



Disaster Management
1710 Red Soils Ct., Ste. 225
Oregon City, OR 97045

T 503-655-8378

clackamas.us

June 10, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of FY2021 Hazardous Materials Emergency Preparedness (HMEP)
Grant Sub-recipient Agreement between Clackamas County and the State of Oregon

Purpose/Outcomes	The purpose of the grant is to hire a contractor to design, coordinate, facilitate, and provide written after action reports for a hazardous materials functional exercise in Clackamas County.
Dollar Amount and Fiscal Impact	The grant agreement is for \$17,345, with a 25% sub-recipient cost match, bringing the grant total to \$21,681. Clackamas County agrees to match the amount of \$4,336.
Funding Source	Clackamas County Disaster Management will provide \$4,336 in staff time as an in-kind (soft match).
Duration	Effective upon execution and terminate on March 31, 2022.
Previous Board Action	This is an ongoing series of awards to provide assistance to the Clackamas County for Local Emergency Planning Committee (LEPC) planning and exercises. The last grant was approved in December 2019 by the BCC.
Strategic Plan Alignment	1. Ensure Safe, Healthy and Secure Communities
County Counsel Review	January 25, 2021 AN
Procurement Review	N/A
Contact Person	Daniel Nibouar, Deputy Disaster Manager – Disaster Management Department, 503-655-3381
Contract No.	Grant Number: 20-703

BACKGROUND:

Clackamas County Disaster Management is key to a functional Clackamas LEPC and the grants available are critical to planning, exercises, and response to hazardous materials spills. The grant agreement is federal dollars passed through the OSFM to assist with local emergency response planning through the training and support of an appropriate local hazardous materials emergency response capability at the local level.

RECOMMENDATION:

Staff respectfully recommends BCC approval of the FY2021 HMEP agreement.

Respectfully submitted,

Daniel Nibouar, Interim Director

SUB-RECIPIENT GRANT AGREEMENT

This Sub-recipient Grant Agreement (this “Agreement”) is entered into by and between the State of Oregon acting by and through its Department of State Police, for the benefit of its Office of State Fire Marshal (“OSFM”) and Clackamas County on behalf of Clackamas County Department of Disaster Management, (“Sub-recipient”).

RECITALS

- A. By authority granted under ORS 190.110, a state agency or unit of local government of this state may cooperate by agreement or otherwise, with a state agency or unit of local government of this or another state in performing a duty imposed upon it or in exercising a power conferred upon it.
- B. In order to ensure a swift response to a hazardous substance accident and to minimize damage to people, property, and wildlife, OSFM is authorized under ORS 453.347 to assist with emergency response planning by appropriate agencies of local and state government, and may apply for funds to train, equip, and maintain an appropriate response capability at the state and local level.
- C. The parties desire to engage in this Agreement for the mutual benefit of the parties. OSFM desires to enter into this Agreement to assist with local emergency response planning through the training and support of an appropriate local hazardous materials emergency response capability. Sub-recipient desires to receive financial assistance from OSFM to carry out the local hazardous materials emergency preparedness training(s) or project(s) as further described in Exhibit A attached hereto (the “Project”).
- D. The parties acknowledge and agree that this Agreement is a sub-award of certain grant funds from OSFM to Sub-recipient (the “Grant Funds”). The Grant Funds are from the United States Department of Transportation. The Catalog of Federal Domestic Assistance (CFDA) number for the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Office of Hazardous Materials Safety, Hazardous Materials Emergency Preparedness program is 20.703.

TERMS OF SUB-RECIPIENT GRANT AGREEMENT

1. PURPOSE.
 - 1.1 Purpose. The purpose of this Agreement is to establish the terms and conditions of the distribution of the Grant Funds and implementation of the Project, as a part of state and local hazardous materials emergency planning and preparedness measures.
2. TERM / EFFECTIVE DATE.
 - 2.1 This Agreement terminates on March 31, 2022 unless sooner terminated or extended pursuant to other provisions of this Agreement.
3. SUB-RECIPIENT OBLIGATIONS.
 - 3.1 Sub-recipient agrees to comply with all Project details as set forth in Exhibit A, the Application for Funds, and with the requirements of the Pipeline and Hazardous Materials Safety Administration, Hazardous Materials Emergency Preparedness Grant Program, Terms and Conditions attached hereto as Exhibit B (“HMEP Terms and Conditions”). For the purposes of this Agreement, Sub-recipient will comply with only those sections applicable to its role as a sub-recipient with an exception, as provided in Section 16 of the HMEP Terms and Conditions for “Flow-down of Requirements under Sub-awards”.
 - 3.2 Sub-recipient agrees to provide 25% of the total project cost in cash (hard match) or as an in-kind (soft match) contribution, or a combination of both (“Sub-recipient Match”). Sub-recipient agrees to provide documentation showing how it satisfied the Sub-recipient Match requirement. Match validation

documentation shall be provided with the Request for Reimbursement. OSFM reserves the right to determine if the Sub-recipient Match requirement is satisfied. The minimum amount of match required for the Grant Funds under this Agreement is **\$4,336.00** (“Sub-recipient Match Amount”).

- 3.3 Sub-recipient agrees to use Oregon Department of Public Safety Standards and Training (DPSST) approved instructors, when applicable for the Project. Sub-recipient shall submit:
- 3.3.1 The application required for DPSST to certify the course and the instructor(s) before the classes are held.
- 3.3.2 A student roster and course evaluations to DPSST’s Fire Training Section with copies to the OSFM at the completion of the class.
- 3.4 Sub-recipient agrees to provide OSFM with copies of all sub-awards and invoices.
- 3.5 Sub-recipient agrees to submit to OSFM a Request for Reimbursement in the form attached hereto as Exhibit C (“Request for Reimbursement”) of applicable charges for verification and approval of expenditures before payment is made by OSFM. All Requests for Reimbursements must be submitted to OSFM no later than thirty (30) days following the termination of this Agreement and must include the following information:
- 3.5.1 For projects:
- a. the project title,
 - b. training or exercise scenario agenda,
 - c. rosters, and
 - d. evaluation forms.
- 3.5.2 For exercises:
- a. an exercise timeline,
 - b. pre-exercise packages, and
 - c. the after action report.
- 3.6 Sub-recipient agrees to submit performance and financial reports as required in Section 13 of the HMEP Terms and Conditions to the OSFM Grant Project Manager identified in Section 5.

4. OSFM’s OBLIGATIONS.

- 4.1 OSFM agrees to provide direction and support, on an “as needed” basis when reasonable, to Sub-recipient.
- 4.2 OSFM agrees to work with Sub-recipient to distribute announcements to public safety agencies across Oregon that may be interested in participating in the training or exercise.
- 4.3 OSFM agrees to reimburse Sub-recipient for actual incurred expenditures related to the completion of the Project, excluding the Sub-recipient Match Amount, with the Grant Funds up to an amount not to exceed **\$17,345.00**, (“Grant Amount”) for performance of the obligations set forth in Section 3. Any and all expenses not covered by the Grant Amount and Match Amount are the sole responsibility of Sub-recipient. Questions regarding eligible costs should be addressed to the OSFM Grant Project Manager identified in Section 5 of this Agreement, who will have final decision-making authority. Any Grant Funds disbursed to Sub-recipient under this Agreement that are used in violation or contravention of one or more of the provisions of this Agreement or the laws pertaining to public funds (“Misexpended

Funds”) must be returned to OSFM by Sub-recipient, no later than ten (10) days after OSFM’s written demand therefor.

5. NOTIFICATIONS.

5.1 OSFM CONTACT.

Notifications required for the administration of this Agreement shall be sent to:

Terry Wolfe, Grant Project Manager
Office of State Fire Marshal
3565 Trelstad Ave. SE
Salem, OR 97317
Ph: 503-934-8245
Email: terry.wolfe@osp.oregon.gov

5.2 NAME OF OTHER PARTY CONTACT.

Notifications required for the administration of this Agreement shall be sent to:

Daniel Nibouar, Interim Director
Clackamas County Disaster Management
1710 Red Soils Court #225
Oregon City, OR 97045
Ph: 503-650-3381
Email: dnibouar@clackamas.us

5.3 ANNOUNCEMENTS; PUBLICATIONS.

5.3.1 Sub-recipient agrees that all training, planning, and exercise announcements or publications created with any Grant Funds shall contain the following announcements: *“This (choose one of the following) (training, exercise, or publication) was funded by the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Hazardous Materials Emergency Preparedness grant program through the Oregon State Police, Office of State Fire Marshal and (insert name) Local Emergency Planning Committee (or if not an LEPC then insert the Name of Other Party).”*

5.3.2 Sub-recipient agrees to include the following language in all publications related to the Project: *“The opinions, findings, and conclusions or recommendations expressed in this publication are those of the author and do not necessarily reflect views of the U.S. Department of Transportation or Oregon State Police, Office of State Fire Marshal.”*

6. TERMINATION.

6.1 This Agreement may be terminated prior to the Termination Date at any time by mutual written consent of the parties.

6.2 OSFM may unilaterally terminate this Agreement effective ten (10) days after delivery of written notice to Sub-recipient, or at such later date as may be established by OSFM, under any condition including, but not limited to, the following:

6.2.1 If Sub-recipient fails to perform any of the provisions of this Agreement, or so fails to pursue the Project as to endanger performance of obligations as required under this Agreement, and after receipt of written notice from OSFM, fails to correct such failures within ten (10) days, or such longer period as OSFM may authorize.

- 6.2.3 If OSFM fails to receive funding, appropriations, limitations, or other expenditure authority at levels sufficient to allow OSFM, in the exercise of its reasonable administrative discretion, to continue to make the payments provided for in this Agreement.
 - 6.2.4 If federal or state laws, regulations, or guidelines are modified, or interpreted in such a way that the Project under this Agreement is prohibited, or if OSFM is prohibited from paying for such Project from the planned funding source.
 - 6.2.5 If Sub-recipient fails to provide the Sub-recipient Match for the Project.
- 6.3 Termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

7. NON-APPROPRIATION

The State of Oregon's payment obligations under this Agreement are conditioned upon OSFM receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow OSFM, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Agreement. Sub-recipient is not entitled to receive payment under this Agreement from any part of Oregon state government other than OSFM. Nothing in this Agreement is to be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. OSFM certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within OSFM's current appropriation or limitation of the current biennial budget.

8. GOVERNING LAW; VENUE; CONSENT TO JURISDICTION.

This Agreement shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of laws. Any claim, action, suit or proceeding (collectively, "Claim") between OSFM (and any other agency or department of the State of Oregon) and Sub-recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity or governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. SUB-RECIPIENT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

9. COMPLIANCE WITH GOVERNMENT REGULATIONS.

- 9.1 Sub-recipient agrees to comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279C.515, 279B.235, 279B.230, and 279B.270, which are hereby incorporated by reference. Without limiting the generality of the foregoing, Sub-recipient expressly agrees to comply with (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- 9.2 Sub-recipient shall comply with the Assurance of Compliance with Title VI of the Civil Rights Act of 1964, Department of Transportation, attached hereto as Exhibit D.

- 9.3 Sub-recipient shall insert the following notification in all solicitations for bids for work or material subject to the Title 49, Code of Federal Regulations and, in adapted form, in all proposals for negotiated agreements related to this Agreement.

“The Sub-recipient, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-4 and Title 49 Code of Federal Regulations, Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in Federally-assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in regard to any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex or national origin in consideration for an award.”

10. CONTRIBUTION.

- 10.1 If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.
- 10.2 With respect to a Third Party Claim for which the State is jointly liable with Sub-recipient (or would be if joined in the Third Party Claim), the State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Sub-recipient in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of Sub-recipient on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the State on the one hand and of Sub-recipient on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.
- 10.3 With respect to a Third Party Claim for which Sub-recipient is jointly liable with the State (or would be if joined in the Third Party Claim), Sub-recipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the State in such proportion as is appropriate to reflect the relative fault of Sub-recipient on the one hand and of the State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Sub-recipient on the one hand and of the State on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Sub-recipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

10.4 Notwithstanding any other provision of this section 10, Sub-recipient, as the recipient of grant funds, pursuant to this agreement with the State of Oregon, shall assume sole liability for Sub-recipient's breach of the conditions of the grant, and shall, upon Sub-recipient's breach of grant conditions that causes or requires the State of Oregon to return funds to the grantor, hold harmless and indemnify the State of Oregon for an amount equal to the funds which the State of Oregon is required to pay grantor.

11. REMEDIES.

In the event that Sub-recipient violates any term or condition under this Agreement, OSFM shall have all remedies available to it under law, in equity, and under this Agreement.

12. INSURANCE REQUIREMENTS.

12.1 The parties acknowledge and agree Sub-recipient is a unit of local government as defined in ORS 190.003, and in order to meet the requirements of ORS 30.272 and ORS 30.273 may be commercially insured or self-insured.

12.2 Sub-recipient shall obtain, and at all times keep in effect, comprehensive liability insurance and property damage insurance covering its own acts and omissions under this Agreement. With the exception of obligation set forth in section 10.4, Sub-recipient may satisfy these requirements in any manner allowed by ORS 30.282. Such liability insurance, whatever the form, shall be in an amount not less than the limits of public body tort liability specified in ORS 30.271. In the event of unilateral cancellation or restriction by the insurance company of Sub-recipient's insurance policy referred to in this paragraph, Sub-recipient, as applicable, shall immediately notify OSFM verbally and in writing. Sub-recipient's coverage limits shall not be less than \$2,000,000 for any single claimant and \$4,000,000 for multiple claimants.

12.3 All employers, including Sub-recipient, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Worker's Compensation coverage, unless such employers are exempt under ORS 656.126.

12.4 If Sub-recipient uses a subcontractor to perform the Project, or portions thereof, the subcontractor shall meet the Subcontractor Insurance Requirements set forth on Exhibit E attached hereto.

13. THIRD PARTY BENEFICIARY.

OSFM and Sub-recipient are the only parties to this Agreement and are the only parties entitled to enforce the terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

14. FORCE MAJEURE.

The parties shall not be held responsible for delay or default caused by fire, riot, acts of God and war, which are beyond the parties' reasonable control. The parties shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of the obligations under this Agreement.

15. ENTIRE AGREEMENT/WAIVER/MERGER.

This Agreement and attached exhibits constitute the entire Agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind the parties unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective

only in the specific instance and for the specific purpose given. The failure of OSFM to enforce any provision of this Agreement shall not constitute a waiver by OSFM of that or any other provision.

16. AMENDMENTS.

This Agreement may be amended by mutual agreement of the parties, but only to the extent permitted by applicable statutes and administrative rules. No amendment to this Agreement shall be effective unless it is in writing signed by the parties, and all approvals required by applicable law have been obtained.

17. RECORDS MAINTENANCE; ACCESS.

Sub-recipient shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. If Sub-recipient expends \$500,000 or more of federal funds (from all sources) in its fiscal year beginning prior to December 26, 2014, Sub-recipient shall have a single organization-wide audit conducted in accordance with the Single Audit Act. If Sub-recipient expends \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014, Sub-recipient shall have a single organization-wide audit conducted in accordance with the provisions of 2 C.F.R. Subtitle B, with guidance at 2 C.F.R. part 200. Copies of all audits must be submitted to OSFM within 30 days of completion. If Sub-recipient expends less than \$500,000 in federal funds in a fiscal year beginning prior to December 26, 2014, or less than \$750,000 in a fiscal year beginning on or after that date, Sub-recipient is exempt from federal audit requirements for that year. In addition, Sub-recipient shall maintain any other records pertinent to this Agreement in such a manner as to clearly document Sub-recipient's performance. Sub-recipient acknowledges and agrees that OSFM and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of Name of Other Party that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Sub-recipient shall retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

18. SEVERABILITY.

The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

19. COUNTERPARTS.

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement so executed shall constitute an original.

EACH PARTY, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT, HAS THE AUTHORITY TO SIGN AND BIND THEIR RESPECTIVE AGENCIES, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

CLACKAMAS COUNTY DISASTER MANAGEMENT _____ Daniel Nibouar Interim Director	DATE: _____
OREGON OFFICE OF STATE FIRE MARSHAL: _____ Mariana Ruiz-Temple State Fire Marshal	DATE: _____

EXHIBIT A

STATEMENT OF WORK

The purpose of the Project is *hire a contractor to design, coordinate, facilitate, and provide written after action reports for a Functional Exercise in Clackamas County.*

THE PROJECT

APPLICATION FOR FUNDS

NOTE: The Grant Application is paginated with an “A” preceding the page number. The following page numbers constitute Exhibit A, Application for Funds: A-1 – A-6.

EXHIBIT B

HMEP TERMS AND CONDITIONS

(aka Pipeline and Hazardous Materials Safety Administration
“Hazardous Materials Emergency Preparedness Grant Program,
Terms and Conditions”)

NOTE: The Hazardous Materials Emergency Preparedness Grant Program Terms and Conditions is paginated with an “B” preceding the page number. The following page numbers constitute Exhibit B, Hazardous Materials Emergency Preparedness Grant Program Terms and Conditions:
B-1 – B-17

EXHIBIT C
REQUEST FOR REIMBURSEMENT (RFR)

EXHIBIT D

ASSURANCE OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 DEPARTMENT OF TRANSPORTATION

During the performance of this Agreement, the Sub-recipient, for itself, its assignees and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. Compliance with Regulations:

The Sub-recipient shall comply with the Regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation (hereinafter, “DOT”) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

2. Nondiscrimination:

The Sub-recipient, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of contractors, including procurements of materials and leases of equipment. The Sub-recipient shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix D of the Regulations.

3. Solicitation for contractors, including procurements of Materials and Equipment:

In all solicitations either by competitive bidding or negotiation made by the Sub-recipient for work to be performed under a contract, including procurements of materials or leases of equipment, each potential contractor or supplier shall be notified by the Sub-recipient of the contractor’s obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.

4. Information and Reports:

The Sub-recipient shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State of Oregon or the Pipeline and Hazardous Materials Safety Administration (PHMSA) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Sub-recipient is in the exclusive possession of another who fails or refuses to furnish this information the Sub-recipient shall so certify to the State of Oregon or the Pipeline and Hazardous Materials Safety Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance:

In the event of the Sub-recipient’s noncompliance with nondiscrimination provisions of this Agreement, the State of Oregon shall impose sanctions as it or the Pipeline and Hazardous Materials Safety Administration may determine to be appropriate, including but not limited to:

- (a) Withholding of payments to the Sub-recipient under the Agreement until the Sub-recipient complies; and/or,
- (b) Cancellation, termination, or suspension of the Agreement, in whole or in part.

6. Incorporation of Provisions:

The Sub-recipient shall include the provisions of paragraphs (1) through (6) in every contract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Sub-recipient shall take such action with respect to any contract or procurements as the State of Oregon or the Pipeline and Hazardous Materials Safety Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a Sub-recipient becomes involved in, or is threatened with, litigation with a contract or supplier as a result of such direction, the Sub-recipient may request the State of Oregon to enter into such litigation to protect the interests of the State of Oregon, and in addition, the Sub-recipient may request the United States to enter into such litigation to protect the interest of the United States.

EXHIBIT E

SUBCONTRACTOR INSURANCE REQUIREMENTS.

General.

Sub-recipient shall require its first tier contractor(s) that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before the contractors perform under contracts between Sub-recipient and the contractors (the "Subcontracts"), and ii) maintain the insurance in full force throughout the duration of the Subcontracts. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Agency. Sub-recipient shall not authorize contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, Sub-recipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Sub-recipient shall incorporate appropriate provisions in the Subcontracts permitting it to enforce contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Subcontracts as permitted by the Subcontracts, or pursuing legal action to enforce the insurance requirements. In no event shall Sub-recipient permit a contractor to work under a Subcontract when Sub-recipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, a "first tier" contractor is a contractor with which Sub-recipient directly enters into a contract. It does not include a subcontractor with which the contractor enters into a contract.

Types and Amounts.

1. WORKERS' COMPENSATION & EMPLOYERS' LIABILITY

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

2. PROFESSIONAL LIABILITY. Not required.

3. COMMERCIAL GENERAL LIABILITY.

Required **Not required**

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that is satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this contract, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

4. AUTOMOBILE LIABILITY INSURANCE.

Required **Not required**

Automobile Liability Insurance covering Contractor's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

5. POLLUTION LIABILITY. Not required by OSFM.

6. ADDITIONAL INSURED. The Commercial General Liability insurance and Automobile Liability insurance must include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to the contractor's activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

7. "TAIL" COVERAGE. If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subcontract, for a minimum of 24 months following the later of : (i) the contractor's completion and Sub-recipient's acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing 24-month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the contractor may request and Agency may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If Agency approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

8. NOTICE OF CANCELLATION OR CHANGE. The contractor or its insurer must provide 30 days' written notice to Sub-recipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

9. CERTIFICATE(S) OF INSURANCE. Sub-recipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify:

- i) all entities and individuals who are endorsed on the policy as Additional Insured and
- ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

APPENDIX I**Information required by 2 CFR § 200.331(a)(1)**

Federal Award Identification:

- (i) Sub-recipient name (which must match registered name in DUNS): Clackamas County on behalf of the Department of Disaster Management
- (ii) Sub-recipient's DUNS number: 96992656
- (iii) Federal Award Identification Number (FAIN): 693JK31940034HMEP
- (iv) Federal Award Date: 9/18/2019
- (v) Sub-award Period of Performance Start and End Date: From November 1, 2020 to September 20, 2021
- (vi) Total Amount of Federal Funds Obligated by this Agreement: \$17,345.00
- (vii) Total Amount of Federal Funds Obligated to the Sub-recipient by the pass-through entity including this Agreement: \$17,345.00
- (viii) Total Amount of Federal Award committed to the Sub-recipient by the pass-through entity: \$17,345.00
- (ix) Federal award project description: Clackamas County Functional Exercise
- (x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity:
 - (a) Name of Federal awarding agency: USDOT – Pipeline and Hazardous Material Safety Administration
 - (b) Name of pass-through entity: Oregon State Police, Office of State Fire Marshal
 - (c) Contact information for awarding official of the pass-through entity: terry.wolfe@osp.oregon.gov
- (xi) CFDA Number and Name: 20.703 Interagency Hazardous Materials Public Sector Training and Planning Grants
Amount: \$306,625.00
- (xii) Is Award R&D? No
- (xiii) Indirect cost rate for the Federal award: 9.5%