

SUBRECIPIENT GRANT AGREEMENT

This Agreement is entered into between the State of Oregon acting by and through its Department of State Police, for the benefit of its Office of State Fire Marshal, hereinafter referred to as "OSFM" and the City of Portland, Portland Fire & Rescue, hereinafter referred to as PF&R.

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 subrecipient grant agreement for the mutual benefit of the parties. The OSFM desires to enter into this subrecipient grant agreement to assist with local emergency response planning through the training and support of an appropriate local hazardous materials emergency response capability. PF&R desires to receive financial assistance from OSFM to carry out the local hazardous materials emergency preparedness training(s) or project(s) set forth in Exhibit A.
- D. The parties understand that this Agreement is the Subaward of grant funds from the OSFM to PF&R. 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 SUBRECIPIENT GRANT AGREEMENT

1. PURPOSE; STATEMENT OF WORK.

1.1 Purpose. The purpose of this subrecipient grant agreement is to establish the terms and conditions of the distribution of grant funds and implementation of the project(s) set forth in Exhibit A, as a part of state and local hazardous materials emergency planning and preparedness measures. The purpose of the project is to provide intermediate and advanced airgas monitoring training.

1.2 Statement of Work. PF&R shall perform the following work in accordance with the terms and conditions of this Agreement.

Establish contracts with training providers, schedule, monitor and document the training and report the results to the OSFM.

2. TERM / EFFECTIVE DATE.

- 2.1 This Agreement is effective as of January 2, 2018. No payment will be made for work performed outside the effective date and termination date of this Agreement.
- 2.2 This Agreement terminates on September 30, 2018 unless sooner terminated or extended pursuant to other provisions of this Agreement.

3. PF&R OBLIGATIONS.

- 3.1 PF&R agrees to comply with all project details 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, with an exception, as provided in Section 16 "Flow-down of Requirements under Subawards". For the purposes of this agreement, Sub-Recipient will comply with only those sections applicable as a sub-recipient. The Pipeline and Hazardous Materials Safety Administration, Hazardous Materials Emergency Preparedness Grant Program, Terms and Conditions are herein incorporated as Exhibit B.
- 3.2 PF&R agrees to provide 20% of the total project cost in cash (hard match) or in-kind (soft match) contribution, or a combination of both. PF&R agrees to provide documentation showing how it satisfied the match requirement. The OSFM reserves the right to determine if the match requirement is satisfied. The minimum amount of match required for this grant is \$3,875.
- 3.3 PF&R agrees to use Oregon Department of Public Safety Standards and Training (DPSST) approved instructors, when applicable. PF&R 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 PF&R agrees to provide the OSFM with copies of all subawards and invoices.
- 3.5 PF&R agrees to submit to the OSFM a Request for Reimbursement (Exhibit C) of applicable charges for verification and approval of expenditures before payment is made by the OSFM. All Requests for Reimbursements must be submitted to the OSFM no later than thirty (30) days following the termination of the 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 PF&R agrees to submit performance and financial reports as required in Section 13 of Exhibit B to the OSFM Grant Project Manager.

4. OSFM's OBLIGATIONS.

- 4.1 OSFM agrees to provide direction and support, on an "as needed" basis when reasonable, to PF&R.
- 4.2 OSFM agrees to work with PF&R 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 the PF&R for actual incurred expenditures, excluding match, up to the amount of **\$15,500**, for accomplishment of the aforementioned PF&R obligations as stated in Section 3. All expenses related to the completion of the work specified herein shall be included in this **\$15,500** amount. All expenses, grant plus match, to fulfill the Agreement are the responsibility of the PF&R. 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 moneys disbursed to PF&R under this agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") must be returned to OSFM. PF&R shall return all Misexpended Funds to OSFM promptly, no later than 15 days after OSFM's written demand."

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@state.or.us

5.2 PF&R CONTACT.

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

Shon Christensen, HazMat Training Lieutenant
PF&R
1120 SW Fifth St. Room 1250
Portland, Oregon 97204
Ph: 503-793-1606
Email: shon.christensen@portlandoregon.gov

5.3 Announcements; Publications.

5.3.1 The PF&R agrees that all training, planning, and exercise announcements or publications created with grant funding in accordance with this Agreement shall contain the following statement: "This training 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 PF&R.”

5.3.2 The PF&R agrees to include the following language in all publications : “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.”

5.3.3 The PF&R agrees to include the OSFM and LEPC logos with the announcements or publications, when applicable.

6. TERMINATION.

6.1 This Agreement may be terminated at any time by mutual written consent of both parties.

6.2 OSFM may terminate this Agreement effective upon delivery of written notice to PF&R, 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 PF&R fails to perform any of the provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from OSFM, fails to correct such failures within five (5) 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 work under this Agreement is prohibited, or if OSFM is prohibited from paying for such work from the planned funding source.

6.2.5 If PF&R fails to provide its share of the cost of 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. PF&R 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 PF&R 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. PF&R, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

9. COMPLIANCE WITH GOVERNMENT REGULATIONS.

- 9.1 PF&R 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, PF&R 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 PF&R shall comply with Exhibit D: Assurance of Compliance with Title VI of the Civil Rights Act of 1964, Department of Transportation, which is incorporated into and is a part of this Agreement. All references to "Subrecipient" in Exhibit D refer to PF&R.
- 9.3 PF&R 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 Recipient and all PF&R, 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 THE PF&R (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 THE PF&R IN SUCH PROPORTION AS IS APPROPRIATE TO REFLECT THE RELATIVE FAULT OF THE STATE ON THE ONE HAND AND OF THE PF&R 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 THE PF&R 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 THE PF&R IS JOINTLY LIABLE WITH THE STATE (OR WOULD BE IF JOINED IN THE THIRD PARTY CLAIM), THE PF&R 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 THE PF&R 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 THE PF&R 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. THE PF&R'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 11, PF&R, AS THE RECIPIENT OF GRANT FUNDS, PURSUANT TO THIS AGREEMENT WITH THE STATE OF OREGON, SHALL ASSUME SOLE LIABILITY FOR PF&R'S BREACH OF THE CONDITIONS OF THE GRANT, AND SHALL, UPON PF&R'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 PF&R 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. THIRD PARTY BENEFICIARY.

OSFM and PF&R 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.

13. 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.

14. 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.

15. AMENDMENTS.

This Agreement may be amended by mutual agreement of both 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.

16. RECORDS MAINTENANCE; ACCESS.

PF&R shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. PF&R is a sub-recipient. If PF&R expends \$500,000 or more of federal funds (from all sources) in its fiscal year beginning prior to December 26, 2014, PF&R shall have a single organization-wide audit conducted in accordance with the Single Audit Act. If PF&R expends \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014, PF&R 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 PF&R 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, PF&R is exempt from federal audit requirements for that year. In addition, PF&R shall maintain any other records pertinent to this Agreement in such a manner as to clearly document PF&R's performance. PF&R 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 PF&R that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations

and audits and make excerpts and transcripts. PF&R 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.

17. 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.

18. 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 AGENCY, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

CITY OF PORTLAND <hr/> Ted Wheeler Mayor	DATE: _____
OREGON OFFICE OF STATE FIRE MARSHAL: <hr/> James L. Walker State Fire Marshal	DATE: _____

APPROVED AS TO FORM


CITY ATTORNEY 1/29/18