

OREGON DEPARTMENT OF EMERGENCY MANAGEMENT
Hazard Mitigation Grant Program (HMGP)
CFDA # 97.039
City of Portland
Fossil Fuel Terminal Zoning and Comprehensive Plan Amendments
Not to Exceed \$405,720.00
Grant No: HMGP-DR-4499-24-P-OR

This Agreement is made and entered into by and between the **State of Oregon**, acting by and through the Oregon Department of Emergency Management, hereinafter referred to as “OEM,” and **City of Portland** hereinafter referred to as “Subrecipient,” and collectively referred to as the “Parties.”

1. **Effective Date.** This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law. Reimbursements will be made for Project Costs (as defined in Section 6.a.) incurred beginning on **July 27, 2023**, and shall terminate upon completion and approval of the Project (as defined in Section 4) by federal and state officials, including the completion of close-out and audit (the “Project Completion Date”). This period shall be known as the Grant Award Period. The Project shall be completed no later than **February 1, 2026**, the “Expiration Date”), unless otherwise extended as provided in this Agreement. OEM’s obligation to disburse Grant Funds under this Agreement is subject to Sections 6 and 10 of this Agreement.
2. **Agreement Documents.** This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:

- Exhibit A: **FEMA Project Description and Budget**
- Exhibit B: **Federal Department of Homeland Security Standard Terms & Conditions**
- Exhibit C: **Subagreement Insurance Requirements**
- Exhibit D: **Information required by 2 CFR 200.332(a)(1)**

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: Exhibit B; this Agreement without Exhibits; Exhibit A; Exhibit C; Exhibit D.

3. **Project Cost, Grant Funds.** The total estimated cost of the Project for the purpose of this Agreement is **\$450,800.00**. In accordance with the terms and conditions of this Agreement, OEM shall provide Subrecipient (i) an amount not to exceed 90 percent of the Project Costs or **\$405,720.00**, whichever is less, (the “Federal Share”) in grant funds for eligible costs described in Section 6 hereof and (ii) Subrecipient management costs in the amount of **\$0.00** the “Management Costs Reimbursement” and, together with the Federal Share, the “Grant Funds”). Grant Funds for this Program are provided by the Federal Emergency Management Agency (FEMA) and are administered by OEM. Subrecipient will commit a percentage of the Project Costs to the project, known as the non-Federal match. The non-Federal match can be cash, in-kind, or a combination of both. For this Agreement, the non-Federal match shall be 10 percent of the Project Costs, up to

\$45,080.00 which shall be contributed by Subrecipient. Subrecipient shall apply any savings, rebates and reductions in cost to reduce the overall cost of the Project. Subrecipient is responsible for any costs in excess of the total Project Cost.

- 4. Project.** The Grant Funds shall be used solely for the project described in Exhibit A (the “Project”) and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by OEM by amendment pursuant to Section 11.d hereof.
- 5. Performance and Close-Out Reports.**
 - a. Subrecipient agrees to submit performance reports, using a form provided by OEM.
 - b. Performance reports are due to OEM on or before 15 days following the end of each calendar quarter (March 31, June 30, September 30, and December 31).
 - c. Subrecipient may request from OEM prior written approval to extend a performance report requirement past its due date. OEM, in its sole discretion, may approve or reject the request.
 - d. Subrecipient shall submit a final close-out report to OEM for review which must include a financial performance report, construction reports (if applicable), invention disclosure (if applicable), Federally-owned property report (if applicable), and final request for reimbursement (if applicable).
 - e. Failure of Subrecipient to submit the required program, financial, or audit reports, or to resolve program, financial, or audit issues, may result in the suspension of grant payments, termination of this Agreement, or both.
- 6. Reimbursement Process.**
 - a. OEM shall reimburse Subrecipient’s actual, reasonable and necessary costs of developing the Project (the “Project Costs”) in an amount not to exceed the Grant Fund amount provided in Section 3. Project Costs do not include those costs that are excluded from reimbursement by either OEM or FEMA under this Agreement or as a result of a financial review or audit. Reimbursements shall be made by OEM within ninety (90) days of OEM’s receipt and approval of a Request for Reimbursement of Funds form (the “RfR”) and all supporting documentation (i.e., a complete packet) from Subrecipient. Subrecipient must pay its contractors, consultants and vendors before submitting RfRs to OEM for reimbursement.
 - b. No later than the end of each calendar quarter (March 31, June 30, September 30, and December 31), Subrecipient shall submit an RfR to OEM for review and approval. Each RfR shall include the appropriate Hazard Mitigation Assistance Project Number, FEMA Project Number, FEMA FIPS Number and UEI Number, as well as supporting invoices and other appropriate documentation evidencing the Project Costs for which reimbursement is sought, e.g., timesheets/work logs for labor hours and receipts and other proof of Subrecipient’s payment to vendors. RfRs must be based on actual expenses incurred and specify the

percentage of Project completion. Subrecipient's deadline to submit its final RfR is 30 days after the earlier of the Project Completion Date or the Expiration Date, whichever occurs first.

- c. OEM will withhold reimbursements for Project Costs if Subrecipient fails to submit performance reports by the specified deadlines or if the performance reports submitted are incomplete.
- d. Reimbursement rates for travel expenses shall not exceed those allowed by the State of Oregon, however, travel expenses must be a part of the approved budget for the project. Requests for reimbursement for travel must be supported with a detailed statement identifying the person who traveled, the purpose of the travel, the dates, times, and places of travel, and the actual expenses or authorized rates incurred.
- e. Reimbursements will only be made for actual expenses incurred during the Grant Award Period provided in Section 1. Subrecipient agrees that no Grant Funds or, if applicable, match funds may be used for expenses incurred before or after the Grant Award Period.
- f. **Conditions Precedent to Disbursement.** OEM's obligation to disburse Grant Funds to Subrecipient is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:
 - i. OEM has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to make the disbursement.
 - ii. Subrecipient is in compliance with the terms of this Agreement including, without limitation, Exhibit B and the requirements incorporated by reference in Exhibit B.
 - iii. Subrecipient's representations and warranties set forth in Section 7 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
 - iv. Subrecipient has provided to OEM an RfR in accordance with Section 6. of this Agreement.
- g. **Recovery of Grant Funds.** Any funds disbursed to Subrecipient under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of termination or expiration of this Agreement ("Unexpended Funds") must be returned to OEM. Subrecipient shall return all Misexpended Funds to OEM promptly after OEM's written demand and no later than 15 days after OEM's written demand. Subrecipient shall return all Unexpended Funds to OEM within 14 days after the earlier of expiration or termination of this Agreement.

The Subrecipient shall be responsible for pursuing recovery of monies paid under this Agreement in providing disaster assistance against any party that might be liable, and further, the Subrecipient shall cooperate in a reasonable manner with the State and the United States in efforts to recover expenditures under this Agreement.

In the event the Subrecipient obtains recovery from a responsible party, the Subrecipient shall first be reimbursed its reasonable costs of litigation from such recovered funds. The Subrecipient shall pay to OEM the proportionate Federal share, as defined in Exhibit E, of all project funds recovered in excess of costs of litigation.

7. Representations and Warranties of Subrecipient. Subrecipient represents and warrants to OEM as follows:

- a. Organization and Authority.** Subrecipient is a city and political subdivision of the State of Oregon duly organized under the laws of the State of Oregon and is eligible to receive the Grant Funds. Subrecipient has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Subrecipient of this Agreement (1) have been duly authorized by all necessary action of Subrecipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Subrecipient is a party or by which Subrecipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Subrecipient of this Agreement.
- b. Binding Obligation.** This Agreement has been duly executed and delivered by Subrecipient and constitutes a legal, valid and binding obligation of Subrecipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- c. No Solicitation.** Subrecipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

The warranties set forth in this section are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

8. Records Maintenance and Access; Audit.

- a. Records, Access to Records and Facilities.** Subrecipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Subrecipient acknowledges and agrees, and Subrecipient will require its contractors, subcontractors, subrecipients (collectively hereafter "contractors"), successors, transferees, and assignees to acknowledge and agree, to provide OEM, Oregon Secretary of State (Secretary), Office of Inspector General (OIG), Department of Homeland Security (DHS),

FEMA, or any of their authorized representatives, access to records, accounts, documents, information, facilities, and staff. Subrecipient and its contractors must cooperate with any compliance review or complaint investigation by any of the above listed agencies, providing them access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary. The right of access is not limited to the required retention period but shall last as long as the records are retained.

- b. **SEFA.** Subrecipient must prepare a Schedule of Expenditures of Federal Awards (SEFA) that includes: Federal grantor name, pass-through entity name, program name, Federal catalog number, identifying number assigned by the pass-through entity and current year expenditures.
- c. **Retention of Records.** Subrecipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project until the latest of (a) six years following termination, completion or expiration of this Agreement, (b) upon resolution of any litigation or other disputes related to this Agreement, or (c) as required by 2 CFR 200.334. It is the responsibility of Subrecipient to obtain a copy of 2 CFR Part 200 and to apprise itself of all rules and regulations set forth.
- d. **Audits.**
 - i. If Subrecipient expends \$750,000 or more in Federal funds (from all sources) in Subrecipient's fiscal year, Subrecipient shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR 200 Subpart F. Copies of all audits must be submitted to OEM within 30 days of completion. If Subrecipient expends less than \$750,000 in its fiscal year in Federal funds, Subrecipient is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in Section 8.a. herein.
 - ii. Audit costs for audits not required in accordance with 2 CFR Part 200, Subpart F are unallowable under this Agreement. If Subrecipient did not expend \$750,000 or more in Federal funds in its fiscal year but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the grant.
 - iii. Subrecipient shall save, protect and hold harmless OEM from the cost of any audits or special investigations performed by the Secretary or any federal agency with respect to the funds expended under this Agreement. Subrecipient acknowledges and agrees that any audit costs incurred by Subrecipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Subrecipient and the State of Oregon.

9. Subrecipient Procurements; Property and Equipment Management and Records; Subcontractor Indemnity and Insurance

- a. **Subagreements.** Subrecipient may enter into contracts (hereafter "subagreements") for performance of the Project. Subrecipient must have and use its own documented procurement procedures that conform with applicable State and Federal law, including, without limitation, 2

CFR 200.318 through 200.327. For each subagreement over \$150,000, the subagreement shall address administrative, contractual or legal remedies for violation or breach of subagreement terms and provide for sanctions and penalties as appropriate. Additionally, for each subagreement over \$10,000, the subagreement shall address termination for cause or for convenience including the manner in which termination will be affected and the basis for settlement.

- i. Subrecipient shall provide to OEM copies of all Requests for Proposals (RFPs) or other solicitations for procurements anticipated to be for \$100,000 or more and shall provide to OEM, upon request by OEM, such documents for procurements for less than \$100,000. Subrecipient shall include with its RfR a list of all procurements issued during the period covered by the report.
 - ii. All subagreements, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner that encourages fair and open competition to the maximum practical extent possible. All sole-source procurements in excess of \$100,000 must receive prior written approval from OEM in addition to any other approvals required by law applicable to Subrecipient. Justification for sole-source procurement in excess of \$100,000 should include a description of the program and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Interagency agreements between units of government are excluded from this provision.
 - iii. Subrecipient shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, or RFPs for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to OEM.
 - iv. Subrecipient agrees that, to the extent it uses contractors, such contractors shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.
 - v. In the event that Subrecipient subcontracts for engineering services, Subrecipient shall require that the engineering firm be covered by errors and omissions insurance in an amount not less than the amount of the firm's contract. If the firm is unable to obtain errors and omissions insurance, the firm shall post a bond with Subrecipient for the benefit of Subrecipient of not less than the amount of its subcontract. Such insurance or bond shall remain in effect for the entire term of the subcontract. The subcontract shall provide that the subcontract shall terminate immediately upon cancellation or lapse of the bond or insurance and shall require the subcontractor to notify Subrecipient immediately upon any change in insurance coverage or cancellation or lapse of the bond.
- b. Purchases and Management of Property and Equipment; Records.** Subrecipient agrees to comply with all applicable federal requirements referenced in Exhibit B to this Agreement and all procedures for managing and maintaining records of all purchases of property and equipment, including, without limitation, the following requirements:

- i. All property and equipment purchased under this Agreement, whether by Subrecipient or a contractor, will be conducted in a manner providing full and open competition and in accordance with all applicable procurement requirements under State and Federal law, including, without limitation, 2 CFR 200.318 through 200.327, and all purchases shall be recorded and maintained in Subrecipient's property or equipment inventory system.
- ii. Subrecipient's property and equipment records shall include the following information at the minimum: a description of the property or equipment; the manufacturer's serial number, model number or other identification number; the source of the property or equipment, including the Catalog of Federal Domestic Assistance (CFDA) number; name of person or entity holding title to the property or equipment; the acquisition date; cost and percentage of Federal participation in the cost; the location, use and condition of the property or equipment; and any ultimate disposition data including the date of disposal and sale price of the property or equipment.

For acquisition projects, Subrecipient shall retain real estate transaction and property tracking records indefinitely to enable FEMA to track the use of real property acquired with grant funds and ensure that the property is maintained for open space in perpetuity (see 44 CFR Part 80).

- iii. A physical inventory of the property and equipment must be taken and the results reconciled with the property and equipment records at least once every two years.
- iv. Subrecipient must develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of the property and equipment. Subrecipient shall investigate any loss, damage, or theft and shall provide the results of the investigation to OEM upon request.
- v. Subrecipient must develop, or require its contractors to develop, adequate maintenance procedures to keep the property and equipment in good condition.
- vi. If Subrecipient is authorized to sell the property or equipment, proper sales procedures must be established to ensure the highest possible return.
- vii. Subrecipient agrees to comply with 2 CFR 200.313 when original or replacement equipment acquired with Grant Funds is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency.
- viii. Subrecipient shall require its contractors to use property and equipment management requirements that meet or exceed the requirements provided herein applicable to all property and equipment purchased with Grant Funds.
- ix. Subrecipient shall retain, and shall require its contractors to retain, the records described in this Section 9.b. for a period of six years from the date of the disposition or replacement or transfer at the discretion of OEM. Title to all property and equipment purchased with Grant Funds shall vest in Subrecipient if Subrecipient provides written certification to OEM that it will use the property and equipment for purposes consistent with this Agreement.

c. Subagreement indemnity; insurance.

- i. Subrecipient's subagreement(s) shall require the other party to such subagreement(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless OEM and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Subrecipient's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that OEM shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of OEM, be indemnified by the other party to Subrecipient's subagreement(s) from and against any and all Claims.
- ii. Any such indemnification shall also provide that neither Subrecipient's contractor(s) nor any attorney engaged by Subrecipient's contractor(s) shall defend any claim in the name of OEM or any agency of the State of Oregon (collectively "State"), nor purport to act as legal representative of the State or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Subrecipient's contractor is prohibited from defending State or that Subrecipient's contractor is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to pursue claims it may have against Subrecipient's contractor if State elects to assume its own defense. Sections 9(c)(i) and (ii) shall survive the expiration or termination of this Agreement.
- iii. Subrecipient shall require the other party, or parties, to each of its subagreements that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance of the types and amounts provided in Exhibit C to this Agreement.

10. Termination

- a. **Termination by OEM.** OEM may terminate this Agreement effective upon delivery of written notice of termination to Subrecipient, or at such later date as may be established by OEM in such written notice, if:
 - i. Subrecipient fails to complete the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Subrecipient is, for any reason, rendered improbable, impossible, or illegal; or
 - ii. OEM fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or
 - iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement;

- iv. The Project would not produce results commensurate with the further expenditure of funds; or
 - v. Subrecipient takes any action pertaining to this Agreement without the approval of OEM and which under the provisions of this Agreement would have required the approval of OEM.
 - vi. OEM determines there is a material misrepresentation, error or inaccuracy in Subrecipient's application.
- b. Termination by Subrecipient.** Subrecipient may terminate this Agreement effective upon delivery of written notice of termination to OEM, or at such later date as may be established by Subrecipient in such written notice, if:
- i. The requisite local funding to continue the Project becomes unavailable to Subrecipient; or
 - ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.
- c. Termination by Either Party.** Either Party may terminate this Agreement upon at least thirty days' notice to the other Party.
- d. Effect of Termination.** In the event of termination of this Agreement, each party shall be liable only for Project Costs and allowable expenses incurred by the other party, prior to the effective date of termination, and Subrecipient will return all Federal funds paid to Subrecipient for the Project which have not been expended or irrevocably committed to eligible activities.

11. General Provisions

- a. Indemnity.** To the degree permitted by the Oregon Constitution, Article XI, Section 10, and the Oregon Tort Claims Act, ORS 30.260 et seq., Subrecipient shall indemnify, defend, save, and hold harmless the United States and its agencies, officers, employees, agents, and members, and the State of Oregon and its agencies, officers, employees, agents, and members, from and against all claims, damages, losses, expenses, suits, or actions of any nature arising out of or resulting from the activities of Subrecipient, its agencies, officers, employees, agents, members, contractors, or subcontractors under this Agreement. If legal limitations apply to the indemnification ability of Subrecipient, this indemnification shall be for the maximum amount of funds available for expenditure, including any available contingency funds, funds available under ORS 30.260 to 30.300 or other available non-appropriated funds. If requested by OEM, Subrecipient shall purchase commercial insurance covering this indemnification.
- b. Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation. Each party shall bear its own costs incurred under this Section 11.b.

- c. Responsibility for Grant Funds.** Subrecipient shall assume sole liability for that Subrecipient's breach of the conditions of this Agreement, and shall, upon Subrecipient's breach of conditions that requires OEM to return funds to the FEMA, hold harmless and indemnify OEM for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Subrecipient, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
- d. Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- e. Duplicate Payment.** Subrecipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.
- f. No Third Party Beneficiaries.** OEM and Subrecipient are the only Parties to this Agreement and are the only Parties entitled to enforce its 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, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

Subrecipient acknowledges and agrees that the Federal Government, absent express written consent by the Federal Government, is not a party to this Agreement and shall not be subject to any obligations or liabilities to Subrecipient, contractor or any other party (whether or not a party to the Agreement) pertaining to any matter resulting from this Agreement.

- g. Notices.** Except as otherwise expressly provided in this Section, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, email or mailing the same by registered or certified mail, postage prepaid to the persons identified in the signature blocks or to such other persons, addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and sent by registered or certified mail shall be deemed delivered upon receipt or refusal of receipt. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. The parties also may communicate by telephone, regular mail or other means, but such communications shall not be deemed Notices under this Section unless receipt by the other party is expressly acknowledged in writing by the receiving party.
- h. Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by, enforced under and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim")

between OEM (or any other agency or department of the State of Oregon) and Subrecipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State 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 sovereign immunity, 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. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

- i. Compliance with Law.** Subrecipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B. Without limiting the generality of the foregoing, Subrecipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (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.
 - j. Insurance; Workers' Compensation.** All employers, including Subrecipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Subrecipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.
- The Subrecipient will comply with the insurance requirements of the Stafford Act, as amended, and obtain and maintain any other insurance as may be reasonable, adequate, and necessary to protect against further loss to any property which was replaced, restored, repaired or constructed with this assistance.
- k. Independent Contractor.** Subrecipient shall perform the Project as an independent contractor and not as an agent or employee of OEM. Subrecipient has no right or authority to incur or create any obligation for or legally bind OEM in any way. OEM cannot and will not control the means or manner by which Subrecipient performs the Project, except as specifically set forth in this Agreement. Subrecipient is responsible for determining the appropriate means and manner of performing the Project. Subrecipient acknowledges and agrees that Subrecipient is not an "officer", "employee", or "agent" of OEM, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
 - l. Headings.** The section headings in this Agreement are included for convenience only, do not give full notice of the terms of any portion of this Agreement, and are not relevant to the interpretation of any provision of this Agreement.
 - m. Severability.** 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 this Agreement did not contain the particular term or provision held to be invalid.

- n. Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- o. Integration and Waiver.** This Agreement, including all Exhibits and referenced documents, constitutes 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. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision. Subrecipient, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

THE PARTIES, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

City of Portland

By _____
Mayor Ted Wheeler
City of Portland
1221 SW Fourth Ave, Room 110
Portland OR 97204

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

(If required for Subrecipient)

By _____

Date _____

Subrecipient Program Contact:
Tom Armstrong
Supervising Planner
City of Portland, Bureau of Planning and Sustainability
1810 SW Fifth Ave, Room 710
Portland OR 97201
503-823-3527
tom.armstrong@portlandoregon.gov

Subrecipient Finance Contact:
Christopher Cope
Financial Analyst
Office of Management and Finance, Bureau of Revenue
1120 SW Fifth Avenue
Portland OR 97201
503-823-5802

Oregon Department of Emergency Management

By _____
Stephen Richardson
Mitigation Section Manager
Oregon Department of Emergency Management

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By Sam Zeigler

Date November 30, 2023

OEM Program Contact:
Stephen Richardson
Mitigation Section Manager
Oregon Department of Emergency Management
PO Box 14370
Salem, OR 97309-5062
971-332-0005
stephen.j.richardson@oem.oregon.gov

OEM Finance Contact:
Kristine Burrow
Accountant
Oregon Department of Emergency Management
PO Box 14370
Salem, OR 97309-5062
503-378-3256
Kristine.burrow@oem.oregon.gov

EXHIBIT A

Attached Budget and Project Description



Approved Budget for HMGP-DR-4499-OR Portland Fossil Fuel Zoning and Comprehensive Plan Amendments					--->	SF-424A Cost Estimate Final			
Pre-Award Costs							Item (p represents pre-award cost)	Total Cost	
Item #	Item Description	Count	Unit Cost	Total Cost					
				\$0.00			1p. Personnel	\$0.00	
				\$0.00			2p. Fringe	\$0.00	
				\$0.00			3p. Travel	\$0.00	
				\$0.00			4p. Equipment	\$0.00	
				\$0.00			6p. Contractual	\$0.00	
				\$0.00			8p. Other	\$0.00	
				\$0.00			1. Personnel	\$415,800.00	
				\$0.00			2. Fringe	\$0.00	
				\$0.00			3. Travel	\$0.00	
				\$0.00			4. Equipment	\$0.00	
				\$0.00			5. Supplies	\$5,000.00	
				\$0.00			6. Contractual	\$30,000.00	
				\$0.00			7. Construction	\$0.00	
				\$0.00			8. Other	\$0.00	
Post-Award Costs							Description of Proposal:		
1	Concept Development			\$58,000.00			The purpose of this project is to adopt zoning code restrictions on fossil fuel terminals and to amend the natural hazard policies in the 2035 Comprehensive Plan to provide a stronger policy foundation for these actions		
2	Public Involvement			\$104,000.00					
3	Proposed Draft			\$112,000.00					
4	Legislative Adoption Process			\$0.00					
4a	Planning and Sustainability Commission			\$85,900.00					
4b	City Council			\$85,900.00					
4c	Submit to State and FEMA			\$5,000.00					
				\$0.00					
				\$0.00					
				\$0.00					
				Total Cost	\$450,800.00			Total Cost	\$450,800.00
				90% Amount	\$405,720.00				
Management Costs									
(are in addition to the above total project cost; they should NOT be included in the total project cost)									
Post-Award Management Costs									
				\$0.00					
				\$0.00					
				\$0.00					
				Management Cost Total	\$0.00				
Management Costs cannot exceed 5% of the total project cost which is					\$22,540.00			Management Cost Total	\$0.00

EXHIBIT B

Federal Department of Homeland Security Standard Terms and Certifications

Subrecipient and any of its successors, transferees and assignees agree to comply with all applicable provisions governing Department of Homeland Security (DHS) access to record, accounts, documents, information, facilities, and staff members. In addition, recipients shall comply with the following provisions:

FY2023 DHS Standard Terms and Conditions

The Fiscal Year (FY) 2023 DHS Standard Terms and Conditions apply to all new federal financial assistance awards funded in FY 2023. These terms and conditions flow down to subrecipients unless an award term or condition specifically indicates otherwise. The United States has the right to seek judicial enforcement of these obligations.

All legislation and digital resources are referenced with no digital links. The FY 2023 DHS Standard Terms and Conditions will be housed on dhs.gov at www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions.

A. Assurances, Administrative Requirements, Cost Principles, Representations and Certifications

- I. DHS financial assistance recipients must complete either the Office of Management and Budget (OMB) Standard Form 424B Assurances – Non-Construction Programs, or OMB Standard Form 424D Assurances – Construction Programs, as applicable. Certain assurances in these documents may not be applicable to your program, and the DHS financial assistance office (DHS FAO) may require applicants to certify additional assurances. Applicants are required to fill out the assurances as instructed by the awarding agency.
- II. DHS financial assistance recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at Title 2, Code of Federal Regulations (C.F.R.) Part 200 and adopted by DHS at 2 C.F.R. Part 3002.
- III. By accepting this agreement, recipients, and their executives, as defined in 2 C.F.R. § 170.315, certify that their policies are in accordance with OMB's guidance located at 2 C.F.R. Part 200, all applicable federal laws, and relevant Executive guidance.

B. General Acknowledgements and Assurances

All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff.

- I. Recipients must cooperate with any DHS compliance reviews or compliance investigations conducted by DHS.
- II. Recipients must give DHS access to examine and copy records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities or personnel.
- III. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.

- IV. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law, or detailed in program guidance.
- V. Recipients (as defined in 2 C.F.R. Part 200 and including recipients acting as pass-through entities) of federal financial assistance from DHS or one of its awarding component agencies must complete the DHS Civil Rights Evaluation Tool within thirty (30) days of receipt of the Notice of Award for the first award under which this term applies. Recipients of multiple awards of DHS financial assistance should only submit one completed tool for their organization, not per award. After the initial submission, recipients are required to complete the tool once every two (2) years if they have an active award, not every time an award is made. Recipients should submit the completed tool, including supporting materials, to CivilRightsEvaluation@hq.dhs.gov. This tool clarifies the civil rights obligations and related reporting requirements contained in the DHS Standard Terms and Conditions. Subrecipients are not required to complete and submit this tool to DHS. The evaluation tool can be found at <https://www.dhs.gov/publication/dhs-civil-rights-evaluation-tool>. DHS Civil Rights Evaluation Tool | Homeland Security

The DHS Office for Civil Rights and Civil Liberties will consider, in its discretion, granting an extension if the recipient identifies steps and a timeline for completing the tool. Recipients should request extensions by emailing the request to CivilRightsEvaluation@hq.dhs.gov prior to expiration of the 30-day deadline.

C. Standard Terms & Conditions

- I. Acknowledgement of Federal Funding from DHS
Recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposal, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.
- II. Activities Conducted Abroad
Recipients must ensure that project activities performed outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.
- III. Age Discrimination Act of 1975
Recipients must comply with the requirements of the Age Discrimination Act of 1975, Public Law 94-135 (1975) (codified as amended at Title 42, U.S. Code, § 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.
- IV. Americans with Disabilities Act of 1990
Recipients must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, Pub. L. 101-336 (1990) (codified as amended at 42 U.S.C. §§ 12101–12213), which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.
- V. Best Practices for Collection and Use of Personally Identifiable Information
Recipients who collect personally identifiable information (PII) are required to have a publicly available privacy policy that describes standards on the usage and maintenance of the PII they collect. DHS defines PII as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or

linkable to that individual. Recipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy Template as useful resources respectively.

VI. Civil Rights Act of 1964 – Title VI

Recipients must comply with the requirements of Title VI of the Civil Rights Act of 1964 (codified as amended at 42 U.S.C. § 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. DHS implementing regulations for the Act are found at 6 C.F.R. Part 21 and 44 C.F.R. Part 7.

VII. Civil Rights Act of 1968

Recipients must comply with Title VIII of the Civil Rights Act of 1968, Pub. L. 90-284, as amended through Pub. L. 113-4, which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (see 42 U.S.C. § 3601 et seq.), as implemented by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features. (See 24 C.F.R. Part 100, Subpart D.)

VIII. Copyright

Recipients must affix the applicable copyright notices of 17 U.S.C. §§ 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

IX. Debarment and Suspension

Recipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) 12549 and 12689, which are at 2 C.F.R. Part 180 as adopted by DHS at 2 C.F.R. Part 3002. These regulations restrict federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

X. Drug-Free Workplace Regulations

Recipients must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 C.F.R. Part 3001, which adopts the Government-wide implementation (2 C.F.R. Part 182) of Sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101-8106).

XI. Duplication of Benefits

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies; to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions; or for other reasons. However, these prohibitions would not preclude recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions may not be charged to other federal financial assistance awards to overcome fund deficiencies; to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions; or for other reasons.

- XII. Education Amendments of 1972 (Equal Opportunity in Education Act) – Title IX
Recipients must comply with the requirements of Title IX of the Education Amendments of 1972, Pub. L. 92-318 (1972) (codified as amended at 20 U.S.C. § 1681 et seq.), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at 6 C.F.R. Part 17 and 44 C.F.R. Part 19.
- XIII. E.O. 14074 – Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety
Recipient State, Tribal, local, or territorial law enforcement agencies must comply with the requirements of section 12(c) of E.O. 14074. Recipient State, Tribal, local, or territorial law enforcement agencies are also encouraged to adopt and enforce policies consistent with E.O. 14074 to support safe and effective policing.
- XIV. Energy Policy and Conservation Act
Recipients must comply with the requirements of the Energy Policy and Conservation Act, Pub. L. 94- 163 (1975) (codified as amended at 42 U.S.C. § 6201 et seq.), which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.
- XV. False Claims Act and Program Fraud Civil Remedies
Recipients must comply with the requirements of the False Claims Act, 31 U.S.C. §§3729-3733, which prohibit the submission of false or fraudulent claims for payment to the Federal Government. (See 31 U.S.C. §§ 3801-3812, which details the administrative remedies for false claims and statements made.)
- XVI. Federal Debt Status
All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. (See OMB Circular A-129.)
- XVII. Federal Leadership on Reducing Text Messaging while Driving
Recipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513, including conducting initiatives described in Section 3(a) of the Order when on official government business or when performing any work for or on behalf of the Federal Government.
- XVIII. Fly America Act of 1974
Recipients must comply with Preference for U.S. Flag Air Carriers (air carriers holding certificates under 49 U.S.C.) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. § 40118, and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.
- XIX. Hotel and Motel Fire Safety Act of 1990
Recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. § 2225a
- XX. John S. McCain National Defense Authorization Act of Fiscal Year 2019
Recipients, subrecipients, and their contractors and subcontractors are subject to the prohibitions described in section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232 (2018) and 2 C.F.R. §§

200.216, 200.327, 200.471, and Appendix II to 2 C.F.R. Part 200. Beginning August 13, 2020, the statute – as it applies to DHS recipients, subrecipients, and their contractors and subcontractors – prohibits obligating or expending federal award funds on certain telecommunications and video surveillance products and contracting with certain entities for national security reasons.

XXI. Limited English Proficiency (Civil Rights Act of 1964, Title VI)

Recipients must comply with Title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d et seq.) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance: <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

XXII. Lobbying Prohibitions

Recipients must comply with 31 U.S.C. § 1352, which provides that none of the funds provided under a federal financial assistance award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification.

XXIII. National Environmental Policy Act

Recipients must comply with the requirements of the National Environmental Policy Act of 1969, (NEPA) Pub. L. 91-190 (1970) (codified as amended at 42 U.S.C. § 4321 et seq. and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which require recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

XXIV. Nondiscrimination in Matters Pertaining to Faith-Based Organizations

It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries.

Recipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.

XXV. Non-Supplanting Requirement

Recipients receiving federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

XXVI. Notice of Funding Opportunity Requirements

All the instructions, guidance, limitations, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this program are incorporated here by reference in the award terms and conditions. All recipients must comply with any such requirements set forth in the program NOFO.

XXVII. Patents and Intellectual Property Rights

Recipients are subject to the Bayh-Dole Act, 35 U.S.C. § 200 et seq, unless otherwise provided by law. Recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from federal financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.

XXVIII. Procurement of Recovered Materials

States, political subdivisions of states, and their contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. 89-272 (1965), (codified as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962.) The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

XXIX. Rehabilitation Act of 1973

Recipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (1973), (codified as amended at 29 U.S.C. § 794,) which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

XXX. Reporting of Matters Related to Recipient Integrity and Performance

General Reporting Requirements:

If the total value of any currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this federal award, then the recipients must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.

XXXI. Reporting Subawards and Executive Compensation

Reporting of first tier subawards.

Recipients are required to comply with the requirements set forth in the government-wide award term on Reporting Subawards and Executive Compensation located at 2 C.F.R. Part 170, Appendix A, the full text of which is incorporated here by reference in the award terms and conditions.

XXXII. Required Use of American Iron, Steel, Manufactured Products, and Construction Materials

Recipients must comply with the “Build America, Buy America” provisions of the Infrastructure Investment and Jobs Act and E.O. 14005. Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

- (1) all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- (2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- (3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

Waivers

When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. Information on the process for requesting a waiver from these requirements is on the website below.

(a) When the Federal agency has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the agency determines that:

- (1) applying the domestic content procurement preference would be inconsistent with the public interest;
- (2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
- (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the domestic content procurement preference must be in writing. The agency will provide instructions on the format, contents, and supporting

materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office.

There may be instances where an award qualifies, in whole or in part, for an existing waiver described at "[Buy America" Preference in FEMA Financial Assistance Programs for Infrastructure | FEMA.gov](#).

The awarding Component may provide specific instructions to Recipients of awards from infrastructure programs that are subject to the “Build America, Buy America” provisions. Recipients should refer to the Notice of Funding Opportunity for further information on the Buy America preference and waiver process.

XXXIII. SAFECOM

Recipients receiving federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

XXXIV. Terrorist Financing

Recipients must comply with E.O. 13224 and U.S. laws that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Recipients are legally responsible to ensure compliance with the Order and laws.

XXXV. Trafficking Victims Protection Act of 2000 (TVPA)

Trafficking in Persons.

Recipients must comply with the requirements of the government-wide financial assistance award term which implements Section 106 (g) of the Trafficking Victims Protection Act of 2000 (TVPA), codified as amended at 22 U.S.C. § 7104. The award term is located at 2 C.F.R. § 175.15, the full text of which is incorporated here by reference.

XXXVI. Universal Identifier and System of Award Management

Requirements for System for Award Management and Unique Entity Identifier Recipients are required to comply with the requirements set forth in the government-wide financial assistance award term regarding the System for Award Management and Universal Identifier Requirements located at 2 C.F.R. Part 25, Appendix A, the full text of which is incorporated here by reference.

XXXVII. USA PATRIOT Act of 2001

Recipients must comply with requirements of Section 817 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), which amends 18 U.S.C. §§ 175–175c.

XXXVIII. Use of DHS Seal, Logo and Flags

Recipients must obtain permission from their DHS FAO prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

XXXIX. Whistleblower Protection Act

Recipients must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C § 2409, 41 U.S.C. § 4712, and 10 U.S.C. § 2324, 41 U.S.C. §§ 4304 and 4310.

EXHIBIT C

Subagreement Insurance Requirements

GENERAL.

Subrecipient shall require its first tier contractor(s) (Contractor) 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 Subrecipient 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 OEM. Subrecipient shall not authorize Contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, Subrecipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Subrecipient 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 Subrecipient permit a Contractor to work under a Subcontract when the Subrecipient 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 the Subrecipient directly enters into a contract. It does not include a subcontractor with which the Contractor enters into a contract.

TYPES AND AMOUNTS.

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 shall 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.

COMMERCIAL GENERAL LIABILITY:

Required

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to OEM. 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.

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.

ADDITIONAL INSURED:

All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Subcontract must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 07 04 or equivalent.

WAIVER OF SUBROGATION:

Contractor shall waive rights of subrogation which Contractor or any insurer of Contractor may acquire against OEM or State of Oregon by virtue of the payment of any loss. Contractor will obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not OEM has received a waiver of subrogation endorsement from the Contractor or the Contractor's insurer(s).

TAIL COVERAGE:

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, 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 this Subcontract, for a minimum of 24 months following the later of (i) Contractor's completion and Subrecipient's acceptance of all Services required under this Subcontract, or, (ii) Subrecipient's or Contractor termination of contract, or, iii) The expiration of all warranty periods provided under this Subcontract.

CERTIFICATE(S) AND PROOF OF INSURANCE:

Subrecipient shall obtain from the Contractor a Certificate(s) of Insurance for all required insurance before delivering any goods and performing any services required under this Contract. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this contract. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the

excess/umbrella insurance. As proof of insurance OEM has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Contract.

NOTICE OF CHANGE OR CANCELLATION:

The Contractor or its insurer must provide at least 30 days' written notice to Subrecipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

INSURANCE REQUIREMENT REVIEW:

Contractor agrees to periodic review of insurance requirements by OEM under this agreement and to provide updated requirements as mutually agreed upon by Contractor and OEM.

STATE ACCEPTANCE:

All insurance providers are subject to OEM acceptance. If requested by OEM, Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to OEM's representatives responsible for verification of the insurance coverages required under this Exhibit C.

EXHIBIT D
Information required by 2 CFR 200.332(a)(1)

1. Federal Award Identification: HMGP-DR-4499-24-P-OR
 - (i) Subrecipient name: City of Portland
 - (ii) Subrecipient's UEI number: N5NMTXG2UE65
 - (iii) Federal Award Identification Number (FAIN): HMGP-DR-4499-24-P-OR
 - (iv) Federal Award Date: July 27, 2023
 - (v) Subaward Period of Performance: February 1, 2026
 - (vi) Subaward budget period start and end dates: July 27, 2023 through February 1, 2026
 - (vii) Total Amount of Federal Funds Obligated by this Agreement: \$405,720.00
 - (viii) Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this agreement *: \$17,223,893.28
 - (ix) Total Amount of Federal Award Committed to the subrecipient by the pass-through entity: \$405,720.00
 - (x) Federal award project description: City of Portland, Fossil Fuel Terminal Zoning and Comprehensive Plan Amendments
 - (xi) (a) Name of Federal awarding agency: U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA)
 (b) Name of Pass-through entity: Oregon Department of Emergency Management
 (c) Contact information for awarding official of the pass-through entity: Erin McMahan, Director, P.O. Box 14370, Salem, OR 97309-5062
 - (xii) Assistance listings number, title and amount: 97.039 Hazard Mitigation Assistance Grant (HMGP)
 Total Project Amount: \$450,800.00
 - (xiii) Is Award R&D? No
 - (xiv) (a) Indirect cost rate for the Federal award: 0%
 (b) Is the de minimus rate being used per §200.414? No

* The Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this agreement is a point in time amount, as of November 6, 2023.