

**OREGON DEPARTMENT OF EMERGENCY MANAGEMENT  
STATE PREPAREDNESS AND INCIDENT RESPONSE GRANT**

**Tillamook County Emergency Management  
Option B: Portable Lighting**

**Grant No: SP22-053**

This Agreement is made and entered into by and between the **State of Oregon**, acting by and through its Department of Emergency Management, hereinafter referred to as “OEM,” and **Tillamook County Emergency Management**, hereinafter referred to as “Recipient,” 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. This Agreement, and OEM’s obligation to provide the Equipment (as that term is defined in Section 3) under this Agreement, shall terminate as provided in Section 9.
2. **AGREEMENT DOCUMENTS.** This Agreement consists of this document and Exhibit A, Equipment Schedule, which is attached hereto and incorporated by reference.
3. **GRANT OF EQUIPMENT.** In accordance with the terms and conditions of this Agreement, OEM shall provide Recipient the item(s) of emergency response vehicles, equipment, and other personal property identified in Exhibit A (collectively, the “Equipment”).
4. **USE OF EQUIPMENT.** Recipient shall use the Equipment solely to decrease risks to life and property resulting from an “emergency,” as that term is defined in ORS 401.025. Recipient shall not allow private organizations to use the Equipment for any purpose without OEM’s prior written consent. This includes, without limitation, any use of the Equipment by a private organization for emergency or non-emergency purposes and whether or not the proposed use is within the scope of the organization’s organizational or formation documents.
5. **MAINTENANCE; ANNUAL SUSTAINMENT REPORTS.**
  - a. Recipient must maintain, repair, perform upkeep on, and otherwise keep the Equipment in good working condition.
  - b. Recipient shall submit annual sustainment reports using a form provided by OEM. The sustainment reports will summarize Recipient’s maintenance and use of the Equipment during the preceding year, or since the last sustainment report was submitted.
  - c. Recipient must submit sustainment reports to OEM annually on or before July 31st.
  - d. Recipient may request from OEM prior written approval to submit a sustainment report after its due date. OEM may approve or deny the request in its sole discretion.
  - e. Failure of Recipient to timely submit an annual program sustainment report may result in termination of this Agreement.

## 6. RECORDS MAINTENANCE AND ACCESS; EQUIPMENT INSPECTIONS.

- a. **Records, Access to Records.** Recipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Equipment in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards, and state minimum standards for audits of municipal corporations. OEM, the Secretary of State of the State of Oregon (the “Secretary”), and their duly authorized representatives shall have access to the books, documents, papers, and records of Recipient that are directly related to this Agreement or the Equipment provided for the purpose of making audits and examinations. In addition, OEM, the Secretary, and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records.
- b. **Retention of Records.** Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement or the Equipment for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following termination of this Agreement. If there are unresolved audit questions at the end of the six-year period, Recipient shall retain the records until the questions are resolved.
- c. **Equipment Inspections.** Recipient shall permit authorized representatives of OEM to periodically inspect the Equipment, with or without notice.

## 7. OPERATION AND MAINTENANCE EXPENSES; MINIMUM INSURANCE

**REQUIREMENT.** Recipient shall be solely responsible for the costs of operating, maintaining, licensing, and insuring the Equipment and the costs, if any, to acquire and install any parts, accessories, or attachments for the Equipment (collectively, the “Operating Expenses”). OEM shall not be responsible for any Operating Expenses while the Equipment remains in Recipient’s possession, custody, or control. Recipient shall obtain Automobile Liability Insurance covering Recipient’s use of the Equipment for bodily injury and property. Coverage shall be written with a combined single limit of not less than \$1,000,000. Automobile Liability Insurance must include the “**State of Oregon, the Oregon Department of Emergency Management, and their respective officers, members, agents and employees**” as an **endorsed** Additional Insured. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

**8. OWNERSHIP.** OEM will retain ownership of the Equipment and can reclaim any or all of the item(s) of Equipment at any time and for any duration based on Recipient’s failure to meet requirements of this Agreement, community needs, or any other purpose, as determined by OEM in its sole discretion. Upon the Equipment being fully depreciated under governmental accounting principles, OEM may elect to sell the Equipment to Recipient at its fair market value.

## 9. TERMINATION.

- a. **Termination by OEM.** OEM may terminate this Agreement effective upon delivery of written notice of termination to Recipient, or at such later date as may be established by OEM in such written notice, if:
  - i. Recipient fails to follow grant agreement requirements or standard or special conditions; or
  - ii. Recipient fails to adequately maintain the Equipment; or
  - iii. Recipient fails to submit required reports; or
  - iv. Recipient fails to comply with inspections for any reason; or

- v. Recipient files a false certification in this application or other report or document, including correspondence with OEM by any medium; or
- vi. OEM determines that the Equipment could be of greater use to the community elsewhere.

**b. Termination by Recipient.** Recipient may terminate this Agreement effective upon delivery of written notice of termination to OEM, or at such later date as may be established by Recipient in such written notice, if:

- i. Recipient no longer needs the Equipment; or
- ii. The Equipment is beyond its useful life.

**c. Termination by Either Party.** Either Party may terminate this Agreement upon at least ten business days' notice to the other Party.

**d. OEM's Rights Upon Termination.** Upon termination under this Section 9:

- i. OEM may repossess the Equipment from Recipient and, if Recipient has failed to adequately maintain the Equipment as required by Section 5(a), require Recipient to reimburse OEM the cost of repairing the Equipment; or
- ii. Where Recipient has failed to adequately maintain the Equipment as required by Section 5(a), OEM may require Recipient to pay OEM an amount equal to the Equipment's fair market value assuming proper maintenance and repair.

## **10. REPRESENTATIONS AND COVENANTS REGARDING THE TAX-EXEMPT STATUS OF BONDS.**

- a. Recipient acknowledges that the State of Oregon may issue certain bonds (the "Bonds") in part to fund this grant and that the interest paid on the Bonds is excludable from gross income for federal income tax purposes. Recipient further acknowledges that the uses of the Equipment by Recipient during the term of the Bonds may impact the tax-exempt status of the Bonds. Accordingly, Recipient agrees to comply with all applicable provisions of the Internal Revenue Code of 1986, as amended, including any implementing regulations and any administrative or judicial interpretations, (the "Code") necessary to protect the exclusion of interest on the Bonds from federal income taxation.
- b. Recipient shall not, without prior written consent of OEM, permit more than five percent (5%) of the Equipment to be used in a "private use" by a "private person" (as defined in the Code) if such private use could result in the State of Oregon, receiving direct or indirect payments or revenues from the portion of the Equipment to be privately used.
- c. Recipient shall maintain documentation demonstrating compliance with this subsection 10 for the life of the Bonds, including any refunding bonds, and shall make sure documentation is available to OEM upon request.
- d. Recipient indemnifies the State of Oregon for any costs, expenses or liability due to loss of federal tax benefits related to the Bonds, where such loss is caused by action or inaction of Recipient.
- e. This Section 10 shall survive any expiration or termination of this Agreement.

## **11. GENERAL PROVISIONS.**

**a. Contribution.**

- i. 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.

- ii. With respect to a Third-Party Claim for which OEM is jointly liable with Recipient (or would be if joined in the Third-Party Claim), OEM 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 Recipient in such proportion as is appropriate to reflect the relative fault of OEM on the one hand and of Recipient on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of OEM on the one hand and of Recipient on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. OEM's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if OEM had sole liability in the proceeding.
- iii. With respect to a Third-Party Claim for which Recipient is jointly liable with OEM (or would be if joined in the Third-Party Claim), Recipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by OEM in such proportion as is appropriate to reflect the relative fault of Recipient on the one hand and of OEM 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 Recipient on the one hand and of OEM 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. Recipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

- 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. Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- d. 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 Recipient or OEM at the appropriate address or number set forth on the signature page of this Agreement, or to such other 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.

- e. Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by 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 Recipient 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.
- f. Compliance with Law.** Recipient 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.
- g. 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.
- h. 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.

**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.

**Tillamook County Emergency Management**

By \_\_\_\_\_

Name \_\_\_\_\_  
(printed)

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**  
(If required for Recipient)

By \_\_\_\_\_  
Recipient's Legal Counsel

Date \_\_\_\_\_

**Recipient Program Contact:**

Randy Thorpe  
Emergency Mangement Director  
Tillamook County Emergency Management  
201 Laurel Avenue  
Tillamook, OR 97141  
503.842.3412  
rthorpe@co.tillamook.or.us

**Recipient Fiscal Contact:**

Shawn Blanchard  
Treasurer  
Tillamook County Emergency Management  
201 Laurel Avenue  
Tillamook, OR 97141  
503-842-3439  
sblancha@co.tillamook.or.us

**State of Oregon**, acting by through its Department of  
Emergency Management

By \_\_\_\_\_

Alaina Mayfield  
Preparedness Section Manager, OEM

Date \_\_\_\_\_

**APPROVED AS TO FORM**

By \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

**OEM Program Contact:**

Carole Sebens  
Grants Coordinator  
Oregon Department of Emergency Management  
3930 Fairview Industrial Dr. SE  
Salem, OR 97302  
503-798-1938  
[carole.l.sebens@oem.oregon.gov](mailto:carole.l.sebens@oem.oregon.gov)

**OEM Fiscal Contact:**

Michelle Lovejoy  
Chief Financial Officer  
Oregon Department of Emergency Management  
3930 Fairview Industrial Dr. SE  
Salem, OR 97302  
503-934-3303  
[oem.accountspayable@oem.oregon.gov](mailto:oem.accountspayable@oem.oregon.gov)

# EXHIBIT A

## Equipment Schedule

<b>Description</b>	<b>Make</b>	<b>Model</b>	<b>Serial No.</b>
Option B: Portable Lighting			

