

**OREGON DEPARTMENT OF EMERGENCY MANAGEMENT
STATEWIDE PREPAREDNESS AND INCIDENT RESPONSE
GRANT AGREEMENT**

Project Name: City of Tualatin

Agreement Number: SP25-028

This grant agreement (“Agreement”), is between the State of Oregon, acting through its Oregon Department of Emergency Management (“OEM”), and City of Tualatin (“Recipient”) and collectively referred to as the “Parties”. This Agreement becomes effective only when fully signed and approved as required by applicable law. This Agreement includes the following parts, listed in descending order of precedence for purposes of resolving any conflict between two or more of the parts:

- This Agreement without any Exhibits.
- Exhibit A Equipment Schedule
- Exhibit B Program Requirements
- Exhibit C Contact Information

Pursuant to Oregon Laws 2017, Chapter 657 (the “Act”), OEM is authorized to award grants and enter into grant agreements as part of the Statewide Preparedness and Incident Response Program (“SPIRE” or “Program”), disbursing such grants from the Resiliency Grant Fund established in the Act.

SECTION 1 – GRANT OF EQUIPMENT

OEM shall provide Recipient, and Recipient shall accept from OEM, all item(s) of emergency response vehicles, equipment, and other personal property identified in Exhibit A (“Equipment”).

OEM’s obligations are subject to the receipt of the following items, in form and substance satisfactory to OEM:

- (1) This Agreement duly signed by an authorized officer of Recipient; and
- (2) Such other certificates, documents, opinions and information as OEM may reasonably require.

SECTION 2 – USE OF EQUIPMENT

Recipient shall use the Equipment to decrease risks to life and property resulting from an “Emergency,” as that term is defined in ORS 401.025. Recipient may use the preparedness equipment for any purpose, governmental or otherwise, that is permissible for assets financed with tax-exempt bonds, including nonemergency purposes. Equipment may be requested by other organizations to prepare for or to be used during or after emergencies. Recipient shall have agreements in place or readily available and shall develop and maintain a plan for hand-off and training of borrowing user. Recipient shall provide OEM with equipment’s normal operating location. When equipment is loaned or deployed outside of Recipient’s normal operating area, Recipient shall notify OEM upon deployment and upon return. If equipment is unavailable at any time, whether out for service, repair, or any other reason, Recipient shall notify OEM. If a private organization requests equipment, Recipient shall obtain approval from OEM before making any use of preparedness equipment that is outside the scope of the purpose of the private organization as stated in the formation documents or bylaws of the organization.

SECTION 3 – 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. If Equipment requires motor vehicle liability insurance, Recipient shall obtain motor vehicle liability insurance in accordance with ORS 806.080, 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.

SECTION 4 – 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 to best meet the emergency preparedness needs of the State or Oregon. Upon the Equipment being fully depreciated under governmental accounting principles, OEM may elect to sell the Equipment to Recipient at its fair market value at the time of sale.

SECTION 5 – REPRESENTATIONS AND COVENANTS OF RECIPIENT

- A. Existence and Power. Recipient represents and warrants to OEM that Recipient is a municipality duly organized under the laws of Oregon, and has full power, authority and legal right to make this Agreement and to incur and perform its obligations under this Agreement.
- B. Authority, No Contravention. The making and performance by Recipient of this Agreement: (a) have been duly authorized by all necessary action of Recipient; (b) 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 or any provision of its organizational documents; and (c) 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 Recipient is a party or by which Recipient or any of its properties may be bound or affected.
- C. Binding Obligation. This Agreement has been duly executed and delivered by Recipient and when duly executed and delivered by OEM, constitutes legal, valid, and binding obligations of Recipient, enforceable in accordance with its terms, subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors’ rights generally.
- D. Approvals. 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 Recipient of this Agreement.
- E. Misleading Statements. The Recipient has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading, in this Agreement or any

document submitted by or on behalf of the Recipient to OEM. The information contained in this Agreement is true and accurate in all respects.

- F. Compliance with Tax Laws. Recipient is not in violation of any Oregon tax laws, including but not limited to a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and local taxes administered by the Department of Revenue under ORS 305.620.
- G. Bonds. Recipient acknowledges that the State of Oregon may issue certain bonds (“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, (“Code”) necessary to protect the exclusion of interest on the Bonds from federal income taxation.
- H. Private Use. 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.
- I. Compliance. Recipient shall maintain documentation demonstrating compliance with this subsection 5 for the life of the Bonds, including any refunding bonds, and shall make sure documentation is available to OEM upon request.
- J. 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 (“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.
- K. 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.
- L. Equipment Inspections. Recipient shall permit authorized representatives of OEM to periodically inspect the Equipment, with or without notice.
- M. FOR Oregon Governmental Entities: Contributory Liability and Contractor Indemnification.
 - (1) If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (“Third Party Claim”) against a party (the “Notified Party”) with respect to which the other party may have liability, the Notified Party must promptly notify the other party in writing and deliver a copy of the claim, process, and all legal pleadings related 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. The foregoing provisions are conditions precedent for either party's liability to the other in regards to the Third Party Claim.

If the parties are jointly liable (or would be if joined in the Third Party Claim), the parties 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 in such proportion as is appropriate to reflect their respective relative fault. The relative fault of the parties 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. Each party's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if that party had sole liability in the proceeding. This Section shall survive termination of this Contract.

- (2) Recipient shall take all reasonable steps to require its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") 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 Recipient's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims. This Section shall survive termination of this Contract.]

N. Survival. This Section 5 shall survive any expiration or termination of this Agreement.

SECTION 6 - DEFAULT

Any of the following constitutes an "Event of Default":

- A. Misleading Statement. Any material false or misleading representation is made by or on behalf of Recipient, in this Agreement or in any document provided by Recipient related to this Grant.
- B. The Recipient fails to perform any obligation required under this Agreement and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Recipient by OEM. OEM may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action.

SECTION 7 - REMEDIES

Upon the occurrence of an Event of Default, OEM may pursue any remedies available under this Agreement, at law or in equity. Such remedies include, but are not limited to, termination of OEM's obligations to make the Grant, return of all Equipment, and declaration of ineligibility for the receipt of future awards from OEM. These remedies are cumulative and not exclusive of any other remedies provided by law.

SECTION 8 - TERMINATION

- A. Termination by OEM. In addition to terminating this Agreement upon an Event of Default as provided in Section 7, 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:
1. Recipient fails to follow grant agreement requirements or standard or special conditions;
 2. Recipient fails to adequately maintain the Equipment;
 3. Recipient fails to submit required reports;
 4. Recipient fails to comply with inspections for any reason;
 5. Recipient files a false certification in this application or other report or document, including correspondence with OEM by any medium; or
 6. 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:
1. Recipient no longer needs the Equipment; or
 2. 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 8:
1. OEM may repossess the Equipment from Recipient and, if Recipient has failed to adequately maintain the Equipment as required by Section 3, require Recipient to reimburse OEM the cost of repairing the Equipment; or
 2. Where Recipient has failed to adequately maintain the Equipment as required by Section 3, OEM may require Recipient to pay OEM an amount equal to the Equipment's fair market value assuming proper maintenance and repair.

SECTION 9 - MISCELLANEOUS

- A. 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 9.b.
- B. Amendments. This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- C. 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.

- D. Governing Law, Consent to Jurisdiction. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). 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.

- E. 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.
- F. 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.
- G. 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.
- H. 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.

Signature page follows.

The Recipient, by its signature below, acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.



STATE OF OREGON
acting by and through its
Oregon Department of Emergency Management

CITY OF TUALATIN

By: _____
Alaina Mayfield, Preparedness Section
Manager

By: _____
Name: _____
Title: _____

Date: _____

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY

APPROVED AS TO LEGAL SUFFICIENCY
(If required for Recipient)

By: Not Required per OAR 137-045-0030

By: _____
Recipient's Legal Counsel
Date: _____

Exhibit A – Equipment Schedule

Description	Make	Model	Serial No.
lightingportable			

Exhibit B – Program Requirements

Recipient will complete annual report as requested by OEM. Report is due October 15 each year for the period October to September annually and can be found on the [OEM SPIRE webpage](#). Recipient will confirm data provided online is correct and will submit changes to oem.spire@oem.oregon.gov whenever necessary.

Minor repairs and adjustments to equipment can be made by recipient to maintain integrity and improve performance without notification of OEM. If equipment is modified, it must be able to perform capability it was granted for. Modifications that may change the equipment's response capability must be reported to and approved by SPIRE program staff. Modifications made without prior authorization from OEM are not permitted.

If OEM provides signage, tracking devices, inventory tags, or other items, Recipient is responsible to ensure they remain affixed to the equipment and notify OEM if they are lost, stolen or damaged.

Maintenance schedules are to be developed established within one month of receipt of equipment and recorded in maintenance log. Maintenance logs are to be located on site and will be reviewed when OEM completes their annual inventory visit.

Please note that these program requirements are in addition to requirements in contract and may be modified based on changes in legislation or ongoing program needs.

Exhibit C – Contact Information

Except as otherwise expressly provided in this Agreement, parties may use the contact information set forth below, or to such other persons or addresses that either party may subsequently provide:

Recipient Program Contact 1:

Lindsay Marshall
Management Analyst
City of Tualatin
18880 SW Martinazzi Ave.
Tualatin, Oregon 97062
910-409-1021
503-691-3093
lmarshall@tualatin.gov

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

After Hours Contact Information:

Recipient Fiscal/Other Contact Information:

Bryce McKenna
Fleet and Facilities Manager
503-779-9574
503-691-3099
bmckenna@tualatin.gov

OEM Fiscal Contact:

Amy Mettler
Chief Financial Officer/Finance Section
Manager
Oregon Department of Emergency Management
3930 Fairview Industrial Dr. SE
Salem, OR 97302
971-719-0650
Amy.mettler@oem.oregon.gov