

Attachment 2 – Sample Contract

**CITY OF SPRINGFIELD
CONTRACT FOR SERVICES**

Contract # _____

Dated:

Parties: City of Springfield "CITY"
A Municipal Corporation of the State of Oregon
225 5th Street
Springfield, OR 97477

and

"Contractor"

Additional Contractor Information:

- a) Type of Entity: Sole Proprietorship Partnership
 Limited Liability Comp Corporation
- b) Address:
- c) Telephone:
- d) Fax No:
- e) If Applicable, Listed among the Parties Excluded from Federal Procurement or Non-Procurement Programs found at: <https://www.sam.gov/portal/public/SAM/>: Yes No

City Account Number(s) To Be Charged (Include Percentages):

| Account Number | Percentage |
|-------------------------------------|------------|
| 204-07600-8800-800004-P41044 | 89% |
| 100-07300-1021-611008-P41044 | 11% |

In consideration of the mutual covenants contained herein, the parties agree to the following terms, provisions, and conditions, in addition to the terms and conditions in any attached addenda:

- 1. Services to be Delivered.** Contractor shall perform the Services and deliver to the City the Deliverables specified in Attachment 1. The Statement of Work (Attachment 1) includes the delivery schedule for the Deliverables and Services. Contractor will perform the Services in accordance with the terms and conditions of this Contract.
- 2. Payment by City.** The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is \$***,***.**. City will not pay Contractor any

amount in excess of the not-to-exceed compensation of this Contract and will not pay for Services performed before the Effective Date or after the expiration or termination of this Contract. If the maximum compensation is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Services subject to the amendment. City will pay Contractor for only for completed Deliverables and Services performed according to the schedule and rates in Attachment 1.

2.1. Documentation of Work Performed – Grant Reporting. The services being provided under this Agreement are being partially funded through a State Homeland Security Program (SHSP) grant obtained by City from Oregon Military Department Office of Emergency Management (Oregon OEM). Pursuant to its grant agreement with OEM, City must provide supporting documentation with each Request for Reimbursement (RFR) submitted by City to OEM. Contractor will provide to City supporting documentation sufficient to satisfy the requirements of OEM with each of its monthly invoices for services performed under this contract during the prior month. City will not pay or reimburse any expenses incurred by Contractor which are not supported, in the sole discretion of City and/or OEM, by adequate supporting documentation until such documentation is provided.

- 3. Expenses.** City will not pay or reimburse any expenses incurred by Contractor during the completion of the Services except as authorized in the Statement Work or elsewhere in this Contract.
- 4. Term.** This Agreement is effective as of the date first set forth above and will continue until July 31, 2023, unless earlier terminated in accordance with the provisions of this Agreement or by mutual consent of the parties.
 - 4.1. Renewal.** This Agreement may be extended for zero (0) additional one-year terms upon mutual agreement of the parties in writing.
 - 4.2. Non-Appropriation.** The obligation of the City to make payments beyond June 30, 2022 is subject to annual appropriation. To the extent that funds are appropriated to make those payments for a given fiscal year, the full faith and credit of the City is pledged to the payments for such fiscal year. The obligation of the City to make those payments is not secured by the unlimited taxing power of the City and is not a general obligation of the City, The City's obligation to make those payments in any year is subject to future appropriation of funds by the City Council for the fiscal year in which the payment is due. In the event that funds are not so appropriated, payments will not be made and this Agreement will be terminated as of the date noted in this subsection 4.2.
- 5. Invoice.** City will pay Contractor's invoices on Net 30 day terms upon City acceptance of Services performed and Goods delivered as stated in section 7. Contractor must send invoices to: Accounts Payable - City of Springfield, 225 5th Street, Springfield, OR 97477 or email to ap@springfield-or.gov. The invoice must reference this contract #XXXX and approval code #711.
 - 5.1. Invoice Due Date.** Contractor's invoices must be submitted to City not later than the fifth (5th) day of each month following the month for which Contractor is seeking payment for services performed.
- 6. Overdue Charges.** Contractor may assess overdue account charges to City on unpaid invoices only as stated in this section. Overdue account charges must be the same as the usual overdue account charges to the general clientele of the vendor. Overdue claims are only those claims that have not been paid within 45 days of: the date of the City's receipt of the invoice, the date of the initial billing statement if there is no invoice, or the date the claim is made certain by agreement of the parties or by operation of law. However, no overdue account charges will accrue on any purchases made by City during time of civil emergency or in the event of a natural disaster which prevents the timely payment of accounts. In such instances accounts shall be paid in as timely a manner as possible. The date of the check or automatic funds transfer in payment of the claims

will be used to determine if the claim has been paid in a timely manner. It is a rebuttable presumption that the check was correctly dated.

7. Rejection of Deliverables. If City determines that a Deliverable does not have the characteristics or otherwise meet the acceptance criteria set forth in the Statement of Work in all material respects, City will notify Contractor in writing of City's rejection of the Deliverable(s) and describe in reasonable detail in such notice the City's basis for rejection of the Deliverable(s). Within 21 days of receiving notice of non-acceptance, the Contractor must modify or improve the Deliverables at Contractor's sole expense so that the Deliverable(s) meets the acceptance criteria in all material respects, notify the City in writing that it has completed such modifications or improvements, and re-tender the Deliverables to City. Within 21 days of Contractor's re-tender of the Deliverable(s), City will review the modified or improved Deliverable(s). Failure of the Deliverables to meet the acceptance criteria in all material respects after the second submission will constitute a default by Contractor. In the event of such default, Agency may either, (i) notify Contractor of such default and instruct Contractor to modify or improve the Deliverables as set forth in this Section, or (ii) notify Contractor of such default and pursue its remedies for default provided for by law or the terms of this Contract.

8. Contractor's Representations. Contractor represents that:

- 8.1.** Contractor has the authority to enter into and perform according to this Contract, and that this Contract, when executed and delivered, is a valid and binding obligation of Contractor that is enforceable according to its terms;
- 8.2.** Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence and perform Services in a timely, professional, and skillful manner according to standards applicable to Contractor's industry, trade, or profession; and
- 8.3.** Contractor is, and must be at all times during the term of this Contract, qualified, professionally competent, and duly licensed to perform Services.

9. Sourcing. City sourced this contract through publicly advertising its solicitation RFP No. S3075 – 42nd Street Levee Emergency Action Plan on its public website and in the Register Guard newspaper, a newspaper of general circulation, in accordance with Federal, State, and local Springfield Municipal Code "Public Contracts" Section 2.700 et seq. and City's Purchasing Guidelines.

10. First Point of Contact.

[Contractor name]- [Contractor contract name, email] PH [Contractor ph #]
City-[NAME and email] - PH: 541.[###.####]

11. Indemnification and Hold Harmless.

- 11.1.** Contractor agrees to indemnify, defend, and hold harmless the City and its officers, agents, and employees from and against all claims, actions, liabilities, loss, and costs including attorney's fees and costs of defense, arising in whole or in part from the acts or omissions of Contractor, and Contractor's subcontractors, officers, agents, and employees, in performance of this contract.
- 11.2.** In the event any such action or claim is brought against City, upon tender by City, Contractor will defend the same at Contractor's sole cost and expense, promptly satisfy any judgment adverse to City or to City and Contractor, jointly, and reimburse City for any loss, cost, damage, or expense, including attorney fees, suffered, or incurred by City. City shall notify Contractor, within a reasonable time, of any claim, threat of claim or legal action.
- 11.3.** Notwithstanding subsections 11.1 and 11.2, neither Contractor nor any attorney engaged by Contractor will defend any claim in the name of the City, nor purport to act as legal representative of the City, without the prior written consent of the City Attorney's Office.

CITY may, at any time and at its election, assume its own defense and settlement of any claims. City reserves all rights to pursue any claims it may have against Contractor if the City elects to assume its own defense.

11.4. This Section 11 does not include indemnification by Contractor for losses, claims, or actions resulting from the sole negligence of City or its officers, agents, and employees, whether within the scope of the Contract or otherwise.

11.5. Contractor agrees to indemnify, defend, save and hold harmless Oregon Military Department, Office of Emergency Management, hereinafter referred to as "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 Contractor or any of Contractor'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 Contractor from and against any and all Claims.

Neither Contractor(s) nor any attorney engaged by Contractor 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 Contractor is prohibited from defending State or that 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 Contractor if State elects to assume its own defense.

12. Insurance.

12.1. Required Coverages. Contractor must obtain at Contractor's expense, and require its first tier contractors and subcontractors, if any, to obtain the insurance specified in this section 12 prior to commencing performance under this Contract, and must maintain it in full force and at its own expense throughout the duration of this Contract, as required by any extended reporting period or tail coverage requirements, and all warranty periods that apply. Contractor must obtain and require its first-tier contractors and subcontractors, if any, to obtain the following insurance from insurance companies or entities acceptable to City and OEM and authorized to transact the business of insurance and issue coverage in Oregon. Contractor acknowledges that insurance specified in this section does not limit indemnification responsibilities specified in section 11 Indemnification.

12.1.1. General Insurance. Commercial general liability insurance covering bodily injury, death, and property damage in a form and with coverage that are satisfactory to City and OEM. This insurance must include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this Grant, and have no limitation of coverage to designated premises, project, or operation. Coverage must be written on an occurrence basis in an amount of not less than \$2,000,000 per occurrence. Annual aggregate limit may not be less than \$3,000,000.

12.1.2. Automobile Liability Insurance. 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 per occurrence for bodily injury and property damage. Annual aggregate limit may not be less than \$2,000,000. 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 Contractor provides evidence that the policy includes a business use endorsement.

12.1.3. Workers' Compensation. Contractor must provide and maintain workers' compensation coverage with limits not less than \$500,000 for its employees, officers,

agents, or partners, as required by applicable workers' compensation laws as defined in ORS 656.027 and ORS 701.035(5). If Contractor is exempt from coverage, a written statement signed by Contractor so stating the reason for exemption must be provided to the City.

12.2. Additional Coverages. [City staff check as applicable to scope of services]

12.2.1. Professional Liability. Contractor shall maintain a professional liability insurance policy reflecting limits of not less than \$2,000,000 for claims for professional acts, errors or omissions arising from the Work. The policy may be written on a "claims made" form. Contractor shall maintain the professional liability insurance coverage for at least one year after the completion of the work. The policy shall contain an endorsement entitling the City not less than 60 days prior written notice of cancellation of such policy

12.2.2. Cybersecurity. Contractor shall maintain in force during the duration of this agreement a cybersecurity policy with limits not less than \$2,000,000.

12.3. Excess/Umbrella Insurance. A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

Additional Insured. All insurance, except for workers' compensation, professional liability, and network security and privacy liability (if applicable), required under this Contract must include an additional insured endorsement specifying the City and OEM and collectively their 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 must be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of Contractor's 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 04 13 or equivalent.

12.4. Waiver of Subrogation. Contractor waives, and must require its first tier contractors and subcontractors waive, rights of subrogation which Contractor, Contractor's first tier contractors and subcontractors, if any, or any insurer of Contractor may acquire against the City or OEM by virtue of the payment of any loss. Contractor must obtain, and require its first tier contractors and subcontractors to obtain, any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the Contractor or the Contractor's insurer(s).

12.5. 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 must maintain, and require its first tier contractors and subcontractors, if any, 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 Contract, for a minimum of 24 months following the later of (i) Contractor's completion and City's acceptance of all Goods and Services provided under this Contract, or, (ii) City or Contractor termination of this Contract, or, (iii) the expiration of all warranty periods provided under this Contract.

12.6. Evidence of Insurance Coverage. Evidence of the required insurance coverages issued by an insurance company satisfactory to the City and OEM shall be provided to the City by way of a City approved certificate of insurance, with applicable endorsements, before any work or services commence. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and (ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage as provided in section 12.5.

12.7. Notice of Cancellation or Material Change in Coverage. The certificate of insurance shall contain a requirement that the Insurance company notify the City 30 days prior to any cancellation or material change in coverage. If the approved insurance company will not provide this 30-day notice, the Contractor shall provide written notice to the City contract manager within two days after the Contractor becomes aware that their coverage has been canceled or has been materially changed. The Contractor shall either fax 541-726-3782 said

notice or email it directly to City Finance Department at purchasing@springfield-or.gov. Regardless of what circumstances cause Contractor's insurance coverage to cease or be modified, it is the Contractor's responsibility to notify the City. Failure to maintain proper insurance or provide notice of cancellation or modification shall be grounds for immediate termination of this contract. _____ **(Contractor initials)**

12.8. OEM Acceptance. All insurance providers are subject to OEM acceptance. If requested by OEM, City shall provide complete copies of Contractors' insurance policies, endorsements, self-insurance documents and related insurance documents to OEM's representatives responsible for verification of the insurance coverages required under section 12.

12.9. Equipment and Material. Contractor shall be responsible for any loss, damage, or destruction of its own property, equipment, and materials used in conjunction with the work.

13. Independent Contractor Status, Tax duties and Liabilities.

13.1. Contractor will perform all Services as an independent contractor. Although City may (a) determine and modify the delivery schedule for Goods to be delivered and Services to be performed and (b) evaluate the quality of the completed performance, City cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing any Services required under this Contract. Contractor is not an "officer," "employee," or "agent" of City as those terms are used in ORS 30.265.

13.2. Contractor shall be responsible for all federal, state, and local taxes, if any, applicable to any payments received pursuant to this Agreement, including but not limited to income tax, payroll tax, social security, and self-employment tax. City will not withhold, pay, or in any other manner be responsible for payment of any taxes on behalf of Contractor. Contractor is not eligible for any social security, unemployment insurance, or workers' compensation benefits from compensation or payments paid to Contractor under this Contract.

14. Legal Representation. This Agreement was prepared by the City. Contractor has had the opportunity to have this Agreement reviewed by its own legal counsel prior to its execution.

15. Venue and Choice of Law. Venue for litigation concerning this Agreement rests exclusively with the court of the State of Oregon for Lane County. Any dispute arising under this Agreement will be governed by the law of the State of Oregon.

16. Force Majeure. If Contractor is delayed by reason of weather, fire, riot, strikes, acts of God or other circumstances beyond Contractor's reasonable control, City may terminate this Agreement in writing to Contractor after determining such delay or default will unreasonably prevent successful performance of the Contract. If City elects not to terminate the Contract, Contractor will be entitled to additional time to complete the Contract equal to that lost by an or all of the above causes.

17. Severability. If any provision of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected; the rights and obligations of the parties will be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

18. Records & Data.

18.1. Access to Data.

18.1.1. Access by the City. City and its duly authorized representatives shall have access to books, documents, papers, and records of Contractor which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts.

18.1.2. Access to Data by OEM, et al. Contractor and its subcontractors, successors, transferees, and assignees acknowledge and agree to provide OEM, Oregon Secretary of State (Secretary), Office of Inspector General (OIG), Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), or any of their authorized representatives, access to records, accounts, documents, information, facilities, and staff. Contractor and its subcontractors 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.

18.1.3. Records Retention. Contractor shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds, or the Project for 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 200.333. It is the responsibility of Contractor to obtain a copy of 2 CFR Part 200, and to apprise itself of all rules and regulations set forth.

18.2. Rights in Data. All original written material in whatever form, whether print or digital, prepared for City pursuant to this Agreement, is the exclusively the property of the City. The ideas, concepts, know-how, or techniques developed during the course of this Agreement by Contractor personnel can be used by either party in any way it may deem appropriate. Material already in Contractor's possession, independently developed by Contractor outside the scope of this Agreement, or rightfully obtained by Contractor from third parties, belong to Contractor. This Agreement does not preclude Contractor from developing materials which are competitive, irrespective of their similarity to materials which might be delivered to the City pursuant to this Agreement. Contractor will not, however, use any written materials developed under this Agreement in developing materials for others, except as provided in this section.

19. Purchase and Management of Property and Equipment. During the course of performance hereunder, Contractor may determine that the purchase of property or equipment will benefit its performance and City. In the event Contractor desires to seek reimbursement from City for said purchase(s), Contractor must first submit a request in writing to City including the justification for said purchase(s), the benefits to be realized for the work hereunder and City overall, and the full amount of expected reimbursement. Contractor shall not proceed with the procurement until written approval by City is provided. Any such purchase shall be conducted in compliance with the terms of Exhibit A Purchase and Management of Property and Equipment, incorporated herein by this reference.

20. Confidentiality. During the course of performance hereunder, Contractor or its agent, employees, or contractors, may receive confidential information. Contractor agrees to use its best efforts to maintain the confidentiality of such information and to inform each agent and employee performing services of the confidentiality obligation that pertains to such information.

20.1. Additional Provisions. Contractor must comply with the terms and conditions in the followed addenda, incorporated by reference, in the receipt and handling of confidential information:

- Protected Information Addenda
- Business Associate Agreement (HIIPA Compliance) Addenda

21. Waiver. Failure of City to enforce any provision of this Agreement shall not constitute a waiver or relinquishment by City of the right to such performance in the future nor of the right to enforce any other provision of this Agreement.

- 22. Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever, without prior written approval of City. No modification of this Agreement shall bind either party unless reduced to writing and subscribed by both parties, or ordered by a Court.
- 23. Termination.** The performance of work under this Agreement may be terminated by City, in whole or in part, whenever for any reason City shall determine that such termination is in the best interest of City. Any such termination shall be affected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of the work under the Agreement is terminated and the date on which such termination is effective. Upon delivery to the Contractor of a Notice of Termination under this paragraph, the Contractor and City shall, by agreement, make an appropriate written modification to this Agreement governing completion of portions of the Contractor's work and payment therefore by CITY.
- 24. Assignment/Subcontract.** Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Agreement, in whole or in part, without the prior written approval of City. No such written approval shall relieve Contractor of any obligations of this Agreement, and any transferee or subcontractor shall be considered the agent of Contractor. Contractor shall remain liable as between the original parties to this Agreement as if no such assignment had occurred.
- 25. Compliance with All Government Regulations.** Contractor shall comply with all Federal, State, and local laws, codes, regulations, and ordinances applicable to the work performed under this Agreement. Failure to comply with such requirements shall constitute a breach of contract and shall be grounds for termination of this Agreement. Damages or costs resulting from noncompliance shall be the sole responsibility of Contractor. This section includes, but is not limited to, compliance with all applicable requirements of Federal and State civil rights statutes, rules, and regulations, and all applicable provisions of the Americans with Disabilities Act of 1990, 42 USC Section 12101 et seq. and Section 504 of the Rehabilitation Act of 1973. This section also includes all applicable requirements listed in Exhibit B Federal Requirements and Certifications for SHSP Grant, incorporated herein by this reference, as required under the SHSP grant received by City from OEM.
- 26. Attorney Fees.** Except for defense costs and expenses pursuant to section 12, neither City nor Contractor is entitled to recover attorney's fees, court and investigative costs, or any other fees or expenses associated with pursuing a remedy for damages arising out of or relating to this Contract.
- 27. Construction of Agreement.** This Contract shall not be construed more favorably to City due to the preparation of this Contract by City. The headings and subheadings in this Contract are for convenience, do not form a part of this Contract, and shall not be used in construing this Contract.
- 28. Entire Agreement.** This Agreement signed by both parties is the parties' final and entire Agreement and supersedes all prior and contemporaneous oral or written communications between the parties, their agents and representatives. There are no representations, promises, terms, conditions or obligations other than those contained herein.

CITY OF SPRINGFIELD:

By: _____
 Name: _____
 Title: _____
 Date: _____

CONTRACTOR:

By: _____
 Name: _____
 Title: _____
 Date: _____

**City of Springfield Public Contract Addendum
Required Contract Terms Under ORS 279B – Goods, Services, and Personal Services**

Pursuant to Oregon law, this public contract includes the following terms and conditions, when applicable:

1. The contractor must make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract. ORS 279B.220(1).
2. The contractor must pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract. ORS 279B.220(2).
3. That contractor must not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished. ORS 279B.220(3).
4. The contractor must pay to the Department of Revenue all sums withheld from employees under ORS 316.167. ORS 279B.220(4).
5. If the agreement is for lawn and landscape maintenance, Contractor must salvage, recycle, compost or mulch yard waste material at an approved site, if feasible and cost-effective. ORS 279B.225.
6. The contractor must promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services. All employers shall comply with ORS 656.017. ORS 279B.230.
7. A person may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055, the employee shall be paid at least time and a half pay:
 - a. For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days; or
 - b. For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
 - c. For all work performed on Saturday and on any legal holiday specified in ORS 279B.020.
8. An employer must give notice in writing to employees who work on a public contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. ORS 279B.235(1)-(2).
9. If the agreement is for personal services, the contract shall contain a provision that the employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201-209 from receiving overtime. ORS 279B.235(3).
10. If the contract is for services, persons employed under contracts shall receive at least time and half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279B.020(1)(b)(B)-(G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater. Contractor shall give notice in writing to employees who work on a contract for services, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number hours per day and days per week that the employees may be required to work. ORS 279B.235(5).

City of Springfield Public Contract Addendum Protected Information

1. **"Protected Information"** shall be defined as *data or information* that has been designated as private or confidential by law or by the City. *Protected Information* includes, but is not limited to, employment records, medical records, personal financial records (or other personally identifiable information), trade secrets, and classified government information. To the extent there is any uncertainty as to whether any *data* constitutes *Protected Information*, the *data* in question shall be treated as *Protected Information* until a determination is made by the City or proper legal authority.
2. **Data Confidentiality.** Independent Contractor shall implement appropriate measures designed to ensure the confidentiality and security of *Protected Information*, protect against any anticipated hazards or threats to the integrity or security of such information, protect against unauthorized access or disclosure of information, and prevent any other action of unauthorized disclosure that could result in substantial harm to the City or an individual identified with the data or information in Independent Contractor's custody or access.

To the extent that Independent Contractor may have access to City protected health information (as the same is defined in the privacy regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and the implementing regulations known and referred to as Privacy Rule, Security Rule, Enforcement Rule and Breach Notification Rule, referred to herein collectively as "HIPAA"), Independent Contractor agrees to protect such information in compliance with HIPAA and represents that it has the processes, systems and training to assure compliance with the same.

3. **Data and Network Security.** Independent Contractor agrees at all times to maintain commercially reasonable network security that, at a minimum, includes: network firewall provisioning, intrusion detection/prevention and periodic third party penetration testing. Likewise Independent Contractor agrees to maintain network security that at a minimum conforms to current standards set forth and maintained by the National Institute of Standards and Technology, including those at: <http://checklists.nist.gov/repository>. Independent Contractor agrees to protect and maintain the security of data with protection security measures that include maintaining secure environments that are patched and up to date with all appropriate security updates as designated by a relevant authority.
4. **Security Breach.** In the event of a security breach of data owned or developed by the City, Independent Contractor will notify the City IT Director without unreasonable delay and in no case later than 30 days after discovery of the breach or incident. Independent Contractor will be responsible for all remedial action necessary to correct the breach; provided however, that Independent Contractor will not undertake litigation on behalf of the City without prior written consent.
5. **Data Storage and Backup.** Independent Contractor agrees that any and all City data will be stored, processed, and maintained solely on designated servers and that no City data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, unless that storage medium is in use as part of the Independent Contractor's designated backup and recovery processes. All servers, storage, backups, and network paths utilized in the delivery of the service shall be contained within the states, districts, and territories of the United States unless specifically agreed to in writing by an City officer with designated data, security, or signature authority. An appropriate officer with the necessary authority can be identified by the City Information Security Officer for any general or specific case.

Independent Contractor agrees to store all City backup data stored as part of its backup and recovery processes in encrypted form, using no less than AES 256.

6. **Data Re-Use.** Independent Contractor agrees that any and all Customer data exchanged shall be used expressly and solely for the purposes enumerated in the Agreement. Customer data shall not be distributed, repurposed or shared across other applications, environments, or business units of Independent Contractor. Independent Contractor further agrees that no Customer data of any kind shall be revealed, transmitted, exchanged

or otherwise passed to other Independent Contractor or interested parties except on a case-by-case basis as specifically agreed to in writing by a City officer with designated data, security, or signature authority.

- 7. PCI Compliance.** Independent Contractor agrees to comply with PCI DSS (Payment Card Industry Data Security Standard). As evidence of compliance, Independent Contractor shall provide upon request a current attestation of compliance signed by a PCI QSA (Qualified Security Assessor).
- 8. End of Agreement Data Handling.** Independent Contractor agrees that upon termination of this Agreement it shall erase, destroy, and render unreadable all City data in its entirety in a manner that prevents its physical reconstruction through the use of commonly available file restoration utilities, and certify in writing that these actions have been completed within 30 days of the termination of this Agreement or within 7 days of the request of an agent of City whichever shall come first.
- 9. Mandatory Disclosure of Protected Information.** If Independent Contractor becomes compelled by law or regulation (including securities' laws) to disclose any Protected Information, Independent Contractor will provide City with prompt written notice so that City may seek an appropriate protective order or other remedy. If a remedy acceptable to City is not obtained by the date that Independent Contractor must comply with the request, Independent Contractor will furnish only that portion of the Protected Information that it is legally required to furnish, and the Independent Contractor shall require any recipient of the Protected Information to exercise commercially reasonable efforts to keep the Protected Information confidential.
- 10. Remedies for Disclosure of Confidential Information.** Independent Contractor and City acknowledge that unauthorized disclosure or use of the Protected Information may irreparably damage City in such a way that adequate compensation could not be obtained from damages in an action at law. Accordingly, the actual or threatened unauthorized disclosure or use of any Protected Information shall give City the right to seek injunctive relief restraining such unauthorized disclosure or use, in addition to any other remedy otherwise available (including reasonable attorneys' fees). Independent Contractor hereby waives the posting of a bond with respect to any action for injunctive relief. Independent Contractor further grants City the right, but not the obligation, to enforce these provisions in Independent Contractor's name against any of Independent Contractor's employees, officers, board members, owners, representatives, agents, contractors, and subcontractors violating the above provisions.
- 11. Non-Disclosure.** Independent Contractor is permitted to disclose Confidential Information to its employees, authorized subcontractors, agents, consultants and auditors on a need to know basis only, provided that all such subcontractors, agents, consultants and auditors have written confidentiality obligations to both Independent Contractor and City.
- 12. Criminal Background Check.** City shall perform criminal background checks on all talent assigned to this project before a person is allowed to work on any of the City's Criminal Justice Information System (CJIS) protected data, software systems or facilities. For access to any area where CJI information is stored or transmitted Independent Contractor's employees shall possess Level 4 certification.
- 13. Survival.** The confidentiality obligations shall survive termination of any agreement with Independent Contractor for a period of ten (10) years or for so long as the information remains confidential, whichever is longer and will inure to the benefit of City.

EXHIBIT "A"

Purchase and Management of Property and Equipment

Contractor agrees to comply with all applicable federal requirements referenced in Exhibit B to this Agreement and procedures for managing and maintaining records of all purchases of property and equipment will, at a minimum, meet the following requirements:

1. All property and equipment purchased under this agreement by Contractor, will be conducted in a manner providing full and open competition and in accordance with all applicable procurement requirements, including without limitation ORS chapters 279A, 279B, 279C, and purchases shall be recorded and maintained in Contractor's property or equipment inventory system.
2. Contractor's property and equipment records shall include: 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.
3. 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.
4. Contractor must develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of the property and equipment. Contractor shall investigate any loss, damage, or theft and shall provide the results of the investigation to City upon request.
5. Contractor must develop adequate maintenance procedures to keep the property and equipment in good condition.
6. If Contractor is authorized to sell the property or equipment, proper sales procedures must be established to ensure the highest possible return.
7. Contractor agrees to comply with 2 CFR 200.313 pertaining to use and disposal of equipment purchased with Grant Funds, including 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.
8. Contractor shall require its subcontractors 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.
9. Contractor shall, and shall require its subcontractors to, retain the records described in this Exhibit 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 City for its use of the property and equipment for purposes consistent with the State Homeland Security Program.

EXHIBIT "B"

Federal Requirements and Certifications for SHSP Grant

I. General.

Contractor agrees to comply with all federal requirements applicable to this Agreement. Those federal requirements include, without limitation, financial management and procurement requirements; requirements for maintaining accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP); and all other financial, administrative, and audit requirements as set forth in the most recent versions of the Code of Federal Regulations (CFR), Department of Homeland Security (DHS) program legislation, and DHS/Federal Emergency Management Agency (FEMA) program regulations and requirements.

1 - Hotel and Motel Fire Safety Act of 1990

In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. section 2225a, City and Contractor 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 the Federal Fire Prevention and Control Act of 1974, (codified as amended at 15 U.S.C. section 2225.)

2 - Fly America Act of 1974

Contractor must comply with Preference for U.S. Flag Air Carriers (air carriers holding certificates under 49 U.S.C. section 41102) 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. section 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. Article XXXVI - Reporting of Matters Related to Recipient Integrity and Performance. 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 City 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.

3 - Lobbying Prohibitions

Contractor must comply with 31 U.S.C. section 1352, which provides that none of the funds provided under a federal financial assistance award may be expended by City 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.

4 - False Claims Act and Program Fraud Civil Remedies

Contractor must comply with the requirements of the False Claims Act, 31 U.S.C. sections 3729- 3733, which prohibit the submission of false or fraudulent claims for payment to the federal government. (See 31 U.S.C. sections 3801-3812, which details the administrative remedies for false claims and statements made.)

5 - Federal Debt Status

Contractor must 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.)

6 - 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. Contractor 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.

7 - Disposition of Equipment Acquired Under the Federal Award

When original or replacement equipment acquired under this award by Contractor, or its subcontractors, is no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, Contractor or subcontractor must request instructions from FEMA to make proper disposition of the equipment pursuant to 2 C.F.R. section 200.313.

8 - Education Amendments of 1972 (Equal Opportunity in Education Act) - Title IX

Contractor 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. section 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 C.F.R. Part 17 and 44 C.F.R. Part 19.

9 – Copyright

Contractor must affix the applicable copyright notices of 17 U.S.C. sections 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.

10 - Use of DHS Seal, Logo, and Flags

Contractor 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.

11 - Whistleblower Protection Act

City and Contractor must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C section 2409.

II Other Applicable Federal Regulations

1 - Limited English Proficiency (Civil Rights Act of 1964, Title VI)

Contractor must comply with Title VI of the *Civil Rights Act of 1964*, (42 U.S.C. section 2000d et seq.) prohibition against discrimination on the basis of national origin, which requires that City as a recipient 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-helpdepartment-supported-organizations-provide-meaningful-access-peoplelimited> and additional resources on <http://www.lep.gov>.

2 - Americans with Disabilities Act of 1990

Contractor must comply with the requirements of Titles I, II, and III of the *Americans with Disabilities Act*, Pub. L. No. 101-336 (1990) (codified as amended at 42 U.S.C. sections 12101- 12213), which prohibits 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.

3 – SAFECOM

Contractor must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

4 - Rehabilitation Act of 1973

Contractor 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. section 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.

5 - National Environmental Policy Act

Contractor 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. section 4321 *et seq.*) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which require federal grant 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.

6 - Acknowledgement of Federal Funding from DHS

Contractor 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.

7 - USA PATRIOT Act of 2001

Contractor 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), Pub. L. No. 107-56, which amends 18 U.S.C. sections 175-175c.

8 - Age Discrimination Act of 1975

Contractor must comply with the requirements of the *Age Discrimination Act of 1975*, Pub. L. No. 94-135 (1975) (codified as amended at Title 42, U.S. Code, section 6101 *et seq.*), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.

9 - Civil Rights Act of 1964 - Title VI

Contractor must comply with the requirements of Title VI of the *Civil Rights Act of 1964* (codified as amended at 42 U.S.C. section 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.

10 - 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 grant recipients must comply with any such requirements set forth in the program NOFO.

11 - Trafficking Victims Protection Act of 2000 (TVPA)

Contractor 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. section 7104. The award term is located at 2 C.F.R. section 175.15, the full text of which is incorporated here by reference.

12- Acceptance of Post Award Changes

In the event FEMA determines that changes are necessary to the award document after an award has been made, including changes to period of performance or terms and conditions, City will notify Contractor of the changes in writing. Once notification has been made, any subsequent request for funds will indicate Contractor acceptance of the changes to the award. Please call the FEMA/GMD Call Center at (866) 927-5646 or via e-mail to ASKGMD@fema.dhs.gov if you have any questions.

13 - Drug-Free Workplace Regulations

Contractor must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the Contractor 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. sections 8101-8106).

14 - Federal Leadership on Reducing Text Messaging while Driving

Contractor is 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.

15 - Best Practices for Collection and Use of Personally Identifiable Information

In the event Contractor collects or intends to collect personally identifiable information (PII), Contractor shall notify City in writing and shall adhere to City's 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. City and Contractor may also find the DHS Privacy Impact Assessments: Privacy Guidance at http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_guidance_june2010.pdf and Privacy Template at https://www.dhs.gov/sites/default/files/publications/privacy_pia_template2017.pdf as useful resources respectively.

16 - Civil Rights Act of 1968

Contractor 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 federal grant 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. section 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.)

17- Debarment and Suspension

Contractor is 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 3000. 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.

18 - Activities Conducted Abroad

Contractor must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

19- Energy Policy and Conservation Act

Contractor 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. section 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.

20 - 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. section 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.

SAMPLE