

CITY OF COOS BAY CITY COUNCIL
Agenda Staff Report

MEETING DATE	AGENDA ITEM NUMBER
October 1, 2013	

TO: Mayor Shoji and City Councilors

FROM: Mark Anderson, Acting Fire Chief

ISSUE: Intergovernmental Agreement (IGA) for Hazardous Materials Team

BACKGROUND:

The Oregon State Fire Marshal's office has agreements with 13 agencies, strategically located around the state, for the provision of regional hazardous materials emergency response services. The City of Coos Bay has been the primary agency for Hazardous Materials response on the South Coast since the formation of the regional team program in 1993. The Coos Bay's Haz Mat Team responds from Florence to the California border and east to Scottsburg on Highway 38 and to Bridge on Highway 42. In the agreement, the State of Oregon provides the equipment and training, and the City provides the team staffing. The proposed Intergovernmental Agreement (IGA) for Hazardous Materials Team response is a biennial agreement. It has been reviewed by staff and the City Attorney. Other than minor language and formatting changes, the proposed agreement is similar to the last agreed upon IGA.

ADVANTAGES:

The OSFM provides funding for the reimbursement of approved training, equipment procurement, and employee physicals totaling \$36,000 annually. Larger items (vehicles, electronics, etc.) are replaced as needed in addition to the reimbursement funds. Maintaining a Haz Mat Team on the South Coast insures prompt response and access to equipment and resources that the City would otherwise not be able to purchase or maintain.

DISADVANTAGES:

No disadvantages identified other than the budget implications.

BUDGET IMPLICATIONS:

The City historically pays approximately \$8,000 annually to firefighters in non-reimbursed overtime for monthly training and \$12,000 annually for certification incentive. Costs associated with emergency responses are reimbursed, in whole, by the State and/or responsible party.

ACTION REQUESTED:

If it pleases the Council, allow the City Manager to sign the biennial Intergovernmental Agreement (IGA) for Hazardous Materials Team with the Oregon State Fire Marshall's Office.

**INTERGOVERNMENTAL AGREEMENT FOR
REGIONAL HAZARDOUS MATERIALS EMERGENCY
RESPONSE TEAM SERVICES**

Between

**THE STATE OF OREGON, ACTING BY AND THROUGH ITS
DEPARTMENT OF STATE POLICE
ON BEHALF OF ITS
OFFICE OF STATE FIRE MARSHAL**

And

CITY OF COOS BAY

**STATE OF OREGON
John Kitzhaber, Governor**

State Fire Marshal

July 1, 2013

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Exhibit B - Inventory of OSFM-Owned Equipment

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Exhibit D - Specialized Training

Exhibit E - Medical Surveillance

Exhibit F – Extraordinary Response Cost Fee Schedule – Part I

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 Compensation for Contractor's Response Personnel

 Non-Officer

 Officer (Eligible for Overtime)

 Officer/Salaried (Not Eligible for Overtime)

Exhibit H - Compensation for Contractor Program Outreach

Exhibit I - Compensation for Contractor Sub-Committee And Special Projects Participation

Exhibit J – Summary: 2013-2015 Biennium Funding Available for Stand-By Costs

Exhibit K – State Spill Response Revolving Fund

INTERGOVERNMENTAL AGREEMENT FOR REGIONAL HAZARDOUS MATERIALS EMERGENCY RESPONSE TEAM SERVICES

General Agreement Information

Agreement Type: This Agreement is between the State of Oregon, acting by and through its Department of State Police, for the benefit of its Office of State Fire Marshal (hereinafter "OSFM"), and the City of Coos Bay (hereinafter "Contractor") for the provision of regional hazardous materials emergency response team services as described herein and authorized under ORS 453.374 to 453.390.

RECITALS

- A. In order to protect life and property against the dangers of emergencies involving hazardous materials, the State Fire Marshal may assign and make available for use in any county, city or district, any part of a Regional Hazardous Materials Emergency Response Team.
- B. The OSFM desires to enter into this Agreement to establish Contractor as a Regional Hazardous Materials Emergency Response Team, and Contractor desires to be so designated and to enter into this Agreement.

STANDARD AGREEMENT TERMS AND CONDITIONS

1.0 AGREEMENT TERM.

1.1 This Agreement shall be effective as of July 1, 2013 to June 30, 2015, unless terminated prior in accordance with other provisions of this Agreement.

1.2 Subject to Legislative approval, future Agreements will be awarded on a biennial basis.

2.0 DEFINITIONS.

"Agreement" means this Intergovernmental Agreement, all attachments and exhibits hereto, and any future amendments.

"Automatic Response" means the authority to respond to any incident beyond the capabilities of local responders without approval prior to team response by the OSFM Duty Officer. Incident must involve a hazardous spill, leak, explosion, or injury, or potential thereof, with immediate threat to life, environment, or property.

"Clean-up" means the measures taken after Emergency Response to permanently remove the hazard from the incident site.

"Contractor" means the local government agency(s) by which the service or services will be performed under this Agreement, including those agencies under an approved inter-governmental or interagency agreement.

"Emergency Response" has the meaning as defined in OAR 837-120-0010(5), and includes those actions and services set out in OAR 837-120-0020(3).

"Emergency Response Costs" means the total Emergency Response expense, including team response costs, arising from a hazardous materials emergency. Such costs generally include, but are not limited to, all OSFM and Contractor expenses that result from the assessment and emergency phases of the response activity. Emergency response costs do not include clean up or disposal costs of hazardous

materials, except, as may be reasonably necessary and incidental to preventing a Release or threat of Release or in stabilizing the Emergency Response incident.

“Extraordinary Response Costs” shall mean and is equivalent to “team response costs”. See also OAR 837-120-0090(4).

“Hazardous Materials” means "hazardous substance" as that term is defined in ORS 453.307(5).

“Incident” means any actual or imminent threat of a Release, or any rupture, fire or accident that results in, or has the potential to result in, the loss or escape of a hazardous material into the environment.

“Intergovernmental Agreement” means an agreement between an agency or agencies and one or more units of local government of the State of Oregon.

“Local Government Agency” means a city, county, special district or subdivision thereof.

“Oregon-OSHA” means the Oregon Occupational Safety and Health Act as administered by the Occupational Safety and Health Division of the Department of Insurance and Finance.

“ORS” means Oregon Revised Statutes.

“Primary Response Area” means that geographical region where the Contractor is principally responsible for providing regional Hazardous Materials Emergency Response services.

“Regional Hazardous Materials Emergency Response Team” (RHMERT) means the designated members of the Contractor who are expected to respond to, control, or stabilize actual or potential emergency releases of hazardous substances. A RHMERT operates within the limits discussed in Oregon-OSHA's OAR 437, Division 2, which is incorporated herein by this reference.

“Release” shall have the same meaning as that in ORS 465.200(22).

“Responsible Person” means the person or persons responsible for causing the emergency to which the Contractor responded. (See, e.g. ORS 453.382).

“RHMERT Operations” means Emergency Response operations conducted by the Contractor.

“Stand-By Activities” means Contractor’s activities associated with specialized training, medical surveillance, and routine maintenance for vehicles and equipment.

“Stand-By Costs” means Contractor’s costs associated with specialized training costs, medical surveillance costs, vehicles and equipment loans, and level A/B personal protective equipment acquisition.

“State” means the State of Oregon acting by and through the Department of State Police for the benefit of its Office of State Fire Marshal.

“OSFM-Owned Equipment” means all vehicles, equipment, and supplies loaned to RHMERTs as described in this Agreement and listed in Exhibit B.

“State Spill Response Revolving Fund” means the revolving fund established under ORS 453.390.

“Teams Advisory Group” means a group consisting of one appointed member from each RHMERT, who provide technical advice to the State Fire Marshal on equipment, vehicles, operating guidelines and similar operational issues.

“Team Response Costs” means those Contractor expenses, which are expressly allowed under this Agreement and are approved by the OSFM. Team Response Costs under this Agreement shall be limited to approved expenses directly related to RHMERT Operations. “Team response costs” are equivalent to “extraordinary response costs”. See also OAR 837-120-0090(4).

3.0 STATEMENT OF WORK.

3.1 SERVICES TO BE PROVIDED BY CONTRACTOR.

- 3.1.1 During the term of this Agreement the Contractor agrees to provide RHMERT services within the boundaries of Contractor assigned Primary Response Area as generally depicted and described in "Exhibit A", Regional Team Primary Response Area Boundary Description, and by this reference incorporated herein. Contractor is hereby designated "**HM15**".
- 3.1.2 Contractor response activities under this Agreement shall be limited to emergency operations, reporting and documentation activities arising from a Hazardous Materials Emergency Response.
- 3.1.3 Contractor shall not provide the following services as part of this Agreement, except where may be reasonably necessary to prevent a Release or threat of Release, or as required to stabilize an Incident:
- sampling,
 - testing and analysis,
 - treatment,
 - removal,
 - remediation,
 - recovery,
 - packaging,
 - monitoring,
 - transportation,
 - movement of hazardous materials,
 - cleanup,
 - storage, or
 - disposal of hazardous materials.
- 3.1.4 Contractor shall not provide the following services at or near the emergency response Incident to which the Contractor is dispatched:
- maintain general security or safety perimeters at or near sites and vessels,
 - locate underground utilities,
 - ensure appropriate traffic control services,
 - conduct hydrological investigations or analysis, or
 - provide testing, removal and disposal of underground storage tanks
- 3.1.5 Contractor shall make no representation(s) or warranty(s) to third parties with regard to the ultimate outcome of the hazardous materials services to be provided, but shall respond to the best of its abilities, subject to the terms of this Agreement.
- 3.1.6 Contractor personnel shall perform only those actions and duties for which they are trained and equipped.

3.2 COMPLIANCE WITH REGULATORY REQUIREMENTS. Contractor certifies that its employees, equipment, and vehicles meet or exceed applicable regulatory requirements. Contractor further agrees that all OSFM Owned Equipment in Exhibit B shall be maintained by the Contractor to meet or exceed all applicable regulatory requirements.

3.3 PERSONNEL.

- 3.3.1 Contractor shall provide an adequate number of trained, medically monitored, competent, and supervised RHMERT personnel as is necessary to operate within the safety levels of a RHMERT as specified in OR-OSHA's OAR 437, Division 2. Contractor shall limit its team activities to that within the safety and training levels specified by Oregon-OSHA for a Hazardous Materials response team.
- 3.3.2 To document training and experience Contractor shall ensure its team members complete the tasks in the Hazardous Material Technician Task Book within the established 24 month period.
- 3.3.3 Contractor shall submit annually the Task Book reporting form to the OSFM no later than 10th of January of each year.

3.4 VEHICLES AND EQUIPMENT.

- 3.4.1 Use of OSFM-Owned Equipment.
 - i. The Contractor shall operate a RHMERT using OSFM-Owned Equipment as specified in Exhibit "B" of this Agreement.
 - ii. Contractor shall limit its activities to that which can be safely accomplished within the technical limitations of the OSFM-Owned Equipment and vehicles and equipment provided by the Contractor.
 - iii. Contractor shall at all times use equipment with reasonable and diligent care taking into consideration the type of equipment and its intended use. Contractor shall at all times use the equipment in accordance with all OSFM Standard Operating Guidelines (SOGs), available on the OSFM website.
- 3.4.2 Routine Maintenance/Physical Damage/Repairs.
 - i. Routine Maintenance: The Contractor is responsible for all routine maintenance of OSFM-Owned Equipment. For purposes of this Agreement, routine maintenance means:
 - a. Vehicles and Equipment
 - Daily, weekly, and monthly checks of vehicle and equipment.
 - Semiannual or mileage-related lubrication, oil and filter changes.
 - Annual tune-up as required for preventive maintenance.
 - b. Equipment checks and testing as outlined in the Oregon-OSHA standards and manufacturer's recommendations.
 - c. Protective clothing to be tested as per Oregon-OSHA standards and manufacturer's recommendations.
 - d. Communications equipment checked regularly.
 - ii. Physical Damage and Repairs: Contractor and OSFM each bear responsibility for repairs of physical damage as follows:
 - a. Excluding ordinary wear and tear, when Contractor uses OSFM-Owned Equipment for purposes not authorized under this Agreement and ORS 453.374 to 453.390, regardless of fault, Contractor is responsible for any physical damage to or loss of such OSFM-Owned Equipment.

- b When Contractor acts under OSFM authority pursuant to this Agreement and ORS 453.374 to 453.390, the OSFM is responsible for physical damage to or loss of OSFM-Owned Equipment regardless of fault, subject to the terms and conditions of the Oregon Risk Management Division Policy 125-7-101 (Property Self-Insurance Policy Manual), and the limitations set forth in this agreement. Damage occurring to OSFM-Owned Equipment during Contractor's performance of routine maintenance activities is the responsibility of OSFM.

3.4.3 The Contractor may use the OSFM-Owned Equipment provided in this Agreement in conjunction with non-Emergency Response activities, however the OSFM-Owned Equipment shall at all times be immediately available for Emergency Response having highest priority. Use of OSFM-Owned Equipment for non-Emergency Response activities is not a reimbursable expense by OSFM. In addition, use of OSFM-Owned Equipment for non-Emergency Response activities shall follow Contractor's established guidelines and policies for daily operations. OSFM-Owned Equipment shall not be used by anyone other than Contractor members, except as approved by the team leader or administrator.

3.4.4 When the OSFM-Owned Equipment is not used in conjunction with Emergency Response or Stand-By Activities, including assistance to local government entities at events not meeting state authorized response criteria, Contractor is liable for all repairs or replacement directly attributable to that use. Contractor is also liable for all abuse or neglect of OSFM-Owned Equipment, including when used in conjunction with Emergency Response or Stand-by Activities.

3.4.5 Contractor shall submit monthly a vehicle usage log to the OSFM no later than the 10th of the following month. Contractor shall record the beginning and ending mileage for each trip, regardless of the activity; i.e., whether it is Emergency Response, training, maintenance, or any other activity.

3.4.6 Contractor shall not agree in writing or otherwise with other local government entities to provide the OSFM-Owned Equipment to assist those entities at events not meeting Emergency Response criteria unless OSFM also is a party to that agreement.

3.5 RIGHT OF REFUSAL. The OSFM recognizes that the obligations of the Contractor in its own jurisdiction are paramount. If, on occasion, an Emergency Response under this Agreement would temporarily place an undue burden on the Contractor because Contractor resources are limited or unavailable within the Contractor Primary Response Area, and if prior or immediate notice has been provided to the OSFM Duty Officer, the Contractor may decline a request for an Emergency Response. However, if the Contractor declines a request for an Emergency Response, the Contractor shall ensure the OSFM-Owned Equipment remains available for OSFM's use in this instance.

3.6 STANDARD OPERATING GUIDELINES. Contractor and OSFM agree that RHMERT operations shall be conducted in accordance with the OSFM's Standard Operating Guidelines as reviewed and recommended by the Teams Advisory Group and as mutually approved by the parties to this Agreement.

3.7 ADMINISTRATIVE RULES. The parties acknowledge that the OSFM has adopted OAR 837, Division 120, and that this Agreement is consistent with those administrative rules. If those rules are amended, such amendments shall be incorporated into this Agreement by written amendment and may require modification of the procedures, terms and conditions of this Agreement.

4.0 CONTRACTOR COMPENSATION.

There are two types of Contractor compensation under this Agreement: (1) Contractor Stand-By Costs, and (2) Contractor Team Response Costs. Each of these is discussed more fully below.

4.1 CONTRACTOR STAND-BY COSTS. Contractor shall be compensated by the OSFM under this Agreement for its OSFM-approved stand-by costs. Such Stand-By Costs include:

- 4.1.1 **Specialized Training Costs.** The OSFM will provide funding for advanced training and education to Contractor RHMERT employees as specified in Exhibit "D" if approved by the OSFM in advance. All such training and selection of training or training providers must comply with all federal, state and local rules and regulations. If training is approved, the OSFM agrees to pay the cost of tuition, per diem, and travel expenses at OSFM-approved rates. With prior approval by the OSFM, one hundred percent of the funding specified in Exhibit "D" may be used to reimburse personnel costs incurred by employees attending specialized training.
- 4.1.2 **Medical Surveillance.** The OSFM will provide funding for baseline, maintenance and exit physicals for Contractor RHMERT employees as specified in Exhibit "E" of this Agreement. Cost will be based on competitive bid for the protocols covered in the OSFM Hazardous Materials Emergency Response Team Standard Operating Guideline T-015. Selection of health care provider must comply with all federal, state and local rules and regulations.
- 4.1.3 **Vehicle(s) and Equipment Loans.** The OSFM agrees to loan the Contractor OSFM-Owned Equipment as specified in Exhibit "B" of this Agreement. The parties agree that items of OSFM-Owned equipment may be added to or removed from the list in Exhibit B without requiring amendment of this agreement, but only if each change is mutually agreed to in writing by all parties. Funding available from the OSFM for the purchase and maintenance of OSFM-Owned Equipment is specified in Exhibit "C" of this Agreement. Replacement of capital equipment, expendable items, and other equipment will be provided as necessary, by prior approval of the Office of State Fire Marshal
- 4.1.4 **Level A/B Personal Protective Equipment (PPE) Acquisition.** Contractor shall be exclusively responsible for its selection of PPE suits, suit types or models to meet its own specific needs. The OSFM encourages contractor to follow recommendation of the HazMat Equipment Committee for the selection of PPE suits, however the OSFM shall have no involvement in, no responsibility or liability whatsoever arising out of Contractor's choice of PPE suits, their safety, reliability, testing of the PPE suits, or their maintenance. The OSFM will pay for, and Contractor is authorized to purchase, only PPE suits that meet or exceed all applicable regulatory requirements and National Fire Protection Association guidelines.
- 4.1.5 Contractor shall comply with all applicable public procurement laws, including the applicable provisions of ORS chapters 279A and 279B and Contractor's own procurement ordinances, codes, rules and regulations, in the solicitation of and contracting for the acquisition of the PPE suits. The PPE suits shall be procured according to the procedure established in Standard Operating Guideline T021. Upon their acquisition, the PPE suits become part of the state-owned equipment on loan to the Contractor as specified in Exhibit "B" of this Agreement.
- 4.1.6 Contractor Stand-by Costs are not chargeable to a Responsible Person, but are reimbursed to the Contractor by the OSFM.

4.2 CONTRACTOR'S TEAM RESPONSE COSTS.

4.2.1 Contractor shall be compensated by the OSFM under this Agreement for certain OSFM-approved team response costs. Team response costs are the equivalent of "extraordinary response costs". The total funding available for team response costs as specified in Exhibit "K" of this Agreement is in addition to Contractor Stand-By Costs as specified in section 4.1. Compensation of such team response costs shall be limited by the funds available in the State Spill Response Revolving Fund established under ORS 453.390 for the 2013-2015 biennium. Such Team response costs may include, but are not limited to:

- i. Compensation for Materials, Contractor Vehicle(s) and Apparatus: OSFM shall compensate contractor for OSFM-approved purchases of materials and supplies at the rates set forth in Exhibit "F" of this agreement. Where the OSFM has approved the use of Contractor vehicles and equipment, OSFM shall compensate Contractor at the rates described in Exhibit "F" of this Agreement.
- ii. Compensation for Contractor Personnel Response Costs: Contractor RHMERT personnel response costs, which are approved and authorized under this Agreement, are compensable at the rates described in Exhibit "G". Hourly personnel rates for the 2013-2015 biennium shall be calculated as follows:
 - A. Base Hourly Rate/Non-officer - shall be calculated at the hourly overtime rate, plus benefits, for the highest paid, technician trained team member who is not an officer.
 - B. Base Hourly Rate/Officer (eligible for overtime) – shall be calculated at the overtime rate, plus benefits for the highest paid, technician trained officer on the team.
 - C. Base Hourly Rate/Salaried Officer (not eligible for overtime) - shall be calculated at the salary rate, plus benefits, of the highest paid, technician trained officer on the team.
 - D. OSFM and Contractor understand that the base hourly rate of non-officers, officers, and salaried officers referred to in this section is subject to change pursuant to any collective bargaining agreement entered into between Contractor and Contractor's employees. It is the intent of OSFM and Contractor that if, during the term of this Agreement, the base hourly rate of Contractor's employees for non-officers, officers, or salaried officers changes due to a change in a collective bargaining agreement between Contractor and Contractor's employees, that on the date those changes become effective under a collective bargaining agreement, those changes will be incorporated in this Agreement by formally amending this Agreement in writing, and shall be used for purposes of calculating compensation for Contractor's Personnel Response Costs only after the effective date of the Amendment. Notwithstanding any retroactive payment provision contained in a collective bargaining agreement, the Contractor's Personnel Response Costs shall be calculated and reimbursed at the hourly rate set forth in the version of this Agreement which was in effect at the time the Contractor commenced the hazardous materials emergency response.
 - E. A Response Availability Rate of \$15.5788 shall be added to each base hourly rate to determine the total hourly personnel response rate for each category. Contractor shall be required to document total hourly personnel response rates for each category utilizing OSFM provided format. That documentation is entered into this Agreement as Exhibit G. Contractor RHMERT personnel response costs shall be billed to the nearest one-fourth (1/4) hour period worked.

iii. Emergency Expenses: Contractor's necessary and reasonable Emergency Response costs related to services rendered under this Agreement are reimbursable at the rates described in Exhibit "F" of this agreement. All such costs must be based on actual expenditures and documented by the Contractor. Original receipts must be submitted with the response billing. Emergency Response purchases of up to \$100 per Emergency Response Incident may be made at the Contractor's discretion without prior approval by the OSFM. The Team Leader or authorized Contractor representative shall attempt to contact the OSFM Duty Officer for prior approval of Contractor emergency expenses exceeding \$100. Contractor claim for reimbursement must clearly document the nature of the purchases and extent of the OSFM prior verbal approval of Contractor emergency expenditures. The OSFM reserves the right to deny any payment of unjustifiable Contractor expenditures.

A. Exposure exams resulting from a RHMERT Operations response will be included in the Contractor's team response costs to be billed to the responsible person and reimbursed by the OSFM. Where no responsible person is identified reimbursement to the Contractor will be provided out of the State Spill Response Revolving Fund.

4.2.2 In addition to the compensable team response costs set forth in 4.2.1, Contractor's emergency response may also incur certain team response costs for which Contractor shall not be compensated by OSFM. Contractor shall not be reimbursed for Contractor's use of OSFM-owned vehicles, equipment, and supplies, or for expenditures made by OSFM.

4.2.3 Team response costs may be charged to a Responsible Person.

4.3 BILLING SYSTEM.

4.3.1 Contractor must notify the OSFM's Emergency Response Unit within 24 hours of an Emergency Response. The OSFM will assign an Incident number to the response at that time. Contractor shall leave a voice-mail message if Contractor notification is made after business hours. OSFM will return a call to the Contractor the next business day. Contractor shall provide an estimate of Team Response Costs to the OSFM within 10 working days of the Emergency Response. Contractor shall submit an expenditure report and invoice to the OSFM within 30 days of the Emergency Response. Contractor shall submit its claim for reimbursement on OSFM approved forms and the claim must contain such documentation as is necessary to support OSFM cost-recovery operations and financial audits.

4.3.2 The OSFM may bill the Responsible Person within 30 days of receipt of Contractor invoice. The OSFM may bill Responsible Person(s) for the Emergency Response Costs, including Team Response Costs. Normally Contractor team response costs are collected by the OSFM from the Responsible Person prior to making payment to the Contractor. When payment has not been received by the OSFM within 30 days after the second billing to the Responsible Person, the Contractor's OSFM approved Team Response Costs will be paid to the Contractor from the State Spill Response Revolving Fund. In no case shall the OSFM payment to the Contractor exceed 90 days after receipt of an acceptable Contractor invoice by OSFM; i.e., one that meets the requirements of 4.3 above.

4.3.3 Billing for OSFM-Owned Equipment Only. OSFM shall bill the Responsible Person(s) for Contractor's use of OSFM-owned equipment during emergency response activities, including responses to incidents within the Contractor's local jurisdiction. . The OSFM will prepare a statement for OSFM-Owned Equipment used and the OSFM will forward the statement to the

identified Responsible Person any time OSFM-Owned Equipment is used for an Emergency Response.

- 4.3.4 Option for Waiver. The Contractor shall have the option of requesting a waiver of OSFM-Owned Equipment charges for response to any public agency within the jurisdictional boundaries of the Contractor. In addition, the Contractor may request a waiver of charges when there are extenuating circumstances, which would preclude a billing to the responsible person. Requests for waiver are subject to review and approval by the OSFM.
- 4.3.5 Priority of Reimbursements. If the OSFM successfully recovers payment from the Responsible Person, the monies shall first be used to pay the Contractor Team Response Costs, if these costs have not been paid in their entirety; then the monies will be used to reimburse the State Spill Response Revolving Fund for the amount previously paid to the Contractor and the OSFM. Any remaining funds will be used to pay Emergency Response Costs as billed. Contractor agrees to cooperate with the OSFM as is reasonable and necessary in order to bill Responsible Persons or parties and pursue cost recovery actions.
- 4.3.6 If a disputed billing is resolved in favor of the Responsible Person or party then the Contractor shall not be required to reimburse the OSFM for payments previously made.
- 4.4 **INTEREST.** If the OSFM fails to make timely payments to Contractor as described in 4.3.2, interest shall be paid to Contractor by the OSFM on amounts past due at the rate of interest specified in ORS 293.462(3). Interest payments will be made only if Emergency Response Costs are invoiced by the Contractor on OSFM-approved forms and Responsible Person information supplied by the Contractor is correct to the best of the Contractor's knowledge or belief.
- 4.5 **STATE FUNDING AVAILABLE.**
 - 4.5.1 The OSFM has sufficient funds currently available and authorized for expenditure to finance the costs of the Agreement within the OSFM's 2013-2015 biennial appropriation or limitation. Contractor understand and agrees that the OSFM's payment of amounts under this Agreement attributable to work performed after the last day of the current biennium is contingent upon the OSFM receiving from the Oregon Legislative Assembly appropriations, limitations, or other expenditure authority sufficient to allow the OSFM, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.
 - 4.5.2 State funding for Stand-By Costs available under this Agreement for the 2013-2015 biennium shall be the sum of the amounts specified in exhibits C, D, E, H and I to this Agreement and are summarized in Exhibit J of this Agreement.
 - 4.5.3 The funding available as specified in Exhibits C, D, E, H and I to this Agreement does not include Contractor team response costs as specified in 4.2. Such team response costs are available in addition to Contractor Stand-By Costs and shall be limited by the funds available in the State's Spill Response Revolving Fund established under ORS 453.390 for the 2013-2015 biennium, by the limitations described in ORS 453.382 and 453.390 and as identified in Exhibit K, State Spill Response Revolving Fund, to this Agreement.
 - 4.5.4 Additional Contractor compensation shall be paid under this Agreement only if specifically agreed to by the OSFM and the Contractor in writing, but the funds used shall not be provided under ORS 453.390.

- 4.5.5 OSFM payments under the terms of this Agreement shall be considered full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work authorized under this Agreement.
- 4.5.6 Acceptance of payment by the Contractor shall relieve the OSFM from all claims by Contractor for reimbursement of Team Response Costs except where partial payment has been made due to limitations of the State's Spill Response Revolving Fund and subject to further payment as set forth above.
- 4.6 PRIOR APPROVAL.** Contractor may not respond under this Agreement without prior written or verbal approval by OSFM as set forth in Section 4.7. Granting of response approval by the OSFM Duty Officer constitutes the OSFM agreement to pay Contractor Team Response Costs from the State Spill Response Revolving Fund if recovery from a Responsible Person or party is not obtained in a timely manner. Contractor agrees to make reasonable and good faith efforts to minimize Responsible Person and OSFM expenses.
- 4.7 RESPONSE PROCEDURES AND LIMITATIONS; AUTOMATIC RESPONSE.**
- 4.7.1 If the Contractor has received state authority for automatic response, Contractor may, upon receipt of an Emergency Response request, provide Emergency Response services as specified under the terms of this Agreement and the OSFM's Standard Operating Guidelines, which is incorporated herein by this reference, and may be found on the OSFM's website. Contractor shall immediately thereafter notify the OSFM Duty Officer.
- 4.7.2 If the Contractor has *not* received state authority for automatic response or if the Emergency Response request does not meet the Standard Operating Guideline criteria, the Contractor shall refer the response request to the OSFM Duty Officer who will evaluate the situation and either authorize the Contractor response or decline the response request.
- 4.8 STATE SPILL RESPONSE REVOLVING FUND.**
- 4.8.1 If the State Spill Response Revolving Fund becomes depleted or fiscally unsound, the OSFM shall immediately notify Contractor, who may upon receipt of such notice suspend response actions under this Agreement.
- 4.8.2 For purposes of this section, "fiscally unsound" shall mean the balance in the State Spill Response Revolving Fund is less than \$20,000, and "immediately" shall mean within twelve (12) hours of a Contractor receiving the emergency response request, which reduces the fund below the \$20,000 threshold.
- 4.8.3 If Contractor commences an emergency response action subsequent to notification of fiscally unsound State Spill Response Revolving Fund balance, Contractor assumes the risk of non-payment if the OSFM is unable to obtain additional funding for the State Spill Response Revolving Fund, recover the Contractor team emergency response costs from a Responsible Person or party or if there is no identifiable Responsible Person. Contractor shall immediately notify the OSFM Duty Officer of all emergency response activities undertaken pursuant to this Agreement.
- 4.8.4 If, after becoming depleted or fiscally unsound, additional funds become available in the State Spill Response Revolving Fund and Contractor has billed the OSFM as set forth in Section 4.2, the OSFM shall reimburse the Contractor for unpaid Team Response Costs to the extent funds are available.

5.0 WHERE NO RESPONSIBLE PERSON CAN BE IDENTIFIED.

As previously mentioned in Section 4.8, OSFM agrees to bill the person responsible for causing the hazardous materials emergency for total emergency response costs. Where there is no identifiable responsible person, or if the responsible person or party is unable to pay, the OSFM agrees to pay Contractor team response costs from the State Spill Response Revolving Fund provided funds are available and Contractor has complied with Section 4.3 herein.

6.0 CONTRACTOR STATUS.

Contractor certifies it is not an employee of the State of Oregon and is a local government agency or agencies.

7.0 RETIREMENT SYSTEM STATUS, SOCIAL SECURITY, WORKERS COMPENSATION.

Contractor is not entitled under this Agreement to any Public Employees Retirement System benefits and is responsible for payment of any applicable federal or State taxes. Contractor is not entitled under this Agreement to any benefits for payments of federal Social Security, employment insurance, or workers' compensation from the State of Oregon.

8.0 ASSIGNMENTS; SUBCONTRACTS.

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 the OSFM. Such written approval will not relieve Contractor of any obligations under this Agreement. Except where the OSFM expressly approves otherwise, Contractor shall remain liable as between the original parties to this Agreement as if no such assignment had occurred.

9.0 SUCCESSORS IN INTEREST.

The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties to this Agreement and their respective successors and assigns.

10.0 COMPLIANCE WITH GOVERNMENT REGULATIONS.

Contractor agrees to comply with federal, state and local laws, codes, regulations and ordinances applicable to the work performed under this Agreement including, but not limited to, OAR 437-002-0100(18) (Hazardous waste operations and emergency response), which adopts 29 CFR 1910.120 (published 12/27/11, FR vol. 76, no. 248, p. 80735).

11.0 FORCE MAJEURE.

Neither party to this Agreement shall be held responsible for delay or default caused by fire, riots, acts of God, or war, which is beyond that party's reasonable control. OSFM or Contractor may terminate this Agreement upon written notice after determining such delay or default will reasonably prevent performance of the Agreement.

12.0 INDEMNIFICATION, CONTRIBUTION, SCOPE OF LIABILITY.

12.1 ACTIVITIES AUTHORIZED UNDER ORS 453.374 – 453.390:

12.1.1 CONTRACTOR'S RHMERT MEMBERS: PURSUANT TO ORS 453.384, DURING EMERGENCY RESPONSE OPERATIONS AUTHORIZED BY THIS AGREEMENT AND ORS 453.374 TO 453.390, THE STATE OF OREGON, BY AND THROUGH THE DEPARTMENT OF STATE POLICE, OFFICE OF STATE FIRE MARSHAL, SHALL PROTECT AND DEFEND CONTRACTOR'S RHMERT MEMBERS FROM LIABILITY UNDER ORS 30.260 TO 30.300 (OREGON TORT CLAIMS ACT). AS USED IN THIS SECTION, "OPERATIONS" MEAN ACTIVITIES DIRECTLY RELATED TO A PARTICULAR EMERGENCY RESPONSE INVOLVING A HAZARDOUS MATERIAL BY A RHMERT AS PROVIDED FOR UNDER THIS AGREEMENT. "OPERATIONS" ALSO INCLUDE ADVANCED TRAINING ACTIVITIES PROVIDED TO THE CONTRACTOR'S RHMERT MEMBERS AS PROVIDED FOR UNDER THIS AGREEMENT, BUT DO NOT INCLUDE TRAVEL TO AND FROM SUCH TRAINING.

12.1.2 CONTRACTOR: **EXCEPT AS PROVIDED UNDER PARAGRAPHS 12.1.1 AND 12.2** THE OSFM AND CONTRACTOR SHALL EACH BE RESPONSIBLE, TO THE EXTENT PERMITTED BY THE OREGON TORT CLAIMS ACT (ORS 30.260 THROUGH 30.300) AND THE OREGON CONSTITUTION (INCLUDING BUT NOT LIMITED TO ARTICLE XI, SECTION 7), FOR ANY LEGAL LIABILITY, LOSS, DAMAGES, COSTS AND EXPENSES ARISING IN FAVOR OF ANY PERSON, ON ACCOUNT OF PERSONAL INJURIES, DEATH, OR PROPERTY LOSS OR DAMAGE OCCURRING, GROWING OUT OF, INCIDENT TO OR RESULTING DIRECTLY FROM THEIR RESPECTIVE ACTS OR OMISSIONS UNDER THIS AGREEMENT.

12.2 **ACTIVITIES NOT AUTHORIZED UNDER ORS 453.374 - 453.390:** WHEN CONTRACTOR USES STATE-OWNED EQUIPMENT, OR STATE PROCEDURES OR TRAINING FOR ANY ACTION NOT AUTHORIZED UNDER ORS 453.374 – 453.390, THE CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE STATE, ITS OFFICERS, DIVISIONS, AGENTS, EMPLOYEES, AND MEMBERS, FROM ALL CLAIMS, SUITS OR ACTIONS OF ANY NATURE ARISING OUT OF THE ACTIVITIES OR OMISSIONS OF CONTRACTOR, ITS OFFICERS, SUBCONTRACTORS, AGENTS OR EMPLOYEES, SUBJECT TO THE OREGON TORT CLAIMS ACT, ORS 30.260 TO 30.300, AND THE OREGON CONSTITUTION, ARTICLE XI, SECTION 7.

12.3 THIRD PARTY CLAIMS:

12.3.1 IF ANY THIRD PARTY MAKES ANY CLAIM OR BRINGS ANY ACTION, SUIT OR PROCEEDING ALLEGING A TORT AS NOW OR HEREAFTER DEFINED IN ORS 30.260 ("THIRD PARTY CLAIM") AGAINST A PARTY (THE "NOTIFIED PARTY") WITH RESPECT TO WHICH THE OTHER PARTY ("OTHER PARTY") MAY HAVE LIABILITY, THE NOTIFIED PARTY MUST PROMPTLY NOTIFY THE OTHER PARTY IN WRITING OF THE THIRD PARTY CLAIM AND DELIVER TO THE OTHER PARTY A COPY OF THE CLAIM, PROCESS, AND ALL LEGAL PLEADINGS WITH RESPECT TO THE THIRD PARTY CLAIM. EITHER PARTY IS ENTITLED TO PARTICIPATE IN THE DEFENSE OF A THIRD PARTY CLAIM, AND TO DEFEND A THIRD PARTY CLAIM WITH COUNSEL OF ITS OWN CHOOSING. RECEIPT BY THE OTHER PARTY OF THE NOTICE AND COPIES REQUIRED IN THIS PARAGRAPH AND MEANINGFUL OPPORTUNITY FOR THE OTHER PARTY TO PARTICIPATE IN THE INVESTIGATION, DEFENSE AND SETTLEMENT OF THE THIRD PARTY CLAIM WITH COUNSEL OF ITS OWN CHOOSING ARE CONDITIONS PRECEDENT TO THE OTHER PARTY'S LIABILITY WITH RESPECT TO THE THIRD PARTY CLAIM.

12.3.2 WITH RESPECT TO A THIRD PARTY CLAIM FOR WHICH THE STATE IS JOINTLY LIABLE WITH THE CONTRACTOR (OR WOULD BE IF JOINED IN THE THIRD PARTY CLAIM), THE STATE SHALL CONTRIBUTE TO THE AMOUNT OF EXPENSES (INCLUDING ATTORNEYS' FEES), JUDGMENTS, FINES AND AMOUNTS PAID IN SETTLEMENT ACTUALLY AND REASONABLY INCURRED AND PAID OR

PAYABLE BY THE CONTRACTOR IN SUCH PROPORTION AS IS APPROPRIATE TO REFLECT THE RELATIVE FAULT OF THE STATE ON THE ONE HAND AND OF THE CONTRACTOR ON THE OTHER HAND IN CONNECTION WITH THE EVENTS WHICH RESULTED IN SUCH EXPENSES, JUDGMENTS, FINES OR SETTLEMENT AMOUNTS, AS WELL AS ANY OTHER RELEVANT EQUITABLE CONSIDERATIONS. THE RELATIVE FAULT OF THE STATE ON THE ONE HAND AND OF THE CONTRACTOR ON THE OTHER HAND SHALL BE DETERMINED BY REFERENCE TO, AMONG OTHER THINGS, THE PARTIES' RELATIVE INTENT, KNOWLEDGE, ACCESS TO INFORMATION AND OPPORTUNITY TO CORRECT OR PREVENT THE CIRCUMSTANCES RESULTING IN SUCH EXPENSES, JUDGMENTS, FINES OR SETTLEMENT AMOUNTS. THE STATE'S CONTRIBUTION AMOUNT IN ANY INSTANCE IS CAPPED TO THE SAME EXTENT IT WOULD HAVE BEEN CAPPED UNDER OREGON LAW IF THE STATE HAD SOLE LIABILITY IN THE PROCEEDING.

- 12.3.3 WITH RESPECT TO A THIRD PARTY CLAIM FOR WHICH THE CONTRACTOR IS JOINTLY LIABLE WITH THE STATE (OR WOULD BE IF JOINED IN THE THIRD PARTY CLAIM), THE CONTRACTOR SHALL CONTRIBUTE TO THE AMOUNT OF EXPENSES (INCLUDING ATTORNEYS' FEES), JUDGMENTS, FINES AND AMOUNTS PAID IN SETTLEMENT ACTUALLY AND REASONABLY INCURRED AND PAID OR PAYABLE BY THE STATE IN SUCH PROPORTION AS IS APPROPRIATE TO REFLECT THE RELATIVE FAULT OF THE CONTRACTOR ON THE ONE HAND AND OF THE STATE ON THE OTHER HAND IN CONNECTION WITH THE EVENTS WHICH RESULTED IN SUCH EXPENSES, JUDGMENTS, FINES OR SETTLEMENT AMOUNTS, AS WELL AS ANY OTHER RELEVANT EQUITABLE CONSIDERATIONS. THE RELATIVE FAULT OF THE CONTRACTOR ON THE ONE HAND AND OF THE STATE ON THE OTHER HAND SHALL BE DETERMINED BY REFERENCE TO, AMONG OTHER THINGS, THE PARTIES' RELATIVE INTENT, KNOWLEDGE, ACCESS TO INFORMATION AND OPPORTUNITY TO CORRECT OR PREVENT THE CIRCUMSTANCES RESULTING IN SUCH EXPENSES, JUDGMENTS, FINES OR SETTLEMENT AMOUNTS. THE CONTRACTOR'S CONTRIBUTION AMOUNT IN ANY INSTANCE IS CAPPED TO THE SAME EXTENT IT WOULD HAVE BEEN CAPPED UNDER OREGON LAW IF IT HAD SOLE LIABILITY IN THE PROCEEDING.

12.4 LIMITATIONS. Except as provided in Section 3.4, this Agreement in no way limits a Contractor from responding with State owned vehicles, equipment and supplies under local authority, mutual-aid agreements, or other contracts under local authority.

12.5 NOTIFICATIONS: Contractor shall immediately report by telephone and in writing any demand, request, or occurrence that reasonably may give rise to a claim against the State. Such reports shall be directed to:

State Fire Marshal Hazardous Materials Duty Officer
4760 Portland Road NE
Salem, Oregon 97305
503-378-3473
After Business Hours/Holidays: 503-584-2763

Copies of such written reports shall also be sent to:

State Risk Management Division
1225 Ferry Street SE.
Salem, Oregon 97310

13.0 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 shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

14.0 ACCESS TO RECORDS.

Subject to the state's Public Record Laws, each party to this Agreement, the federal government, and their duly authorized representatives shall have access to the other party's books, documents, investigative reports, papers and records which are directly pertinent to this Agreement for the purpose of making financial, maintenance or regulatory audit. Such records shall be maintained for at least six (6) years, or longer where required by law.

14.1 CONFIDENTIALITY.

Except as otherwise provided by law, each party to this Agreement agrees that they shall not in any way, disclose each other's confidential information to a third party. The rights and obligations set forth in this section shall survive termination of the Agreement.

15.0 AMENDMENTS.

The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of OSFM and Contractor.

16.0 PAYMENT OF CONTRACTOR OBLIGATIONS.

Contractor agrees to make payment promptly, as due, to all persons furnishing services, equipment or supplies to Contractor. If Contractor fails, neglects, or refuses, to pay any such claims as they become due and for which the OSFM may be held liable, the proper officer(s) representing the OSFM, after ascertaining that the claims are just, due and payable, may, but shall not be required to, pay the claim and charge the amount of the payment against funds due Contractor under this Agreement. The payment of claims in this manner shall not relieve Contractor of any duty with respect to any unpaid claims.

17.0 NON-DISCRIMINATION.

Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Contractors are encouraged to recruit qualified women and minorities as RHMERT personnel.

18.0 DUAL PAYMENT.

Contractor shall not be compensated for work performed under this Agreement by any state agency or person(s) responsible for causing a hazardous materials emergency Incident except as approved and authorized under this Agreement.

19.0 PAYMENT FOR MEDICAL CARE.

Contractor agrees to make payment promptly, as due, to any person, partnership, association or corporation furnishing medical, surgical, hospital or other needed medical care to Contractor employees, except as noted in 4.1.2, Medical Surveillance. Such payment shall be made from all sums, which

Contractor has agreed to pay for such services, and from all sums, which Contractor has collected or deducted, from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service. It is the intent of the parties that this section includes any collective bargaining agreements that the Contractor has entered into with Contractor employees.

20.0 INSURANCE COVERAGE.

20.1 WORKERS' COMPENSATION INSURANCE. All employers, including Contractor, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Oregon workers' compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

20.2 COMMERCIAL GENERAL LIABILITY. Contractor's insurance must cover Bodily Injury, Death and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Agreement. Contractor shall provide proof of insurance of not less than the following amounts:

20.2.1 Bodily Injury/Death: Amounts not less than the amounts listed in the following schedule:

Combined single limit per occurrence:

July 1, 2013 to June 30, 2014:.....\$ 1,900,000.

July 1, 2014 to June 30, 2015:.....\$ 2,000,000.

July 1, 2015 and thereafter the adjusted limitation as set by ORS 30.271 (4).

Aggregate limit for all claims per occurrence:

July 1, 2013 to June 30, 2014:.....\$ 3,800,000.

July 1, 2014 to June 30, 2015:.....\$ 4,000,000.

July 1, 2015 and thereafter the adjusted limitation as set by ORS 30.271(4).

20.2.2 Property Damage: Amounts not less than the amounts listed in the following schedule:

Combined single limit per occurrence from July 1, 2012, shall not be less than \$104,300.

From July 1, 2013, and every year thereafter the adjusted limitation as determined by the State Court Administrator per ORS 30.273(3).

Aggregate limits for all claims per occurrence from July 1, 2012, shall not be less than \$521,400.

From January 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator per ORS 30.273(3).

20.3 AUTOMOBILE LIABILITY. This insurance must cover each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable. Contractor shall provide proof of insurance of not less than the following amounts:

20.3.1 Bodily Injury/Death: Amounts not less than the amounts listed in the following schedule:

Combined single limit per occurrence:

July 1, 2013 to June 30, 2014:.....\$ 1,900,000.

July 1, 2014 to June 30, 2015:.....\$ 2,000,000.

July 1, 2015 and thereafter the adjusted limitation as set by ORS 30.271 (4).

Aggregate limit for all claims per occurrence:

July 1, 2013 to June 30, 2014:.....\$ 3,800,000.

July 1, 2014 to June 30, 2015:.....\$ 4,000,000.

July 1, 2015 and thereafter the adjusted limitation as set by ORS 30.271 (4).

20.3.2 Property Damage: Amounts not less than the amounts listed in the following schedule:

Combined single limit per occurrence from July 1, 2012, shall not be less than \$104,300.

From July 1, 2013, and every year thereafter the adjusted limitation as determined by the State Court Administrator per ORS 30.273(3).

Aggregate limits for all claims per occurrence from July 1, 2012, shall not be less than \$521,400.

From January 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator per ORS 30.273(3).

20.4 "TAIL" COVERAGE. If any of the required liability insurance is on a "claims made" basis, "tail" coverage will be required at the completion of this Agreement for a duration of 24 months, or the maximum time period reasonably available in the marketplace. Contractor shall furnish certification of "tail" coverage as described or continuous "claims made" liability coverage for 24 months following Agreement completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of this Agreement. If Continuous "claims made" coverage is used, Contractor shall be required to keep the coverage in effect for a duration of not less than 24 months from the end of the Agreement. This will be a condition of the final acceptance of work or services.

20.5 NOTICE OF CANCELLATION OR CHANGE. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days prior written notice from Contractor or its insurer(s) to OSFM.

20.6 CERTIFICATES OF INSURANCE. As evidence of the insurance coverage required by this Agreement, Contractor shall furnish acceptable insurance certificates to OSFM prior to commencing performance under this Agreement. The certificates must specify all of the parties who are Additional Insureds. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the State. Contractor shall pay for all deductibles, self-insured retentions and self-insurance.

20.7 ADDITIONAL INSURED. The Commercial General Liability and Automobile Liability insurance coverages required under this Agreement shall include the State of Oregon, and its agencies, departments, divisions, commissions, branches, officers, employees, and agents as Additional Insureds but only with respect to Contractor's activities to be performed under this Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

21.0 GOVERNING LAW; VENUE; CONSENT TO JURISDICTION.

This Agreement shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of laws. Any claim, action, suit or proceeding (collectively, "Claim") between OSFM (and any other agency or department of the State of Oregon) and Contractor that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a

waiver by the State of Oregon of any form of defense of immunity, whether it is sovereign immunity or governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. CONTRACTOR, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

22.0 TERMINATION.

- 22.1 This Agreement may be terminated by mutual consent of both parties. This Agreement may be terminated by either party upon 180 days' notice, in writing, and delivered by certified mail or in person.
- 22.2 The OSFM or Contractor may terminate this Agreement at will effective upon delivery of written notice to the Contractor or OSFM, or at such later date as may be established by the OSFM or Contractor, under any of the following conditions:
 - 22.2.1 if OSFM funding from federal, state, or other sources is not obtained or continued at levels sufficient to allow for payment of costs under the terms of this Agreement. As an alternative to termination, the parties may instead agree to modify in writing the Agreement to accommodate a reduction in funding.
 - 22.2.2 if federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement or OSFM is no longer eligible for the funding proposed for payments by this Agreement.
 - 22.2.3 if any license or certification required by law or regulation to be held by the Contractor to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.
- 22.3 Any termination of the Agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.
- 22.4 Default. The OSFM or Contractor, by written notice of default (including breach of contract) to the other party, delivered by certified mail or in person, may terminate the whole or any part of this Agreement:
 - 22.4.1 if the other party fails to provide services called for by this Agreement within the time specified herein or any extension thereof; or,
 - 22.4.2 if the other party fails to perform any other provision of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and, after receipt of written notice from the other party, fails to correct such failures within 10 days or such longer period as the notice may authorize.

23.0 APPROVAL AUTHORITY.

Contractor's representative(s) certify by their signature herein that they have the necessary and lawful authority to enter into contracts and Agreements on behalf of the local government entity.

24.0 INSUFFICIENT FUNDS.

The obligation of the Contractor under this Agreement is contingent upon the availability and allotment of funds for response costs by the OSFM to Contractor. Contractor may, upon thirty (30) days' prior written notice, terminate this Agreement if funds are not available.

25.0 WRITTEN NOTIFICATIONS.

Any written notifications required for the administration of this Agreement shall be sent to the following:

Office of State Fire Marshal
4760 Portland Rd. NE
Salem, OR 97305

City of Coos Bay
150 4th St.
Coos Bay, OR 97420

26.0 MERGER; WAIVER.

This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification, or change of terms of this Agreement shall bind all parties unless in writing and signed by both parties and all necessary state approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of OSFM to enforce any provision of this Agreement shall not constitute a waiver by OSFM of that or any other provision.

27.0 REMEDIES.

In the event that Contractor violates any term or condition under this Agreement, OSFM shall have all remedies available to it under law, in equity, and under this Agreement.

28.0 NON-APPROPRIATION.

The State of Oregon's payment obligations under this Agreement are conditioned upon OSFM receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow OSFM, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Agreement. Contractor is not entitled to receive payment under this Agreement from any part of Oregon state government other than OSFM. Nothing in this Agreement is to be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon.

29.0 ALTERNATIVE DISPUTE RESOLUTION.

The parties should attempt in good faith to resolve any dispute arising out of this agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the 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.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the effective date shown in paragraph 1.1 above.

BY EXECUTION OF THIS CONTRACT, EACH PARTY HEREBY ACKNOWLEDGES THAT THEY HAVE READ THIS CONTRACT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

Signatures begin on following page.

Approving Signatures:**On Behalf of the State of Oregon,**

Dated this _____ day of _____, 2013

Signature _____

Printed Name Mark Wallace

State Fire Marshal
4760 Portland Road N.E.
Salem, OR 97305-1760

Dated this _____ day of _____, 2013

Signature _____

Printed Name Joel Lujan

Major, Gaming & Employee Services Bureau
Oregon Department of State Police
255 Capitol Street N.E., Fourth Floor
Salem, OR 97301

On Behalf of _____

Dated this _____ day of _____, 2013

Signature _____

Printed Name _____

Title _____

Address _____

City _____ Zip _____

On Behalf of _____

[ENTITY'S LEGAL NAME]

Dated this _____ day of _____, 2013

Signature _____

Printed Name _____

Title _____

Address _____

City _____ Zip _____

On Behalf of _____
[ENTITY'S LEGAL NAME]

Dated this ____ day of _____, 2013

Signature _____

Printed Name _____

Title _____

Address _____

City _____ Zip _____

On Behalf of _____
[ENTITY'S LEGAL NAME]

Dated this ____ day of _____, 2013

Signature _____

Printed Name _____

Title _____

Address _____

City _____ Zip _____

On Behalf of _____
[ENTITY'S LEGAL NAME]

Dated this ____ day of _____, 2013

Signature _____

Printed Name _____

Title _____

Address _____

City _____ Zip _____

On Behalf of _____
[ENTITY'S LEGAL NAME]

Dated this ____ day of _____, 2013

Signature _____

Printed Name _____

Title _____

Address _____

City _____ Zip _____

EXHIBIT A

Regional Team Primary Response Area Boundary Description

Beginning at the Pacific Ocean and the Southern Lane County Border intersection, east along the Southern Lane County Border and Northern Douglas County Border to the intersection known as the dividing line between Township 19-South, Township 20-South, Range 8-West and Range 9-West of the Willamette Meridian Survey. Thence Southward along the line between Range 8-West and Range 9-West of the Willamette Meridian Survey to the North Eastern Curry County Border, South along the Eastern County Border to the intersection of the Northern California State Border, West along the Northern California State Border intersecting the Pacific Ocean, North along the Pacific Ocean to the point of beginning.

The primary response area for Region #15 (Coos Bay) shall be:

From Coos Bay, north to the Southern Lane County line (roughly the intersection of highway 101 and County Line Rd., between milepost 198 and 199 of highway 101). From Reedsport, east on highway 38 to the intersection of Wells Creek Road in Scottsburg (between milepost 18 and 19). From Coquille, east on highway 42 to the Western Douglas County line (roughly 300 feet west of milepost 45). From Coos Bay, south on highway 101 to the Northern California State border and bordered entirely on the west by the Pacific Ocean.

EXHIBIT B

INVENTORY OF
OSFM-OWNED EQUIPMENT
As of June 2013

EXHIBIT C

**FUNDING AVAILABLE FOR THE PURCHASE AND MAINTENANCE OF
OSFM-OWNED EQUIPMENT
2013-2015 Biennium Funding**

Funding Available for the	
Purchase of State-Owned Equipment.....	\$16,000.00

EXHIBIT D**SPECIALIZED TRAINING
2013-2015 Biennium Funding**

Funds for approved Technician level specialized training are available under this Agreement as follows:

Funding Available for Specialized Training\$34,112.00

Contractor may elect to use up to 100% of funding available in this exhibit for the reimbursement of personnel costs incurred as a result of RHMERT employees attending advanced training. Reimbursement for personnel cost during 2013-2015 biennium is not to exceed \$34,112.00. Allowing 100% of funding available in this exhibit for the reimbursement of personnel costs is a pilot project for the 2013-2015 biennium and will be reviewed before the next contract cycle. OSFM will track how money is spent, and see if it is feasible to continue allowing 100% of funding available in this exhibit for the reimbursement of personnel costs in future contracts.

On a case by case basis, additional specialized training funds may be available for new team members to attend Technician Weeks 1 – 4.

EXHIBIT E

**MEDICAL SURVEILLANCE
2013-2015 Biennium Funding**

Funds for approved medical surveillance exams are available for Contractor RHMERT employees under this Agreement as follows:

Up to **16** personnel may receive medical surveillance exam(s), up to a maximum of \$700 per person, not to exceed total funding available for medical surveillance shown below.

This amount shown above is the per-person maximum payable for medical surveillance exam(s) during the 2013-2015 biennium. It is understood that costs will vary for baseline, maintenance and exit exams, and therefore, the total funding available for medical surveillance *is not* based on the maximum per-person allowance, but rather on \$700 per person *average* cost. This allows *flexibility* in the per-person cost *within* the maximum funding available for medical surveillance.

Funding Available for Medical Surveillance Exams
Not to Exceed.....\$11,200.00

EXHIBIT F

Extraordinary Response Cost Fee Schedule – Part I
2013-2015
Extraordinary Response Costs Reimbursed to Contractor

OSFM shall reimburse Contractor and seek compensation from the Responsible Person(s) for OSFM-approved extraordinary response costs incurred by Contractor in response to a hazardous materials incident at the following rates:

<u>Item</u>	<u>Cost</u>
Each Engine	\$100.00 per hour
Each Aerial Ladder Vehicle	\$150.00 per hour
Each Utility/Staff Vehicle	\$15.00 per hour
Cellular, Mobile, and Specialized Mobile Radio	
..... \$50.00 per incident per phone (SMR) Telephone Charge	
Materials and Supplies.....	Actual Replacement Expense
Exposure Medical Exam.....	Actual Expense
RHMERT Operations Rehabilitation Costs	Actual Expense
Rental of equipment or materials.....	Actual Expense

Any vehicles and apparatus used during a RHMERT Operation not listed above will be charged at a rate identified in the OSFM State Mobilization Plan under Equipment Rates available for review on OSFM's website.

Source of replacement materials and supplies may be selected by contractor.

Extraordinary Response Costs Not Reimbursed to Contractor

OSFM shall seek compensation from the Responsible Person(s) for Contractor's use of OSFM-owned vehicles, equipment, materials, and other extraordinary response costs incurred in response to a Hazardous Materials Incident at the following rates:

<u>Item</u>	<u>Cost</u>
HM Tractor Trailer Response Vehicle	\$200.00 per hour
HM Suburban and Trailer Response Vehicle	\$125.00 per hour
Personal Protective Equipment	Actual Replacement Expense
Materials and Supplies	Actual Replacement Expense
Exposure Medical Exam	Actual Expense
Rental of equipment or materials.....	Actual Expense

Source of replacement materials and supplies shall be selected by the OSFM.

OSFM shall not pay compensation to Contractor for non-reimbursed extraordinary response costs.

Other Associated Costs

A response to a hazardous materials incident may incur other extraordinary response costs which cannot be anticipated. These costs may include, but are not limited to, replacement and repair costs for damaged or expended equipment and supplies. OSFM shall seek compensation from the Responsible Person(s) for these other associated extraordinary response costs on an actual cost basis.

EXHIBIT G**Extraordinary Response Cost Fee Schedule – Part II****COMPENSATION FOR CONTRACTOR'S RESPONSE PERSONNEL
2013-2015**

OSFM shall reimburse Contractor and seek compensation from the Responsible Person(s) for Contractor personnel utilized in response to a hazardous materials Incident at the following rates:

<u>Personnel Category</u>	<u>Hourly Rate</u>
HazMat Team Member – Non Officer/Firefighter	\$66.93
HazMat Team Member – Officer/Lieutenant	\$69.24
HazMat Team Member – Officer/Battalion Chief	\$77.89

All other support personnel at actual costs.

Pursuant to section 4.2.1 of this Agreement, it is the intent of OSFM and Contractor that if, during the term of this Agreement, the base hourly rate of Contractor's employees for non-officers, officers, or salaried officers changes due to a change in any collective bargaining agreement between Contractor and Contractor's employees, that on the date those changes become effective under a collective bargaining agreement, those changes will be incorporated in this Agreement by formally amending this Agreement in writing and shall be used for purposes of calculating compensation for Contractor's Personnel Response Costs only after the effective date of the Amendment. Notwithstanding any retroactive payment provision contained in a collective bargaining agreement, the Contractor's Personnel Response Costs shall be calculated and reimbursed at the hourly rate set forth in the version of this Agreement which was in effect at the time the Contractor commenced the hazardous materials emergency response.

Attachment #1
Hourly Personnel Response Rate
Calculation Worksheet

NON-OFFICER
RANK: FIREFIGHTER

To complete calculations for each line item, enter requested amounts into **grayed** boxes to auto-calculate column to the right. When calculations are complete, all amounts in the right hand column will be auto-calculated for a total, which will determine the contracted hourly personnel rate for non-officer team members of this rank.

NOTE: Base Hourly Rate/Non-Officer is calculated at the overtime rate for the highest paid, technician trained team member at this rank who is not an officer.

BASE SALARY

Base hourly rate \$ 26.16 x 1 ½ = \$ 39.2400

INSURANCE/BENEFITS

Premium paid per month \$ 1,313.11 / 242.66 hours worked per month = \$ 5.4113

PERS

Employer's contribution paid per month \$ 1,251.26 / 242.66 hours worked per month = \$ 5.1564

WORKERS COMP INSURANCE*

Base hourly rate \$ 26.16 x 0.0165 = \$ 4.3164

FICA* (Medicare 1.45%, OASDI 6.2%)

Base hourly rate \$ 26.16 x 7.65 % = \$ 2.0012

UNEMPLOYMENT TAX**

Base hourly rate \$ 26.16 x % = \$ -

PAYROLL TAX**

Base hourly rate \$ 26.16 x % = \$ -

RESPONSE AVAILABILITY RATE

\$ 15.5788

TOTAL HOURLY RATE

\$ 71.7042

* Percentage for calculation provided by Oregon State Police Payroll, effective January 17, 2013.

** Unemployment and Payroll Taxes are local taxes which, if applicable, are calculated by the percentage allowed by local laws.

Attachment #1
Hourly Personnel Response Rate
Calculation Worksheet

OFFICER (Eligible for Overtime)

RANK: LIEUTENANT

To complete calculations for each line item, enter requested amounts into **grayed** boxes to auto-calculate column to the right. When calculations are complete, all amounts in the right hand column will be auto-calculated for a total, which will determine the contracted hourly personnel rate for team members who are officers eligible for overtime at this rank.

NOTE: Base Hourly Rate/Officer is calculated at the overtime rate for the highest paid, technician trained team member at this rank who is an officer .

BASE SALARY

Base hourly rate \$ 27.47 x 1 ½ = \$ 41.2050

INSURANCE/BENEFITS

Premium paid per month \$ 1,313.11 / 242.67 hours worked per month = \$ 5.4111

PERS

Employer's contribution paid per month \$ 1,314.02 / 242.67 hours worked per month = \$ 5.4148

WORKERS COMP INSURANCE*

Base hourly rate \$ 27.47 x 0.0165 = \$ 4.5326

FICA* (Medicare 1.45%, OASDI 6.2%)

Base hourly rate \$ 27.47 x 7.65 % = \$ 2.1015

UNEMPLOYMENT TAX**

Base hourly rate \$ 27.47 x 0.006 % = \$ 0.0016

PAYROLL TAX**

Base hourly rate \$ 27.47 x % = \$ -

RESPONSE AVAILABILITY RATE

\$ 15.5788

TOTAL HOURLY RATE

74.245

* Percentage for calculation provided by Oregon State Police Payroll, effective January 17, 2013.

** Unemployment and Payroll Taxes are local taxes which, if applicable, are calculated by the percentage allowed by local laws.

Attachment #1
Hourly Personnel Response Rate
Calculation Worksheet

OFFICER (Eligible for Overtime)

RANK: BATTALION CHIEF

To complete calculations for each line item, enter requested amounts into **grayed** boxes to auto-calculate column to the right. When calculations are complete, all amounts in the right hand column will be auto-calculated for a total, which will determine the contracted hourly personnel rate for team members who are officers eligible for overtime at this rank.

NOTE: Base Hourly Rate/Officer is calculated at the overtime rate for the highest paid, technician trained team member at this rank who is an officer .

BASE SALARY

Base hourly rate \$ 32.34 x 1 ½ = \$ 48.5100

INSURANCE/BENEFITS

Premium paid per month \$ 1,313.11 / 242.67 hours worked per month = \$ 5.4111

PERS

Employer's contribution paid per month \$ 1,546.64 / 242.67 hours worked per month = \$ 6.3734

WORKERS COMP INSURANCE*

Base hourly rate \$ 32.34 x 0.0165 = \$ 5.3361

FICA* (Medicare 1.45%, OASDI 6.2%)

Base hourly rate \$ 32.34 x 7.65 % = \$ 2.4740

UNEMPLOYMENT TAX**

Base hourly rate \$ 32.34 x % = \$ -

PAYROLL TAX**

Base hourly rate \$ 32.34 x % = \$ -

RESPONSE AVAILABILITY RATE

\$ 15.5788

TOTAL HOURLY RATE

\$ 83.6834

* Percentage for calculation provided by Oregon State Police Payroll, effective January 17,2013.

** Unemployment and Payroll Taxes are local taxes which, if applicable, are calculated by the percentage allowed by local laws.

EXHIBIT H

**COMPENSATION FOR CONTRACTOR PROGRAM OUTREACH
2013-2015 Biennium Funding**

Funds for approved outreach training, allowing team personnel to interface with, educate and train other local agencies.

Funding Available for Contractor Program Outreach..... \$6,342.00

EXHIBIT I**COMPENSATION FOR CONTRACTOR SUB-COMMITTEE AND SPECIAL PROJECTS
PARTICIPATION
2013-2015 Biennium Funding**

Funds for approved sub-committee and special projects participation.

Funds can be used for personnel and backfill costs associated with team members participating on a sub-committee or special project. Associated travel and per diem costs shall also be deducted from this fund.

Funding available in this exhibit for the reimbursement of sub-committee or special projects costs is a pilot project for the 2013-2015 biennium and will be reviewed before the next contract cycle. OSFM will track how money is spent, and see if it is feasible to continue funding this exhibit for future contracts.

Funding Available for Sub-Committee and Special Projects Participation.....\$5,000.00

EXHIBIT J**SUMMARY - 2013-2015 BIENNIUM FUNDING AVAILABLE
FOR STAND-BY COSTS**

Funding Available For The Purchase And Maintenance Of OSFM-Owned Equipment – 2013-2015 Biennium Funding - (See Exhibit C)	\$16,000.00
Specialized Training –2013-2015 Biennium Funding - (See Exhibit D)	\$34,112.00
Medical Surveillance –2013-2015 Biennium Funding - (See Exhibit E)	\$11,200.00
Compensation for Contractor Program Outreach –2013-2015 Biennium Funding – (See Exhibit H)	\$6,342.00
Compensation for Contractor Sub-Committee and Special Project Participation – 2013-2015 Biennium Funding (See Exhibit I)	\$5,000.00
Total 2013-2015 Biennium Funding Available for Stand-By Costs	\$72,654.00

EXHIBIT K**State Spill Response Revolving Fund****2013 -2015 Biennium Funding.....\$300,000.00**

This is the ***Total*** State Spill Revolving Funding limitation available for the 2013-2015 biennium RHMERT services by ***all*** Contracted RHMERT's. This does ***not*** guarantee that any Contractor will be reimbursed for any specific amount from the State Spill Revolving Fund; only that funding in this amount is available for reimbursement of emergency response team costs within the OSFM limitation or appropriation.