

Smoke Management – Smoke Mitigation and Alternatives to Burning

Request for Proposals

Informational Webinar: November 9, 2021

Date of Issue: November 1, 2021

Closing Date: December 17, 2021, 5:30 pm Pacific

Contact:

Margaret Miller

margaret.miller@deq.state.or.us

503-347-5028

SECTION 1: GENERAL INFORMATION

1.1 BACKGROUND

Past practices of wildland fire suppression in the western United States has resulted in the over accumulation of timber and undergrowth in our forests. This over accumulation of “forest fuels” has caused both forest health issues and elevated risks of the occurrence of catastrophic wildfires and the emissions (smoke) they produce. Prescribed burning is an important forest management technique used to reduce forest fuels for the purposes of both short-term and long-term fire prevention and to aid in fire suppression. Prescribed fire, like with wildfires, still produces smoke emissions and needs to be managed in order to ensure good air quality.

The Oregon Legislature established the Smoke Management Plan 1) To improve the management of prescribed burning as a forest management and protection practice; and 2) To minimize emissions from prescribed burning consistent with the air quality objectives of the federal Clean Air Act and the State Implementation Plan developed by the Oregon Department of Environmental Quality. The program is implemented by the Oregon Department of Forestry with rules being promulgated by the Oregon Board of Forestry. DEQ coordinates with ODF on program management and development, and incorporates rules into Oregon’s State Implementation Plan for approval by the Oregon Environmental Quality Commission and the US Environmental Protection Agency.

In 2017, ODF and DEQ collaborated with the Oregon Health Authority to review the Smoke Management Plan. Through the review rulemaking process, the three agencies received input from members of the Smoke Management Review Committee, the public during a number of public hearings throughout Oregon and a public comment period. Many stakeholders sought more opportunities to use prescribed fire to reduce overall wildfire risk to their communities. The agencies also received comments requesting more organized and proactive communications to accompany proposed increases in the use of prescribed fire. ODF, DEQ and OHA developed recommendations for the Oregon Board of Forestry and Environmental Quality Commission to increase the opportunities for prescribed fire use by adjusting the

thresholds for intrusions in a smoke sensitive receptor area (SSRAs). The agencies also recommended communities protect the most vulnerable through the development of community response plans for prescribed fire smoke. In 2019, the EQC and the Oregon Board of Forestry approved these changes to the Smoke Management Plan. Also that year, DEQ received special legislative funding to assist Oregon communities with the development of community response plans and the evaluation and implementation of strategies to mitigate the impacts of increased prescribed fire smoke on vulnerable populations. Many of these plans were designed to serve dual purpose of protecting communities from both prescribed fire smoke and wildfire smoke impacts.

In 2021, the Oregon Legislature passed Senate Bill 762 to help Oregon modernize and improve wildfire preparedness through three key strategies: creating fire-adapted communities, developing safe and effective response, and increasing the resiliency of Oregon's landscapes. SB 762 provided funding to DEQ to enhance communities' readiness and mitigation capacity for smoke. Air quality impacts caused by prescribed fire smoke are typically for short durations, spanning hours to days. Many factors impact the amount of smoke that enters a community and how long it will remain, such as weather conditions during and after a burn, fuel types, fuel distribution, burning techniques and the geography of the region. With financial support from SB-762, DEQ is currently accepting proposals that demonstrate non-fire alternative treatment options or prescribed burn smoke mitigation options that reduce emissions.

- **Non-Fire Alternative**

Non-fire fuel treatments involving mechanical, biological, or chemical methods offer many advantages in terms of greater control over the outcome and reduced risk of unintended consequences, including air pollution. DEQ and ODF encourage land managers to use practices that will eliminate or significantly reduce the volume of prescribed burning necessary to meet their management objectives. Some practices to consider include, but are not limited to:

- Maximizing the cost-effective use of woody material for manufacture of products;
- Where cost-effective, using wood or other biomass for energy production or mulch; or
- Lopping and scattering limbs and other woody material to maximize contact with the soil in order to speed its breakdown.

- **Smoke Mitigation**

When prescribed burning is determined to be necessary to achieve forest management objectives, land managers are encouraged to use emission reduction techniques as described in OAR 629-048-0210. Please see *Attachment A* for Best Burn Practices: Emission Reduction Techniques. Potential prescribed burn smoke mitigation options that may reduce emissions including, but not limited to:

- The removal or redistribution of fuels to minimize fuel loading and reduce smoldering;
- Fire layouts that allow for controlled rapid ignition; or
- Fire layouts that allow for increased mop-up.

This grant opportunity seeks to make measurable progress in the investigation of alternative burning techniques or non-fire treatment options that effectively reduce fire hazard, maintain productive and resilient forests, reduce emissions and improve air quality.

1.2 CALL FOR PROPOSALS

The DEQ, with support from our partners, is seeking grant proposals for projects that demonstrate alternative burning techniques or non-burn treatment options that effectively reduce fire hazard, maintain productive and resilient forests, reduce emissions and improve air quality. DEQ expects to award multiple contracts resulting from this RFP. Projects must be conducted within the time frame of **March 1, 2022 through March 30, 2023**.

Approximately **\$400,000** of the total grant funds will be awarded for proposals that demonstrate non-fire alternative treatment options or prescribed burn smoke mitigation options that reduce emissions. **We will consider grant requests up to \$200,000.**

1.3 SCHEDULE

The table below represents a tentative schedule of events. All times are in Pacific Standard Time.

Event	Date	Time
Informational Webinar	November 9, 2021	1:00 p.m.
RFP Date of Issue	November 1, 2021	5:30 p.m.
Closing (Proposals Due)	December 17, 2021	5:30 p.m.
Declaration of Awarded Proposals	January 24, 2021	5:30 p.m.

SECTION 2: PROPOSAL CONTENT REQUIREMENTS

2.1 PROJECT WORK PLAN AND TIMELINE

Successful proposals will include:

- Overview of the proposed non-fire alternative treatment options or prescribed burn smoke mitigation options and how they will reduce emissions.
- Project schedule and work plan that details:
 - Who will conduct the work and their experience successfully implementing similar projects and/or contracts
 - Project outcomes and success measures that are Specific, Measurable, Attainable, Realistic, and Time-bound (SMART), with data collected to document performance of the project(s).
- Description of any current or anticipated partnerships, partners, or subcontractors that will or may be involved in the project, how they will be involved, and if they will be receiving funds from the grant.
- Estimated budget using the provided DEQ budget form (*Attachment C*). Please note indirect rates are not to exceed 10%.
- Description of how the Proposer will report progress, goals met, and activities completed at the conclusion of the project.
- **Match requirement.** A 25% match requirement of either in-kind contribution (which can include administration of the program) or matching funds is required.

Content Requirements for Proposals:

Proposers seeking to use up to \$200,000 for the demonstration of alternative burning techniques or non-fire treatment options that effectively reduce fire hazard, encourage forest health, reduce emissions and improve air quality must provide, at a minimum, the following:

- Information on the geographic project impact area (including AQ attainment status, wildfire risk and vicinity to a smoke sensitive receptor area.
- Description of emissions reduce techniques (or alternatives to burning) that will be utilized and how those efforts will positively impact surrounding communities.
 - Evaluation of costs of mitigation/alternatives and how the community would ensure that these efforts remain in effect beyond this grant opportunity.
- Detailed description of how the Proposer would utilize the funds to complete the project:
 - Quantity of acres treated, locations and emission reduced.
 - Detailed description of success metrics and data collected to document performance of the project(s).

2.2 SUBMISSION

Proposals may be submitted through the mail or via e-mail to Margaret Miller at margaret.miller@deq.state.or.us, or to

Oregon Department of Environmental Quality
 Attention: Margaret Miller
 700 NE Multnomah St, Suite 600
 Portland OR 97232

2.3 PROPOSAL DUE

The Proposal and all required submittal items must be received by DEQ on or before Friday, Dec. 17, 2021, by 5:30 p.m. PST. Proposals received after the closing date will not be accepted.

SECTION 3: AWARD AND NEGOTIATION

3.1 AWARD NOTIFICATION PROCESS

3.1.1 Award Consideration

DEQ will seek statewide geographic diversity in its grant recipients. Priority of awards will be provided to projects located in or around communities that:

- Are currently designated as not meeting the National Ambient Air Quality Standard for PM_{2.5} or communities that are in danger of not meeting the standard.
- Have been identified as smoke sensitive receptor areas.

Other criteria DEQ will consider in evaluating the proposals include a history of successful contract and grant implementation with DEQ (especially with Air Quality programs), the overall effect the project will have on the community, and the likelihood of a measurable outcome.

3.1.2 Notice of Award

DEQ will notify all Proposers in writing that DEQ is awarding a Contract to the selected Proposer(s) subject to successful negotiation of any negotiable provisions.

3.2 CONTRACT NEGOTIATION

3.2.1 Negotiation

A copy of the Sample Contract form is included as *Attachment E* to this RFP. The Sample Contract form contains the standard terms and conditions that will govern the Contract awarded under this RFP. After selection of successful Proposers, DEQ and the successful Proposers will negotiate the final Statement of

Work, payment terms, delivery schedule and project specific requirements based on the selected Contractor's Proposal.

3.2.2 Contract Amendments

DEQ reserves the right to amend the Contract to extend its term, to modify the Statement of Work to address activities related to the scope of services described in the RFP, to modify payment terms as agreed upon by DEQ and Contractor or any combination of the foregoing. The terms of the Contract may not be waived or changed except by written amendment signed by all parties and for which all necessary State of Oregon approvals have been obtained. Contract amendments may be for additional time, funding or additional work of the same general nature described in the RFP and resulting Contract.

SECTION 4: ADDITIONAL INFORMATION

4.1 GOVERNING LAWS AND REGULATIONS

This RFP is governed by the laws of the State of Oregon. Venue for any administrative or judicial action relating to this RFP, evaluation and award is the Circuit Court of Marion County for the State of Oregon; provided, however, if a proceeding must be brought in a federal forum, then it must 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 or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court.

4.2 OWNERSHIP/PERMISSION TO USE MATERIALS

All Proposals submitted in response to this RFP become the Property of DEQ. By submitting a Proposal in response to this RFP, Proposer grants the State a non-exclusive, perpetual, irrevocable, royalty-free license for the rights to copy, distribute, display, prepare derivative works of and transmit the Proposal solely for the purpose of evaluating the Proposal, negotiating an Agreement, if awarded to Proposer, or as otherwise needed to administer the RFP process, and to fulfill obligations under Oregon Public Records Law (ORS 192.410 through 192.505). Proposals, including supporting materials, will not be returned to Proposer unless the Proposal is submitted late.

4.3 CANCELLATION OF RFP; REJECTION OF PROPOSALS; NO DAMAGES.

DEQ may reject any or all Proposals in-whole or in-part, or may cancel this RFP at any time when the rejection or cancellation is in the best interest of the State or DEQ, as determined by DEQ. Neither the State nor DEQ is liable to any Proposer for any loss or expense caused by or resulting from the delay, suspension, or cancellation of the RFP, award, or rejection of any Proposal.

4.4 COST OF SUBMITTING A PROPOSAL

Proposer shall pay all the costs in submitting its Proposal, including, but not limited to, the costs to prepare and submit the Proposal, costs of samples and other supporting materials, costs to participate in demonstrations, or costs associated with protests.

SECTION 5: LIST OF ATTACHMENTS

<i>ATTACHMENT A</i>	Best Burn Practices: Emission Reduction Techniques (OAR 629-048-210)
<i>ATTACHMENT B</i>	Cover Page & Checklist
<i>ATTACHMENT C</i>	Proposal Outline & Budget Form
<i>ATTACHMENT D</i>	Scoring Rubric
<i>ATTACHMENT E</i>	Sample Contract

ATTACHMENT A: Best Burn Practices-Emission Reduction Techniques

629-048-0210

Best Burn Practices: Emission Reduction Techniques

(1) "Best burn practices" as used in this rule refers to those practices designed to minimize emissions from prescribed burning or accomplish burning at times and under such conditions as to minimize the likelihood that emissions will have adverse effects to the air quality maintenance or visibility objectives (OAR 629-048-0120 and 629-048-0130). Additional practices not described in this rule may be necessary to ensure against the escape of fire or protection of forest resources.

(2) In general, best burn practices involve methods that ensure the most rapid and complete combustion of forest fuels while nearby, "non-target" fuels are prevented from burning, such as:

(a) Physical separation of "target" and "non-target" fuels;

(b) Burn prescriptions, particularly for broadcast burns, that recognize and utilize the natural differences in fuel moistures of larger and smaller pieces of woody material; or

(c) Covering of piles sufficient to facilitate ignition and complete combustion, and then burning them at times of the year when all other fuels are damp, when it is raining or there is snow on the ground.

(3) Rapid combustion is well served by rapid ignition which may involve the use of petroleum accelerants (with appropriate safety precautions) and by maintaining an adequate air supply to the forest fuels being burned. Piles and windrows should be mostly free of soil, rocks and other non-combustible materials and should be loosely stacked to promote aeration. Where practicable, re-stacking or "feeding" the burn pile is encouraged to complete combustion and avoid smoldering.

(4) When piles are covered as a best burn practice and the covers are to be removed before burning, any effective materials may be used, as long as they are removed for re-use or properly disposed of. When covers will not be removed and thus will be burned along with the piled forest fuels, the covers must not consist of materials prohibited under OAR 340-264-0060(3), except that polyethylene sheeting that complies with the following may be used:

(a) Only polyethylene may be used. All other plastics are prohibited;

(b) The size of each polyethylene cover may vary as necessary to achieve rapid ignition and combustion.

(5) The use of petroleum accelerants and polyethylene covers as "best burn practices" described in this rule is expressly intended as an exception to OAR 340-264-0060(3) as allowed by 340-264-0060.

(6) In general, rapid mop-up of prescribed burning is not needed to meet the objectives of the prescribed burn and protect air quality. However, in instances of prescribed burning within an SSRA or when conditions change significantly from those forecasted or present at the time of ignition, rapid mop-up may become necessary to prevent a smoke intrusion. Burn plans required under OAR 629-043-0026(4), prescribed fire plans required by federal land management agency policy, or burn permits required under ORS 477.515, when appropriate, should address conditions that may require mop-up of the prescribed burn and to what extent.

(7) When local conditions for smoke dispersal appear to be better than forecasted, burn bosses and field administrators are encouraged to communicate such information to the Smoke Management forecast unit, to further the objective of accomplishing burning during the most favorable conditions.

(8) As described in 629-048-0450(2)(c), the department shall complete an annual report summarizing the use of emission reduction techniques.

ATTACHMENT B: Cover Page & Checklist

**Smoke Management: Mitigation and Alternatives to Burning Projects
APPLICATION COVERPAGE & CHECKLIST**

Contact Information

Name: _____
Position: _____
Recipient Agency: _____
Mailing Address: _____
Address 2: _____
City: _____ State: _____ Zip: _____
Phone: _____ Alt Phone: _____
Website: _____
Tax ID #: _____ DUNS # _____

Project Information

Project Title: _____
Project Budget: _____
Project Match: _____

Please note that a 25% match of either in-kind contribution or matching funds is required.

Application Checklist

Your application should include the following:

- This cover page and checklist (*Attachment B*)
- Completed proposal outline and budget form (*Attachment C*)
- Personnel with short bios of relevant experience

Submission

Please email (preferred) or mail the complete application to Margaret Miller, AQ Planner & Forester at margaret.miller@deq.state.or.us, with the Subject Line: “**2021 SM & AB Grant Proposal**” before 5:30 pm, December 17, 2021.

ATTACHMENT C: Proposal Outline & Budget Form

Smoke Management: Smoke Mitigation and Alternatives to Burning Projects

PROPOSAL OUTLINE & BUDGET FORM

PROJECT DESCRIPTION: [Provide a description of your project here including:

- Information on the geographic project impact area (including AQ attainment status, wildfire risk, and vicinity to a smoke sensitive receptor area (SSRA).
- Description of emissions reduce techniques (or alternatives to burning) that will be utilized and how those efforts will positively impact surrounding communities
 - Evaluation of costs of mitigation/alternatives and how the community would ensure that these efforts remain in effect beyond this grant opportunity.
- Detailed description of how the Proposer would utilize the funds to complete the project:
 - Quantity of acres treated, locations, and emission reduced.
 - Detailed description of success metrics and data collected to document performance of the project(s).]

PROJECT PARTNERS: [Provide a description of any current or anticipated partnerships, partners, or subcontractors that will or may be involved in the project, how they will be involved, and if they will be receiving funds from the grant.]

PROJECT SCHEDULE AND WORK PLAN: [Please identify who will conduct the work and their experience successfully implementing similar projects and/or contracts. Expected outcomes and success measures should be specific, measurable, attainable, realistic, and time-bound (SMART), with data collected to document performance of the project(s).]

GOAL 1: [Goal description here]

Task(s)	Timeline	Expected Outcome	Success Measures	Organization Responsible

GOAL 2: [Goal description here]

Task(s)	Timeline	Expected Outcome	Success Measures	Organization Responsible

GOAL 3: [Goal description here]

Task(s)	Timeline	Expected Outcome	Success Measures	Organization Responsible

[Add more goals as needed]

PROJECT BUDGET: [Please include a description of project match.]

	Grant Amount	Match Amount	Total
Personnel			
Professional Services			
Other Services and Supplies			
Capital Outlay (equipment, property, rolling stock, etc)			
Travel (if applicable)*			
Other (Indirect/Admin Fee)			
TOTAL			

Please note indirect rates are not to exceed 10%.

**Please note that DEQ will not reimburse for any travel or travel related expenses, but this could account for project match.*

ATTACHMENT D: Scoring Rubric

Criteria	Percent	Points
	100%	135
Community / Applicant	44%	59
AQ status	15%	20
SSRA status	11%	15
Statewide geographic diversity	4%	6
Wildfire Risk	13%	18
Project Proposal	41%	56
Project Concept	8%	11
Likelihood of achieving outcomes proposed	10%	13
Workplan (quality & implementability)	4%	6
Strength of budget proposal	4%	6
Partnerships	15%	20
Bonus Points	15%	20
Create or expand markets for wood and biomass generated by hazardous fuels reduction projects on forestlands in Oregon	10%	10
Projects that promote cross boundary collaboration and that have landscape scale impacts	10%	10

ATTACHMENT E: Sample Contract

<p>STATE OF OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY SMOKE MANAGEMENT – MITIGATION & ALTERNATIVES TO BURNING GRANT AGREEMENT</p>
<p>Project Name: Project Name Here DEQ Agreement #: XXX-XX</p>

This Smoke Management Grant Agreement (“Agreement”) is between the State of Oregon, acting by and through its Department of Environmental Quality (“DEQ”), and **Recipient Name Here** (“Recipient”).

Recipient Data	DEQ Data
Grant Administrator: Name Here.	Grant Administrator: Name Here
Organization: Organization Name & Address Here	Organization: Department of Environmental Quality 700 NE Multnomah St., Ste. 600 Portland, OR 97232
Phone: XXX-XXX-XXXX E-mail: email@email.com	Phone: XXX-XXX-XXXX E-mail: email@deq.state.or.us
Taxpayer ID #: XX-XXXXXXXX DUNS #: XXXXXXXXXX	

1. **Effective Date, Project Completion Deadline, Invoice Deadline, and Grant Availability.** This Agreement is effective on the date the last party signs it or, if approval by the Oregon Department of Justice (“DOJ”) is required, on the date it is approved by DOJ, whichever date is later (the “Effective Date”). Recipient agrees to complete the Project (described in Exhibit A) no later than **DATE HERE** (“Project Completion Deadline”) (the time period from the Effective Date through the Project Completion Deadline, the “Project Period”). Recipient must submit all invoices for disbursement of Grant funds under Section 4 no later than **DATE HERE** the “Invoice Deadline”). DEQ has no obligation to disburse Grant funds for costs invoiced after the Invoice Deadline.
2. **Project.** Recipient agrees to complete the Project in accordance with the terms and conditions of this Agreement; provided, however, that if the total amount of the Grant is not available solely because one or more of the conditions set forth in Sections 9(a) is not satisfied, Recipient will not be required to complete the Project.
3. **Agreement Documents.** This Agreement consists of this Agreement and Exhibit A (Project Requirements), Exhibit B (Payment Request and Certification), and Exhibit C (Reporting Requirements) that are attached hereto and by this reference incorporated herein. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence will control. The documents comprising this Agreement are listed in the first sentence of this Section 2 from highest to lowest precedence.
4. **Grant Funds.** The maximum, not-to-exceed amount that DEQ will pay to Recipient hereunder is **AMOUNT HERE** (“Grant”). Eligible costs are costs described in Exhibit A that Recipient incurs on or after the Effective Date of this Agreement and on or before the earlier of expiration or termination of this Agreement. Disbursements will be made only in accordance with the requirements contained in Exhibit A and only if Recipient is otherwise in compliance with the terms and conditions of this Agreement.
5. **Match.** Recipient agrees to provide a cash match (or Optional: in-kind match) that satisfies the requirements of 2 CFR 200.306 and 2 CFR.403, equal to **AMOUNT HERE**. Grant moneys may not be used for any purpose other than Project costs. No more than **PERCENT HERE** of total Project costs may be paid with Grant moneys.
6. **Disbursements; Expenses.**
 - (a) This is an expense reimbursement Grant. Disbursements for reimbursement of expenses, including travel and travel related expenses (if authorized), will be made only in accordance with the schedule and

requirements contained in Sections 5 and 5A and subject to the conditions set forth in Section 7. Payments will be based on reimbursement of actual Project expenses authorized by this Agreement. Supporting documentation must be provided for expenses for which reimbursement is claimed and for all match expenses reported. This includes, but is not limited to: documentation of personal services costs and the payment thereof; copies of paid contractor invoices; and copies of paid invoices for equipment; and receipts for lodging, airfare, car rental, and conference registration, when applicable.

(b) Recipient may submit monthly invoices for expense reimbursement. Reimbursement requests must be accompanied by invoices that describe all work performed with particularity (including by whom it was performed) and that itemize and explain all expenses for which reimbursement is claimed. Invoices (including invoices for match expenditures) must be accompanied by a copy of all receipts for expenses for which reimbursement is being requested. Recipient may not seek or receive from any third party any form of duplicate, overlapping or multiple payments for expenses reimbursed under this Agreement nor may expenses used to satisfy any cash match requirement under this Agreement be used to satisfy the match or cost sharing requirement of any other project or program. Invoices and receipts must be submitted with the Smoke Management Grant Agreement Payment Request and Expenditure Report (Exhibit B). Any cost-sharing or match using federal funds must also be disclosed in the Smoke Management Project Grant Agreement Payment Request and Expenditure Report (Exhibit B). DEQ will withhold up to 20% of total Grant funds for the Project until Recipient has submitted, and DEQ has accepted, the Final Report on the Project (as required by Exhibit A and described in Exhibit C) and a Final Payment Request and Expenditure Report.

(c) Notwithstanding Sections 4(a) and 4(b) above and the reimbursement provisions of Section 4A below, DEQ may, in its sole discretion and upon such terms and conditions as it may determine and in order to address Recipient cash flow issues that are otherwise an impediment to Project implementation, disburse Grant moneys to Recipient to finance a Project activity directly rather than as reimbursement of expenditures made by Recipient to conduct that activity. The terms and conditions that DEQ may impose on such advance disbursement may include, but are not necessarily limited to, submission of an appropriate invoice, subsequent submission of documentation of the expenditure of the Grant moneys and the conditioning of future disbursement of Grant moneys on compliance with the terms and conditions of the advance disbursement.

7. **Travel and Related Expenses.** DEQ will not reimburse Recipient for any travel or travel related expenses under this Agreement.

7. **Recovery of Grant Funds.** Any Grant funds disbursed to Recipient under this Agreement that are used in violation or contravention of any of the provisions of this Agreement must be returned to DEQ. Recipient shall return all funds found by DEQ to have been used in violation of this Agreement no later than fifteen (15) days after DEQ's written demand.

8. **Recipient's Representations and Warranties.** Recipient represents and warrants to DEQ as follows:

(a) Recipient is duly organized, validly existing, and in good standing under the laws of Oregon. Recipient has full power and authority to transact the business in which it is engaged and full power, authority, and legal right to execute and deliver this Agreement and incur and perform its obligations hereunder.

(b) The making and performance by Recipient of this Agreement: (1) have been duly authorized by all necessary action of Recipient; (2) do not and will not violate any provision of any applicable law, rule, or regulation or order of any court, regulatory commission, board, or other administrative agency, or any provision of Recipient's organic documents; and (3) do not and will not result in the breach of, or constitute a default or require any consent under, any agreement or instrument to which Recipient is a party or by which Recipient or any of its properties are bound or affected.

(c) This Agreement has been duly authorized, executed and delivered on behalf of Recipient and constitutes the legal, valid, and binding obligation of Recipient, enforceable in accordance with its terms.

(d) No authorization, consent, license, approval of, filing or registration with, or notification to, any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Recipient of this Agreement.

(e) Less than \$750,000 in funds of a public agency (within the meaning of ORS 279C.800 through 279C.870) will be used for the Project.

- 9. Conditions Precedent to Each Disbursement.** DEQ's obligation to disburse Grant moneys to Recipient hereunder is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:
- (a) DEQ has received sufficient funding, appropriations, limitations, allotments or other expenditure authority to allow DEQ, in the reasonable exercise of its administrative discretion, to make the disbursement;
 - (b) No default under this Agreement has occurred and is continuing; and
 - (c) Recipient's representations and warranties set forth in Section 6 are true and correct on the date of disbursement with the same effect as though made on the date disbursement.
 - (d) Recipient is not in default under Section 31.
- 10. Contracts.** Recipient may enter into contracts to implement the Project without obtaining prior written consent from the DEQ's Grant Administrator. The Recipient is not relieved of any duties under this contract when it subcontracts. Recipient must ensure that terms applicable to the Recipient, such as compliance with any required federal terms and conditions, apply also to subcontractors, including Appendix II to 2 CFR Part 200.
- 11. Grant Requirements.** All equipment and materials purchased with Grant funds made available by this Agreement must be used only for purposes of the same general nature as outlined in this Agreement. A capital outlay item purchased with Grant funds must be used for the purpose set forth in this Agreement for a minimum of five (5) years or its rated service life, whichever is shorter. During this period, DEQ reserves the right to recover the equipment or its cash value from Recipient at any time that Recipient ceases use of the equipment for its intended purpose. Use of Grant funds for the following purposes is expressly prohibited:
- (a) Costs for which payment has been or will be received under another financial assistance program or other agency or department of the State of Oregon;
 - (b) Costs incurred outside the Project Period;
 - (c) Ordinary operating expenses that are not directly related to the Project.
- 12. Reporting.** Recipient shall submit reports on the Project as described in Exhibit A. DEQ may withhold payments until it receives and approves the required reports. The reports must be submitted to DEQ's Grant Administrator and may be submitted electronically. All reports must contain the information outlined in Exhibit C. Recipient shall immediately notify DEQ of any development that significantly impacts the activities funded by this Agreement, including any change in the truth or accuracy of the representations and warranties set forth in Section 6 and any delay or adverse condition that materially impairs Recipient's ability to meet the objectives of the Agreement. This notification must include a statement of the action Recipient has taken or intends to take to minimize or mitigate the impact of the situation, along with any assistance Recipient may require to do so.
- 13. Records Maintenance and Access.** Recipient shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles and shall maintain any other records pertinent to this Agreement in such manner as to clearly document Recipient's performance. DEQ, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records that are directly pertinent to this Agreement in order to perform audits and examinations, and make excerpts, transcripts and copies of same in their sole discretion. Recipient shall retain and keep accessible all financial records, supporting documents, and all other records related to this Agreement for a minimum of six (6) years after the Project is completed or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever date is later.
- 14. Compliance with Applicable Law.** Recipient will comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work performed under this Agreement. Without limiting the generality of the foregoing, Recipient expressly agrees to comply with the following laws, regulations, and executive orders to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance

Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) ORS 279A, ORS 279B, and ORS 279C, as applicable to the Recipient; (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes; and (xi) all regulations and administrative rules established pursuant to the foregoing laws. These laws, regulations, and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated.

- 15. Recycled Material Use** Recipient will, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)) and other recycled products as the term "recycled product" is defined in ORS 279A.010(1)(ii)). The Recipient agrees to comply with the requirements of 40 CFR 247 and 2 CFR 1500, as applicable in giving preference in its procurement programs to purchase of recycled products.
- 16. Indemnity.** Recipient shall defend (subject to ORS Chapter 180), save, hold harmless, and indemnify the State of Oregon, DEQ, and their officers, employees, and agents from and against any and all claims, suits, actions, liabilities, damages, losses, costs and expenses (including attorneys' fees) of any nature resulting from, arising out of, or relating to the activities of Recipient or its officers, employees, contractors, or agents under this Agreement or in the implementation of the Project.
- 17. Indemnification by Contractors.** Recipient shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to defend (subject to ORS Chapter 180), save, hold harmless, and indemnify the State of Oregon, DEQ, and their officers, employees, and agents from and against any and all claims, suits, actions, liabilities, damages, losses, costs and expenses (including attorneys' fees) of any nature resulting from, arising out of, or relating to the activities of the contractor or its officers, employees, subcontractors, or agents in connection with the Project.
- 18. Termination.**
 - (a)** This Agreement may be terminated by mutual consent of both parties.
 - (b)** DEQ may terminate this Agreement effective upon written notice to Recipient, or at such later date as may be established by DEQ in such notice, (i) if DEQ fails to receive sufficient funding, appropriations, limitations, allotments or other expenditure authority to allow DEQ, in the reasonable exercise of its administrative discretion, to make payments under this Agreement, (ii) if there is a change in federal or state laws, rules, regulations, or guidelines so that the Project funded by this Agreement is no longer eligible for funding, or (iii) in accordance with Section 18.
- 19. Default by Recipient.** Recipient shall be in default under this Agreement upon the occurrence of any of the following events:
 - (a)** Recipient fails to perform, observe, or discharge any of its covenants, agreements, or obligations contained in this Agreement, including any exhibit attached hereto;
 - (b)** Any representation, warranty or statement by Recipient made herein or in any documents or reports relied upon by DEQ, including but not limited to any statement used by DEQ to measure progress on the Project, the expenditure of Grant moneys, or the performance by Recipient, is untrue in any material respect when made;
 - (c)** Recipient: (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all of its property; (ii) admits in writing its inability to pay, or is generally unable to pay, its debts as they become due; (iii) makes a general assignment for the benefit of its creditors; (iv) is adjudicated as bankrupt or insolvent; (v) commences a voluntary case under the federal Bankruptcy Code (as now or hereafter in effect); (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts; (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the federal Bankruptcy Code (as now or hereafter in effect); or (viii) takes any corporate action for the purpose of effecting any of the foregoing; or
 - (d)** A proceeding or case is commenced, without the application or consent of Recipient, in any court of competent jurisdiction, seeking: (i) the liquidation, dissolution, or winding-up, or the composition or readjustment of, Recipient's debts; (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Recipient or of all or any substantial part of its assets; or (iii) similar relief in respect to Recipient under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of twenty (20)

consecutive days, or an order for relief against Recipient is entered in an involuntary case under the federal Bankruptcy Code (as now or hereafter in effect).

- 20. Remedies Upon Default.** If Recipient's default under Section 17(a) or 17(b) is not cured within fifteen (15) days of written notice thereof to Recipient from DEQ (or such longer period as DEQ may authorize in its sole discretion), or if there is a default by Recipient under Section 17(c) or 17(d), DEQ may pursue any remedies available under this Agreement, at law or in equity. Such remedies include, but are not limited to, termination of this Agreement, return of all or a portion of the Grant amount, payment of any interest earned on the Grant amount, and declaration of ineligibility for the receipt of similar future awards. If, as a result of Recipient's default, DEQ demands return of all or a portion of the Grant amount or payment of interest earned on the Grant amount, Recipient shall pay the amount upon DEQ's demand.
- 21. No Implied Waiver, Cumulative Remedies.** The failure of DEQ to exercise, and any delay by DEQ in exercising, any right, power, or privilege under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege. The remedies provided herein are cumulative and are not exclusive of any remedies provided by law. DEQ may, in its sole discretion, pursue any remedy or remedies singly, collectively, successively, or in any combination or order.
- 22. Notices.** Any notification required under this Agreement shall be in writing, delivered to the Grant Administrator only by one of the following methods: in-person; U.S. mail, postage prepaid; or email. Notices mailed or emailed must be sent to the address or email address set forth in this Agreement on page 1. Any notice so addressed and mailed shall be effective five (5) days after mailing. Any notice given by personal delivery shall be effective when actually delivered. Any notice given by email shall be effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system.
- 23. Amendments.** **The terms of this Agreement may not be waived, altered, modified, supplemented, or amended in any manner, except by written instrument signed by both parties (or, in the case of a waiver, by the party against whom such waiver is sought to be enforced). Such waiver, alteration, modification, supplement, or amendment, if made, is effective only in the specific instance and for the specific purpose given. Recipient must notify DEQ's Grant Administrator in writing no later than forty-five (45) calendar days before the Project Completion Deadline of any proposed amendments to the Agreement.**
- 24. Assignment; Successors and Assigns.** Recipient may not assign or transfer its interest in this Agreement without the prior written consent of DEQ and any attempt by Recipient to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. The provisions of this Agreement will be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns.
- 25. Survival.** Sections 5, 9, 11, 14, 15, 22, and 23, and all other provisions that by their terms are meant to survive, shall survive the termination of this Agreement.
- 26. No Third Party Beneficiaries.** DEQ and Recipient are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly or indirectly, to any third party unless such party is identified individually by name herein and is described expressly as an intended beneficiary of the terms of this Agreement.
- 27. Governing Law; Venue; Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit, or proceeding (collectively, "Claim") between DEQ (or any other agency or department of the State of Oregon) and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if the 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 or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States, or otherwise, to or from any Claim or from the jurisdiction of any court. **RECIPIENT, BY ITS EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**
- 28. Alternative Dispute Resolution.** Recipient and DEQ shall 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 the administration of this Agreement. In addition, the parties may agree to utilize a jointly-selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

- 29. **Management Fees.** Management fees or similar charges are not eligible costs under this Agreement. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not eligible costs under this Agreement. Management fees or similar charges may not be used to improve or expand the Project funded under this Agreement.
- 30. **Intangible Property.** The Recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under this Grant Agreement. For any such work, Recipient grants to DEQ and EPA a nonexclusive, irrevocable, perpetual royalty-free, license to reproduce, publish, or otherwise use the work and to authorize others to do so.
- 31. **Suspension and Debarment.** Recipient shall fully comply with Subpart C of 2 CFR Part 180 entitled, "Responsibilities of Participants Regarding Transactions Doing Business with Other Persons", as implemented and supplemented by 2 CFR Part 1532. Recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180, entitled "Covered Transactions", includes a term or condition requiring compliance with Subpart C. Recipient may access the Excluded Parties List System at <http://www.sam.gov>.
- 32. **Trafficking Victim Protection Act of 2000, Section 106** Prohibition statement for Recipients who are **private entities:** You as the Recipient, your employees, sub-recipients and sub-recipients' employees may not engage in severe forms of trafficking in persons during the period that this Agreement is in effect; procure a commercial sex act during the period of time that this Agreement is in effect; or use forced labor in the performance of the Grant or sub-grants.
- 33. **Drug Free Workplace.** The Recipient must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1536, Subpart B.
- 34. **Captions.** The captions or headings in this Agreement are for convenience only and do not define, limit, or describe the scope or intent of any provisions of this Agreement.
- 35. **Merger Clause.** THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT WILL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, WILL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. THE RECIPIENT, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.
- 36. **Independent Contractors.** DEQ and Recipient agree and acknowledge that their relationship is that of independent contracting parties and that Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.
- 37. **Counterparts.** This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.

EACH PERSON SIGNING THIS AGREEMENT REPRESENTS AND WARRANTS THAT HE/SHE HAS THE POWER AND AUTHORITY TO ENTER INTO THIS AGREEMENT. DEQ enters into this Agreement under the authority of Section 13a, Chapter 592, Oregon Laws 2021

AGREED BY RECIPIENT:

NAME HERE

Date

AGREED BY DEQ:

Brian Boling, Central Services Administrator - DPO

Date