

BEFORE THE BOARD OF COUNTY COMMISSIONERS

IN AND FOR THE COUNTY OF CURRY, OREGON

In the Matter of an Order Approving the)
IGA Between Curry County Emergency) ORDER NO. 23212
Management and Oregon State Fire)
Marshal's Office – CWPP Update)

WHEREAS, the Curry County Community Wildfire Protection Plan is outdated; and,

WHEREAS, the Oregon State Fire Marshal's Office has secured the necessary funding to update the Curry County Community Wildfire Protection Plan; and,

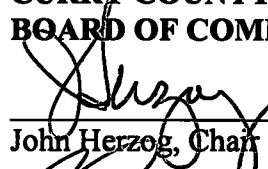
WHEREAS, the update and publication of the Community Wildfire Protection Plan promotes public safety and education for the whole community, while improving preparedness, mitigation, response, and recovery, building a resilient Curry County;

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

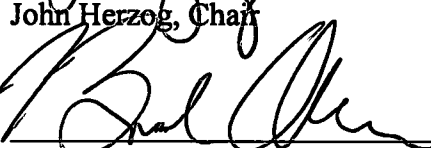
1. Curry County Emergency Management is to sign and execute the County of Curry Community Wildfire Protection Plan Agreement.

DATED this 15th day of February, 2023.

**CURRY COUNTY
BOARD OF COMMISSIONERS**

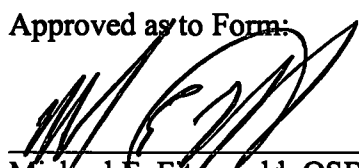


John Herzog, Chair



Brad Alcorn, Vice Chair

Approved as to Form:



Michael E. Fitzgerald, OSB #950738
County Legal Counsel

COUNTY OF CURRY COMMUNITY WILDFIRE PROTECTION PLAN AGREEMENT

Agreement No. PO-25700-00015939

This Agreement is between the State of Oregon acting by and through its Oregon State Fire Marshal's Office ("Agency") and County of Curry ("Contractor") each a "Party" and, together, the "Parties".

SECTION 1: AUTHORITY

This Agreement is authorized by ORS 190.110 and Section 8, 9, and 53 of SB 762 (2021), allowing OSFM to enter into agreements with entities to support community risk reduction programs.

SECTION 2: PURPOSE

The purpose of this Agreement is to clearly define the responsibilities of each Party. County of Curry shall use funds provided by the Office of State Fire Marshal to update the County of Curry Community Wildfire Protection Plan ("the Project").

SECTION 3: EFFECTIVE DATE AND DURATION

This Agreement is effective on February 20, 2023, or the date of the last signature, whichever occurs last ("Effective Date") and terminates on May 15, 2024, unless terminated earlier in accordance with Section 15.

SECTION 4: AUTHORIZED REPRESENTATIVES

4.1 Agency's Authorized Representative is:

Name, Title: Fraser Wick, Community Risk Reduction Program Analyst
Address: 3565 Trelstad Ave. S
Salem, Oregon 97317
Phone: (503) 934-8283
Email: Fraser.Wick@osp.oregon.gov

4.2 County of Curry Authorized Representative is:

Name, Title: Monica Ward Director
Address: 94235 Moore Street, Ste. 121
Gold Beach, Oregon 97444
Phone: (541) 247-3208
Email: wardm@co.curry.or.us

4.3 A Party may designate a new Authorized Representative by written notice to the other Party.

SECTION 5: RESPONSIBILITIES OF EACH PARTY

- 5.1** County of Curry shall, to the satisfaction of Agency, update the County of Curry Community Wildfire Protection Plan, including performing the solicitation for vendors and vendor oversight until project completion in accordance with the Statement of Work as set forth in Exhibit A, attached hereto and incorporated herein by this reference.
- 5.2** Agency shall pay County of Curry as described in Section 6.

SECTION 6: COMPENSATION AND PAYMENT TERMS

- 6.1** Agency shall pay County of Curry a Not to Exceed ("NTE") sum of \$166,587.00 for the Project. Agency will not pay County of Curry any amount in excess of the NTE compensation of this Agreement and will not pay for any work performed before the Effective Date or after the expiration or termination of this Agreement. If the maximum compensation is increased by amendment of this Contract, the amendment must be fully effective before County of Curry performs work subject to the amendment.
- 6.2** Upon and after execution of the Agreement, County of Curry shall submit invoices to Agency in advance of expenditures incurred, up to \$166,587.00, in furtherance of the Project and in accordance with the Statement of Work. The invoices must describe all work to be performed with particularity and shall itemize and explain all expenses that this Agreement requires Agency to pay and for which County of Curry claims reimbursement. Agency will not pay or reimburse any expenses incurred by County of Curry during the term of this Agreement, except as authorized in the Statement Work or elsewhere in this Agreement. Funds are to be used in accordance with Exhibit A, Statement of Work, and in furtherance of the Project.
- 6.3** The invoice is subject to approval by Agency and must include a clear explanation and budget of how the funds will be used. If approved by Agency, County of Curry shall expend funds received in accordance with the approval. Any funds expended by County of Curry in a manner that does not comport with Agency's approval may be subject to immediate recovery by Agency in accordance with Section 12 of this Agreement.

SECTION 7: REPRESENTATIONS AND WARRANTIES

County of Curry represents and warrants to Agency that:

- 7.1** The making and performance by County of Curry of this Agreement, (a) have been duly authorized by County of Curry, (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of County of Curry charter or other organizational document and, (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which County of Curry is party or by which County of Curry may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governing body or regulatory or supervisory authority is required for the execution, delivery or performance by County of Curry of this Agreement, other than those that have already been obtained;
- 7.2** This Agreement has been duly executed and delivered by County of Curry and constitutes a legal, valid and binding obligation of County of Curry enforceable in accordance with its terms;

7.3 County of Curry shall, at all times during the term of this Agreement, be professionally competent, to perform its obligations under this Agreement.

The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations or warranties provided by County of Curry.

SECTION 8: GOVERNING LAW, CONSENT TO JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between Agency or any other agency or department of the State of Oregon, or both, and County of Curry 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 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. COUNTY OF CURRY, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

SECTION 9: CONTRIBUTION

9.1 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 (a "Third Party Claim") against a Party (the "Notified Party") with respect to which the other Party (the "Other Party") may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Each 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 Section and a 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 contribution obligation under this Section 9 with respect to the Third Party Claim.

9.2 With respect to a Third Party Claim for which Agency is jointly liable with County of Curry (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by County of Curry in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of County of Curry on the other hand in connection with the events that resulted in such expenses, judgments, fines, or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of County of Curry 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. Agency'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.

- 9.3** With respect to a Third Party Claim for which County of Curry is jointly liable with Agency (or would be if joined in the Third Party Claim), County of Curry shall contribute to the amount of expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of County of Curry on the one hand and of Agency on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of County of Curry on the one hand and of Agency 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. County of Curry 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.

SECTION 10: CONTRACTOR DEFAULT

County of Curry will be in default under this Agreement upon the occurrence of any of the following events:

- 10.1** County of Curry fails to perform, observe or discharge any of its covenants, agreements or obligations under this Agreement;
- 10.2** Any representation, warranty or statement made by County of Curry in this Agreement or in any documents or reports relied upon by Agency to measure the delivery of services, the expenditure of funds or the performance by County of Curry is untrue in any material respect when made;
- 10.3** County of Curry (a) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (b) admits in writing its inability, or is generally unable, to pay its debts as they become due, (c) makes a general assignment for the benefit of its creditors, (d) is adjudicated a bankrupt or insolvent, (e) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (f) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (g) 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 Bankruptcy Code, or (h) takes any action for the purpose of effecting any of the foregoing; or

A proceeding or case is commenced, without the application or consent of County of Curry, in any court of competent jurisdiction, seeking (a) the liquidation, dissolution or winding-up, or the composition or readjustment of debts of County of Curry, (b) the appointment of a trustee, receiver, custodian, liquidator, or the like of County of Curry or of all or any substantial part of its assets, or (c) similar relief in respect to County of Curry 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 sixty consecutive days, or an order for relief against County of Curry is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

SECTION 11: AGENCY DEFAULT

Agency will be in default under this Agreement if Agency fails to perform, observe, or discharge any of its covenants, agreements, or obligations under this Agreement.

SECTION 12: REMEDIES

- 12.1** In the event County of Curry is in default under Section 7 or Section 10 of this Agreement, Agency may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (a) termination of this Agreement under Section 15, (b) reducing or withholding payment that County of Curry has failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (c) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, or (e) exercise of its right of recovery of overpayments under Section 13 of this Agreement or setoff, or both. These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.
- 12.2** In the event Agency is in default under Section 11 and whether or not County of Curry elects to exercise its right to terminate this Agreement under Section 15.3.3, or in the event Agency terminates this Agreement under Sections 15.2.1, 15.2.2, 15.2.3, or 15.2.5. In no event will Agency be liable to County of Curry for any expenses related to termination of this Agreement.

SECTION 13: RECOVERY OF OVERPAYMENTS

If payments to County of Curry under this Agreement, or any other agreement between Agency and County of Curry, exceed the amount to which County of Curry is entitled, Agency may, after notifying County of Curry in writing, withhold from payments due County of Curry under this Agreement, such amounts, over such periods of times, as are necessary to recover the amount of the overpayment.

SECTION 14: LIMITATION OF LIABILITY

EXCEPT FOR LIABILITY TO THIRD PERSONS ARISING OUT OF OR RELATED TO SECTION 16, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER THE LIABILITY CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE. NEITHER PARTY WILL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS.

SECTION 15: TERMINATION

- 15.1** This Agreement may be terminated at any time by mutual written consent of the Parties.
- 15.2** Agency may terminate this Agreement as follows:
- 15.2.1** Upon 30 days advance written notice to County of Curry;

- 15.2.2** Immediately upon written notice to County of Curry, if Agency fails to receive funding or appropriations, limitations or other expenditure authority at levels sufficient in Agency's reasonable administrative discretion, to perform its obligations under this Agreement;
 - 15.2.3** Immediately upon written notice to County of Curry, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Agency's performance under this Agreement is prohibited, or Agency is prohibited from paying for such performance from the planned funding source;
 - 15.2.4** Immediately upon written notice to County of Curry, if County of Curry is in default under this Agreement and such default remains uncured 15 days after written notice thereof to County of Curry; or
 - 15.2.5** As otherwise expressly provided in this Agreement.
- 15.3** County of Curry may terminate this Agreement as follows:
- 15.3.1** Immediately upon written notice to Agency, if County of Curry fails to receive funding or appropriations, limitations or other expenditure authority at levels sufficient in County of Curry's reasonable administrative discretion, to perform its obligations under this Agreement;
 - 15.3.2** Immediately upon written notice to Agency, if federal or state laws, rules, regulations, or guidelines are modified or interpreted in such a way that County of Curry's performance under this Agreement is prohibited, or County of Curry is prohibited from paying for such performance from the planned funding source;
 - 15.3.3** Immediately upon written notice to Agency, if Agency is in default under this Agreement and such default remains uncured 15 days after written notice thereof to Agency; or
 - 15.3.4** As otherwise expressly provided in this Agreement.
Upon receiving a notice of termination of this Agreement, County of Curry will immediately cease all activities under this Agreement, unless Agency expressly directs otherwise in such notice. Upon termination, County of Curry will deliver to Agency all documents, information, product, and other property that are or would be deliverables under the Agreement. And upon Agency's reasonable request, County of Curry will surrender all documents, research or objects or other tangible things needed to complete the project that was to have been provided by County of Curry under this Agreement.

SECTION 16: INDEMNIFICATION

County of Curry shall defend, save, hold harmless, and indemnify the State of Oregon and Agency and their officers, employees, and agents from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever, including attorney's fees, resulting from, arising out of, or relating to the activities of County of Curry or its officers, employees, subcontractors, or agents under this Agreement.

Subject to Section 9, County of Curry will have control of the defense and settlement of any claim that is subject to this Section 16. But neither County of Curry nor any attorney engaged by County of Curry may defend the claim in the name of the State of Oregon, nor

purport to act as legal representative of the State of Oregon or any of its agencies, without first receiving from the Attorney General, in a form and manner determined appropriate by the Attorney General, authority to act as legal counsel for the State of Oregon. Nor may County of Curry settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that County of Curry is prohibited from defending the State of Oregon, or is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue at the State of Oregon desires to assume its own defense.

SECTION 17: INSURANCE

With respect to a Third Party Claim for which the State is jointly liable with the County (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 County in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the County 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 County 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.

SECTION 18: NONAPPROPRIATION

Agency's obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon Agency receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement may be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law limiting the activities, liabilities, or monetary obligations of Agency.

SECTION 19: AMENDMENTS

The terms of this Agreement may not be altered, modified, supplemented, or otherwise amended, in any manner whatsoever, except by written agreement of the Parties.

SECTION 20: NOTICE

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement shall be given in writing by email, personal delivery, facsimile, or mailing the same, postage prepaid, to a Party's Authorized Representative at the address, number or email address set forth in this Agreement, or to such other addresses or numbers as a Party may indicate pursuant to this Section 20.

SECTION 21: SURVIVAL

All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than the rights and obligations arising under Sections 7, 8, 9, 12, 14, 16, 17 and 21 hereof and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, that termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.

SECTION 22: SEVERABILITY

The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

SECTION 23: 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.

SECTION 24: COMPLIANCE WITH LAW

In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state, and local law and regulations. County of Curry shall cause all subcontractors to comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to this Agreement and the performance of the Statement of Work in furtherance of the Project.

SECTION 25: INTENDED BENEFICIARIES

Agency and Contractor are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.

SECTION 26: FORCE MAJEURE

Neither Party is responsible for any failure to perform or any delay in performance of any obligations under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that Party's reasonable control. Each Party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. Agency may terminate this Agreement upon written notice to County of Curry after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

SECTION 27: ASSIGNMENT AND SUCCESSORS IN INTEREST

County of Curry may not assign or transfer its interest in this Agreement without the prior written consent of Agency and any attempt by County of Curry to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. Agency's consent to County of Curry's assignment or transfer of its interest in this Agreement will not relieve County of Curry of any of its duties or obligations under this Agreement. 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.

SECTION 28: SUBCONTRACTS

County of Curry shall not, without Agency's prior written consent, enter into any subcontracts for any of the work required of County of Curry under this Agreement. Agency's consent to any subcontract will not relieve County of Curry of any of its duties or obligations under this Agreement.

SECTION 29: TIME IS OF THE ESSENCE

Time is of the essence in County of Curry's performance of its obligations under this Agreement.

SECTION 30: MERGER, WAIVER

This Agreement and all exhibits and attachments, if any, 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 or consent under this Agreement binds either Party unless in writing and, signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given. EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

SECTION 31: RECORDS

The Parties shall create and maintain records documenting their performance under this Agreement. The Oregon Secretary of State's Office, the federal government, the other Party, and their duly authorized representatives shall have access to the books, documents, papers, and records of a Party that are directly related to this Agreement for the purposes of making audit, examination, excerpts, and transcripts for a period of six years after termination of this Agreement.

SECTION 32: HEADINGS

The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this Agreement.

SECTION 33: AGREEMENT DOCUMENTS

This Agreement consists of the following documents, which are listed in descending order of precedence: this Agreement less all exhibits, attached Exhibit A (Statement of Work), Exhibit B (Subcontractor Insurance) and Exhibit C (Additional Requirements).

SECTION 34: SIGNATURES

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

STATE OF OREGON acting by and through its Oregon State Police, Office of State Fire Marshal

Shirley Smith, DPO

Date

County of Curry

Monica Ward, Director

Date

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

Approved by Kevin Gleim via email on 2/8/23

Senior Assistant Attorney General

EXHIBIT A

STATEMENT OF WORK

County of Curry is to provide Agency with an updated County of Curry Community Wildfire Protection Plan (the "CWPP").

Phase 1: Solicitation and Procurement: Obtain contractor to assist with CWPP.

1. Follow all applicable solicitation methods, laws, and regulations when choosing contractor.
2. At the request of Agency, County of Curry must release solicitation and contract documents to Agency for review.
3. Identify critical and emergency infrastructure sites that are in need of defensible space treatments.
4. Coordinate vendors and stakeholders, representatives from local, state, city and county officials, and federal fire agencies to update the CWPP. A member of OSFM's Community Risk Reduction Unit and other OSFM representatives must be part of the core team.
5. Incorporate new State standards into the CWPP, including those that were set through SB 762.

Phase 2: Public Engagement:

1. County of Curry must obtain the public's input during the CWPP development process by conducting at least two (2) public meetings and/or public outreach events located in different portions of Curry County.
2. County of Curry and its contractor must develop a method for the public to submit comments without attending the public meetings and make this information available to Agency staff at their request.

Phase 3: Prevention and Education

1. Develop a list of wildfire prevention, mitigation, and/or related projects that may help reduce the likelihood and/or devastation from future wildfire events throughout County of Curry with an emphasis on projects focused on housing, community, and critical infrastructure improvements. Wildfire prevention/mitigation techniques must be included in the CWPP.

Phase 4: Deliverables and Touch Base Meetings:

1. County of Curry and their contractor shall meet at least every other month with an OSFM Community Risk Reduction Unit staff member to provide status updates until the project is complete and approved as such by Agency. County of Curry and its contractor shall provide Agency staff with copies of all assessments completed under this Agreement by SWS/SWFC and their contractors at the monthly meeting, all meeting notes from the core team meetings and all notes

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from all public meetings/ outreach events conducted. Until final approval of project completion is given by Agency, Agency shall be given an opportunity to make suggested changes to the CWPP.

- 2. County of Curry shall provide Agency staff with a digital copy of the CWPP once complete and publish the CWPP online for fire agencies, stakeholders, and the public to utilize.**

THIS SECTION HAS BEEN INTENTIONALLY LEFT BLANK

EXHIBIT B

SUBCONTRACTOR INSURANCE

County of Curry ("Local Government") shall require its first-tier contractor(s) ("Contractor") that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, CONTINUOUS CLAIMS MADE COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before the contractors perform under contracts between Local Government and the contractors (the "Subcontracts"), and ii) maintain the insurance in full force throughout the duration of the Subcontracts. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Agency. Local Government shall not authorize contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, Local Government shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Local Government shall incorporate appropriate provisions in the Subcontracts permitting it to enforce contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Subcontracts as permitted by the Subcontracts or pursuing legal action to enforce the insurance requirements. In no event shall Local Government permit a contractor to work under a Subcontract when the Local Government is aware that the contractor is not in compliance with the insurance requirements. As used in this section, a "first tier" contractor is a contractor with which the county directly enters into a contract. It does not include a subcontractor with which the contractor enters into a contract.

TYPES AND AMOUNTS

WORKERS' COMPENSATION & EMPLOYERS' LIABILITY

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

COMMERCIAL GENERAL LIABILITY:

☒ **Required**

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this contract, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than

\$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

AUTOMOBILE LIABILITY INSURANCE:

☒ Required ☐ Not required

Automobile Liability Insurance covering Contractor's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

PROFESSIONAL LIABILITY:

☐ Required ☒ Not required

Professional Liability insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Contract by the Contractor and Contractor's subcontractors, agents, officers or employees in an amount not less than \$__ per claim. Annual aggregate limit shall not be less than \$_____. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability insurance coverage, or the Contractor and Subcontractors shall provide continuous claims made coverage as stated below.

NETWORK SECURITY AND PRIVACY LIABILITY:

☐ Required ☒ Not required

Contractor shall provide network security and privacy liability insurance for the duration of the contract and for the period of time in which Contractor (or its Business Associates or subcontractor(s)) maintains, possesses, stores or has access to agency or client data, whichever is longer, with a combined single limit of no less than

\$_____ per claim or incident. This insurance shall include coverage for third party claims and for losses, thefts, unauthorized disclosures, access or use of agency or client data (which may include, but is not limited to, Personally Identifiable Information ("PII"), Payment Card Data and Protected Health Information ("PHI")) in any format, including coverage for accidental loss, theft, unauthorized disclosure access or use of agency data.

POLLUTION LIABILITY:

☐ Required ☒ Not required

Pollution Liability Insurance covering Contractor's or appropriate subcontractor's liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs incurred by Contractor, all arising out of the Goods delivered or Services (including transportation risk) performed under this Contract is required.

Combined single limit per occurrence shall not be less than \$_____.

Annual aggregate limit shall not be less than \$_____.

An endorsement to the Commercial General Liability or Automobile Liability policy, covering Contractor's or subcontractor's liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related clean-up cost incurred by the Contractor that arise from the Goods delivered or Services (including transportation risk)

performed by Contractor under this Contract is also acceptable.

EXCESS/UMBRELLA INSURANCE:

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

ADDITIONAL COVERAGE REQUIREMENTS:

Contractor's insurance shall be primary and non-contributory with any other insurance. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

ADDITIONAL INSURED:

All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Subcontract must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 07 04 or equivalent.

WAIVER OF SUBROGATION:

Contractor shall waive rights of subrogation which Contractor or any insurer of Contractor may acquire against the Agency or State of Oregon by virtue of the payment of any loss. Contractor will obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Agency has received a waiver of subrogation endorsement from the Contractor or the Contractor's insurer(s).

CONTINUOUS CLAIMS MADE COVERAGE:

If any of the required liability insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, then Contractor shall maintain continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of the Contract, for a minimum of 24 months following the later of:

- (i) Contractor's completion and Agency's acceptance of all Services required under the Contract, or
- (ii) Agency or Contractor termination of this Contract, or
- (iii) The expiration of all warranty periods provided under this Contract.

CERTIFICATE(S) AND PROOF OF INSURANCE:

Local Government shall obtain from the Contractor a Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this contract. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance Agency has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Contract.

NOTICE OF CHANGE OR CANCELLATION:

The Contractor or its insurer must provide at least 30 days' written notice to Local Government before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

INSURANCE REQUIREMENT REVIEW:

Contractor agrees to periodic review of insurance requirements by Agency under this agreement and to provide updated requirements as mutually agreed upon by Contractor and Agency.

EXHIBIT C

ADDITIONAL REQUIREMENTS

SECTION 1: CONFIDENTIALITY AND NONDISCLOSURE

1.1 Each Party acknowledges that it and any of its officers, directors, employees and agents may, in the course of performing its responsibilities under this Agreement, be exposed to or acquire information that is confidential to the other Party. Any and all information of any form provided to a Party or its officers, directors, employees and agents in the performance of this Agreement that reasonably could at the time of its disclosure be understood to be confidential is confidential information of the disclosing Party ("Confidential Information"). Any reports, summaries, or other documents or items (including software) that result from a receiving Party's use of Confidential Information of the disclosing Party is also confidential Information of the disclosing Party. Confidential Information does not include information that:

- a) Is or becomes (other than by disclosure by the receiving Party) publicly known or is contained in a publicly available document, except to the extent that applicable law continues to restrict or prohibit disclosure;
- b) Is furnished by the disclosing Party to others without restrictions similar to those imposed on the receiving Party under this Agreement;
- c) Is rightfully in the receiving Party's possession without the obligation of nondisclosure prior to the time of its disclosure by the disclosing Party under this Agreement;
- d) Is obtained from a source other than the disclosing Party without the obligation of confidentiality;
- e) Is disclosed with the written consent of the disclosing Party; or
- f) Is independently developed by the receiving Party's officers, directors, employees and agents who can be shown to have had no access to the Confidential Information of the disclosing Party.

The receiving Party shall hold all Confidential Information of the disclosing Party in strict confidence, using at least the same degree of care that it uses in maintaining the confidentiality of its own confidential information; shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information of the disclosing Party to third parties; shall not use Confidential Information of the disclosing Party for any purposes whatsoever other than as contemplated by this Agreement or reasonably related thereto; and shall advise its officers, directors, employees and agents that receive or have access to the Confidential Information of their obligations to keep Confidential Information of the disclosing Party confidential. These confidentiality obligations do not restrict disclosure of Confidential Information if the receiving Party can show that any one of the following conditions exists:

- g) The disclosure was required to respond to a subpoena or court order duly issued in a judicial or legislative process and the receiving Party notified the disclosing Party of the subpoena or court order at least five days prior to the disclosure of the disclosing Party's Confidential Information, unless such notice could not reasonably be given; or
 - h) The disclosure was required to respond to a public records request made under the Oregon Public Records Law, ORS 192.410 to 192.505, and the receiving party notified the disclosing Party of the public records request at least five days prior to the disclosure of the disclosing Party's Confidential Information.
- 1.2 The receiving Party shall use its best efforts to assist the disclosing Party in identifying and preventing any unauthorized use or disclosure of Confidential Information of the disclosing Party. Without limiting the generality of the foregoing, the receiving Party shall advise the disclosing Party immediately in the event it learns or has reason to believe that any person who has had access to Confidential Information of the disclosing Party has violated or intends to violate the terms of this Agreement.
- 1.3 As requested by the disclosing Party, the receiving Party shall return to the disclosing Party, or destroy, all Confidential Information of the disclosing Party disclosed to the receiving Party, except that the receiving Party may retain one archival copy of the Confidential Information of the disclosing Party as and to the extent required by applicable records retention laws. Nothing in the Agreement is intended to make the receiving Party a custodian of any record or any information, documents or materials provided by the disclosing Party to the receiving Party.