

**COPY**

**OFFICE OF PUBLIC SAFETY  
STATE OF SOUTH DAKOTA  
SUBGRANTEE AWARD LETTER OF AGREEMENT  
FY2009 HMEP TRAINING GRANT**

**BETWEEN**

Rapid City Fire & Emergency Services  
Mike Holmes  
10 Main Street  
Rapid City, SD 57701  
Referred to as Subgrantee

**SOUTH DAKOTA OFFICE  
OF EMERGENCY MANAGEMENT  
Referred to as State**

Hazmat Emergency Response

The State hereby enters into an Agreement for Services with the Subgrantee.

**I. THE SUBGRANTEE**

- A. The subgrantee services on this agreement shall commence on November 1, 2009 and end on September 30, 2010.
- B. Is the subgrantee a full or part time employee of the State? YES \_\_\_  
NO
- C. Will subgrantee use State equipment, supplies or facilities? YES \_\_\_  
NO
- D. The subgrantee agrees to: Provide funding to train and qualify first responders and public workers to the hazmat HER10 level according to according to NFPA, EPA and OSHA standards for Hazardous Material HER10  
A list of all attendees will be provided to OEM for training record purposes.  
Grant funds are to be utilized for instructor costs and expenses and course supplies. The sub-grantee is responsible to provide a 20% hard or in-kind match of the total project cost.
- E. The sub-grantee agrees to hold harmless and indemnify the State of South Dakota, its officers, agents and employees, from and against any and all actions, suits damages, liability or other proceedings which may arise as a result of performing services thereunder. This section does not require the subgrantee to be responsible for or defend against claims or damages arising solely from acts or omissions of the State, its officers or employees.

II. THE STATE

- A. The State will make payment for services upon satisfactory completion not to exceed \$2,538.00.
- B. Will the State pay subgrantee expenses as a separate item? YES  NO
- C. TOTAL SUB-GRANTEE AMOUNT (Not to Exceed) \$2,538.00.
- D. The State agrees to: None

III. OTHER PROVISIONS

- A. **AMENDMENT PROVISION:** This subgrantee contains the entire agreement between the parties, and is subject to and will be construed under the laws of the State of South Dakota, and may be amended only in writing signed by both parties.
- B. **TERMINATION PROVISION:** This agreement can be terminated upon thirty (30) days written notice by either party and may be terminated for cause by the State at any time with or without notice.
- C. **INSURANCE PROVISION:** The State requires the following insurance provision. The subgrantee agrees, at its sole cost and expense, to maintain adequate general liability, worker's compensation, professional liability and automobile liability insurance during the period of this agreement.
- D. **DEFAULT PROVISION:** This agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. This agreement will be terminated by the State if the Legislature fails to appropriate funds or grant expenditure authority. Termination for this reason is not a default by the State nor does it give rise to a claim against the State.
- E. **AUDIT PROVISION.** A government or nonprofit who is a sub-recipient of the state and expends \$500,000 or more in one year in Federal financial assistance, must have an annual audit made in accordance with Office of Management and Budget Circular A-133, Audits of States, Local Governments and Non-profit Organizations and guidelines established by the Auditor General.

All audits must be conducted by an auditor approved by the Auditor General to perform the audit. Approval may be obtained by forwarding a copy of the audit engagement letter to the Department of Legislative Audit, 427 South Chapelle, c/o 500 East Capitol, Pierre, SD 57501-5070. On continuing engagements, the Auditor General's approval should be obtained annually. Audits shall be filed with and approved by the Auditor General by the end of the ninth month following the end of the fiscal year of the entity being audited or 30 days after receipt of the auditor's report, whichever is earlier.

Failure to complete audit(s) as required will result in the disallowance of audit costs as direct or indirect charges to programs. Additionally, a percentage of

awards may be withheld, overhead costs may be disallowed, and/or awards may be suspended, until the audit is completed satisfactorily.

- F. **RIGHTS PROVISION: 19.2** With respect to all subject data first produced in the performance of this Agreement, DOT reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

19.2.1 Any work developed under the grant, sub-grant, or third-party contract, irrespective of whether or not a copyright has been obtained; and

19.2.2 Any rights of copyright to which the Grantee, sub-grantee, or a third-party contractor purchases ownership with DOT assistance.

19.3 When DOT provides assistance to a Grantee for a program involving emergency planning and training, it is DOT's intent to increase the body of transportation knowledge, rather than to limit the benefit of the program to the parties to the agreement. Therefore, the Grantee that has received assistance to support research, financed under the Federal Hazardous Material Transportation Law (49 U.S.C. Section 5101 et. Seq.), understands and agrees that, in addition to the rights set forth in Subsection 19.2 of this Agreement, DOT may make available to any DOT Grantee, sub-grantee, sub-recipient, third-party contractor, or third-party subcontractor, with DOT's license in the copyright to the "subject data" derived under this Agreement or a copy of the "subject data" first produced under this Agreement.

19.4 Nothing contained in this clause implies a license to DOT under any patent or can be construed as affecting the scope of any license or other right otherwise granted to DOT under any patent.

19.5 Subsections 19.2 through 19.4 of this document are not applicable to material furnished to the Grantee by DOT and incorporated in the work furnished under the Agreement, provided that the Grantee identifies the incorporated material when the work is delivered.

19.5 If the program, which is the subject of this Agreement, is not completed, for any reason whatsoever, all data developed under that program becomes subject data as defined in Subsection 19.1 of the Agreement and must be delivered as DOT may direct.

- G. **COMPLIANCE PROVISION:** The Recipient, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in regard to any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be

discriminated against on the grounds of race, color, sex, or national origin in consideration for an award.

H. **ASSURANCE OF COMPLIANCE PROVISION WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964:** During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor shall comply with the Regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of the contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitation for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.
4. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State/Territory/Native American Tribe South Dakota or the Research and Special Programs Administration (RSPA) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the State/Territory/Native American Tribe of South Dakota or the Research and Special Programs Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with nondiscrimination provisions of this contract, that State/Territory/Native American Tribe of South Dakota shall impose contract sanctions as it or the Research and Special Programs Administration may determine to be appropriate, including but not limited to:
  - (a) withholding of payments to the contractor under the contract until the contractor complies; and/or

(b) cancellation, termination, or suspension of the contract, in whole or in part.

6. Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurements as the State/Territory/Native American Tribe of South Dakota or the Research and Special Programs Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontract or supplier as a result of such direction, the contractor may request the State/Territory/Native American Tribe of South Dakota, and, in addition the contractor may request the United States to enter into such litigation to protect the interests of the United States.

IV. In witness hereto the parties signify their agreement by affixing their signatures hereto.

<u><i>Mark Helms</i></u>	<u>11/9/09</u>	<u><i>Kristi Turman</i></u>	<u>11-13-09</u>
Subgrantee Signature	Date	Authorized State Signature	Date

State Agency Coding Center: \_\_\_\_\_ Account: \_\_\_\_\_

Subgrantee social security or employer number: 46-6000-381

State contact person: Bob Van Winsen (605) 773-3231

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