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Oregon Emergency Management

## STATE OF OREGON

### OREGON EMERGENCY MANAGEMENT

#### HAZARD MITIGATION GRANT PROGRAM CONTRACT, FEMA DR-1964-OR

##### 1.0 PARTIES TO THIS AGREEMENT

This Agreement is made and entered into by and between the State of Oregon, Oregon Military Department, Oregon Emergency Management, hereinafter referred to as "Grantee" and the **City of Newport**, hereinafter referred to as "Subgrantee".

WHEREAS the President of the United States has declared that a major disaster exists in the State of Oregon based on damage resulting from Tsunami Wave Surge on March 11, 2011.

WHEREAS Grantee is authorized by the 2011 FEMA-State Agreement for the March 11, 2011 Tsunami Wave Surge Event (DR-1964-OR) to execute on behalf of the State of Oregon all necessary documents for the Hazard Mitigation Grant Program, including approval of sub-grants and certification of claims.

THEREFORE, the Parties mutually agree to the following.

##### 2.0 PURPOSE

Federal funding is provided by the Federal Emergency Management Agency (FEMA) and is administered by Grantee. Under the authority of Presidential Major Disaster Declaration FEMA DR-1964-OR, Grantee is reimbursing the Subgrantee for those eligible costs and activities necessary for the implementation of the Hazard Mitigation Planning Grant entitled **Newport Tsunami Safe Haven Hill Retrofit, Hardening and Access Improvements – Phase-I** as described in the application materials<sup>1</sup> submitted to Grantee as the work to be performed, hereinafter referred to as the "Project".

##### 3.0 TIME OF PERFORMANCE

Activities payable under this Agreement and to be performed by Subgrantee under this Agreement shall be those activities which occurred starting **January 26, 2013<sup>2</sup>** and shall terminate upon completion of the Project approved by federal and state officials, including completion of close out and audit. This

<sup>1</sup> Phase I funding does not authorize any physical mitigation (implementation) through retrofitting or construction; only evaluation of project feasibility, geotechnical site investigations and Benefit-Cost Analysis activities.

<sup>2</sup> Eligible pre-award costs (incurred after 3/11/2011) as approved by FEMA in the sub-grant scope of work

period shall be referred to as the "Agreement Period." Except as otherwise provided in this Section 3.0, the Project shall be completed no later than **January 26, 2014 (Phase-I)**.

In the event of extenuating circumstances preventing Subgrantee from completing the Project on or before the FEMA performance deadline of **January 26, 2014**, Grantee may, at its sole discretion and if approved beforehand by FEMA, grant a time extension to the approved Project. Request for an extension of time shall be submitted by Subgrantee in writing with an explanation of the extenuating circumstances.

#### 4.0 CLOSE-OUT

It shall be the responsibility of Grantee to issue close-out instructions to the Subgrantee upon completion of the Project.

#### 5.0 FUNDING

The total *estimated* cost of the Project (Phase-I) for the purpose of this Grant Agreement is **\$51,643**.

Grantee will administer the Hazard Mitigation Grant Program and reimburse any eligible costs for the Project to Subgrantee which are identified in the documentation provided by Subgrantee and approved by Grantee and FEMA.

The Parties understand that the Federal Emergency Management Agency will contribute seventy-five percent (75%) of the eligible costs for any eligible project. The 75% Federal share for this project is **\$38,732 (Phase-I)**.

Subgrantee will commit at least the required twenty-five percent (25%) non-federal match to any eligible project.

#### 6.0 PAYMENTS

Grantee, using funds granted for purposes of the Hazard Mitigation Grant Program from FEMA, shall issue payments to Subgrantee as follows:

1. Payments will be made to Subgrantee upon submission and approval of a State of Oregon Hazard Mitigation Program Payment Request to the Grantee. Partial payments of funds for costs already incurred may be requested at any time during the Project. This request must include appropriate supporting documentation of the incurred costs.
2. Final Payment will be made upon completion of Project, completion of all final inspections by Grantee, and final approval by FEMA. Final payment will also be conditioned upon a financial review by Grantee or

FEMA. Adjustments to the final payment may be made following any audits conducted by the Oregon Secretary of State's Audits Division or the United States Inspector General's Office.

3. Subgrantee is *not* entitled to receive federal administrative monies upon completion and closure of the Project for the costs of requesting, obtaining, and administering the Hazard Mitigation Program grant(s) for FEMA-DR-1964-OR.
4. All payment requests shall be made on a State of Oregon Hazard Mitigation Program Payment Request Form to the Grantee, which references the appropriate Hazard Mitigation Project Number, FEMA Project Number and FEMA FIPS Number, and appropriate documentation as required.
5. Funding shall not exceed the total federal contributions available for the approved hazard mitigation project costs under the Hazard Mitigation Grant Program FEMA-DR-1964-OR.
6. Grantee reserves the right to make any inspection prior to release of any payment or at any time during the duration of this Agreement.

## 7.0 COST OVERRUNS

Cost overruns are the responsibility of the Subgrantee and will be borne fully by the Subgrantee.

## 8.0 RECORDS MAINTENANCE

The Subgrantee shall cause books, records, documents, and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct costs of any nature expended in the performance of this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit by Grantee personnel, other personnel duly authorized by the Grantee, the Secretary of State's Audits Division, or the United States Inspector General. Subgrantee will retain all books, records, documents, and other material relevant to this Agreement for six years after date of final payment or an extended period as established by FEMA in 44 CFR 13.42.

Subgrantee will photographically document pre-construction, construction and completed conditions of the Project and make such documents a part of its records.

## 9.0 AUDITS AND RECORDS

Audits shall be in accordance with the Single Audit Act of 1984, as amended. Subgrantee is to procure, at its own cost, audit services based on the following guidelines:

1. Subgrantee receiving less than \$50,000 in federal funds in a fiscal year is exempt from compliance with the Single Audit Act. However, records must be available for review by Grantee.
2. Subgrantee receiving \$50,000 to \$500,000 in total federal funds in a fiscal year may choose to have an audit made in accordance with the Office of Management and Budget (OMB) Circular A-133 or a program audit.
3. Subgrantee receiving \$500,000 or more in a fiscal year in total federal funds shall have a Single Audit made in accordance with OMB Circular 1-133.

As applicable, Subgrantee must ensure the audit is performed in accordance with Generally Accepted Accounting Principles; Generally Accepted Government Auditing Standards developed by the comptroller General; the OMB Compliance Supplement for Single Audits of State and Local Governments; and all state and federal laws and regulations governing the program.

Subgrantee must prepare a Schedule of Financial Assistance for federal funds that includes: Grantor name, program name, federal catalog number (CFDA-83.548), grantor agreement number, total award amount, beginning balance, current year revenues, current year expenditures and ending balances.

Subgrantee shall maintain records and accounts in such a way as to facilitate the Grantee's audit requirements, and ensure that Subgrantee's contractors and subcontractors also maintain records which are auditable. Subgrantee is responsible for any audit exceptions incurred by its own organization or that of its contractors. Grantee reserves the right to recover from the Subgrantee disallowed costs resulting from the final audit.

Subgrantee shall send the audit report to Grantee's Project Administrator as soon as it is available, but no later than nine months after the end of the Subgrantee's fiscal year in which any funds received by Subgrantee under this Agreement are received. Responses to previous management findings and disallowed or questioned costs shall be included with the audit report. Subgrantee will respond to Grantee's requests for information or corrective action concerning audit issues within 30 days of the request.

Subgrantee shall include these requirements in any contract or subcontracts.

## 10.0 RECOVERY OF FUNDS

In the event that Subgrantee fails to complete the Project(s), fails to expend, or is overpaid federal funds in accordance with federal or state Hazard Mitigation Program laws or programs, or is found by audit or investigation to be owe funds to Grantee, Grantee reserves the right to recapture funds in accordance with federal and state laws and requirements. Repayment by Subgrantee of funds under this recovery provision shall occur within 30 days of demand. In the event that Grantee is required to institute legal proceedings to enforce this recovery provision, Grantee shall be entitled to its costs thereof, including reasonable attorney fees.

The Subgrantee shall be responsible for pursuing recovery of monies paid under this Agreement in providing disaster assistance against any party that might be liable, and further, the Subgrantee shall cooperate in a reasonable manner with the State and the United States in efforts to recover expenditures under this Agreement.

In the event the Subgrantee obtains recovery from a responsible party, the Subgrantee shall first be reimbursed its reasonable costs of litigation from such recovered funds. The Subgrantee shall pay to the state the proportionate federal share of all project funds recovered in excess of costs of litigation.

## 11.0 CONFLICT OF INTEREST

Subgrantee will prohibit any employee, governing body, contractor, subcontractor, or organization from participating if the employee or entity has an actual or potential conflict of interest that a public official would have under ORS Chapter 244.

## 12.0 POLITICAL ACTIVITY

No portion of the funds provided herein shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot measure.

## 13.0 ASSIGNMENT

This Agreement, and any claim arising under this Agreement, may not be assigned or delegated by Subgrantee either in whole or in part.

## 14.0 SUBCONTRACTS FOR ENGINEERING SERVICES

In the event that Subgrantee subcontracts for engineering services, Subgrantee shall require that the engineering firm be covered by errors and omissions insurance in an amount not less than the amount of the firm's contract. If the firm

is unable to obtain errors and omissions insurance, the firm shall post a bond with Subgrantee for the benefit of Subgrantee of not less than the amount of its subcontract. Such insurance or bond shall remain in effect for the entire term of the subcontract. The subcontract shall provide that cancellation or lapse of the bond or insurance during the term of the contract termination. Subgrantee shall cause the subcontractor to provide it with a thirty (30) day notice of cancellation issued by the insurance company.

## 15.0 APPEALS

Consistent with the Code of Federal Regulations, 44 CFR Chapter 1, 206.440, Subgrantee may appeal any determination previously made related to the federal assistance for Subgrantee. The Subgrantee's appeal shall be made in writing and submitted to OEM within 60 days after receipt of notice of the action which is being appealed. The appeal shall contain documented justification supporting the Subgrantee's position.

## 16.0 GOVERNING LAW AND VENUE

1. This Agreement shall be governed 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 OEM and Subgrantee 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. *Subgrantee, by execution of this agreement, consents to the exclusive jurisdiction of said court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.*
2. Notwithstanding Section 2, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This section is also not a waiver by the State of Oregon of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

## 17.0 TERMINATION; RECOVERY OF FUNDS

1. By Subgrantee. Subgrantee may terminate this contract with thirty (30) days notice to Grantee and the return of all federal funds paid to Subgrantee for the Project.

2. By Grantee. The Grantee may unilaterally terminate all or part of this Agreement or may reduce its scope of work if there is:
  - a. A reduction in federal funds which are the basis for this Agreement, and/or,
  - b. A material misrepresentation, error, or inaccuracy in Subgrantee's application.
3. Termination upon Noncompliance by Subgrantee
  - a. If inspections and review of Subgrantee support documentation reveal noncompliance in performance of the work and/or documentation of the work, the Subgrantee will be required to correct deficiencies or variances before program closure.
  - b. If corrective actions required do not resolve variances from the approved Project, Grantee will notify Subgrantee of such. Grantee may then make the determination that Subgrantee variances constitute noncompliance or nonconformance to the Hazard Mitigation Grant Program and/or conditions. In the event of such determination, Grantee will notify Subgrantee of such action and recover obligated funds from the Subgrantee and take other actions as specified under 44 CFR 13.43 (Enforcement) or 44 CFR 13.44 (Termination for Convenience).

## 18.0 SAVINGS

Subgrantee shall apply any savings, rebates, and reductions in cost to reduce the overall cost of the Project.

## 19.0 WAIVERS

The failure of OEM to exercise, and any delay 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 further exercise thereof or the exercise of any other such right, power, or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

## 20.0 INDEMNIFICATION

To the extent permitted by any constitutional and statutory limitations applicable to Subgrantee, including, but not limited to, provisions relating to debt limits, tort claims limits and workers' compensation, Subgrantee shall, as required by ORS 401.178(2), indemnify, defend, save, and hold harmless the United States and its agencies, officers, employees, agents, and members, and the State of Oregon

and its agencies, officers, employees, agents, and members, from and against all claims, damages, losses, expenses, suits, or actions of any nature arising out of or resulting from the activities of Subgrantee, its agencies, officers, employees, agents, members, contractors, or subcontractors under this Agreement.

## 21.0 Subgrantee ASSURANCES

Subgrantee represents and warrants to Grantee as follows:

1. Subgrantee is an independent, non-profit corporation, duly organized, validly existing and in good standing under the laws of the State of Oregon.
2. This Agreement has been duly authorized, executed, and delivered on behalf of Subgrantee and constitutes the legal, valid, and binding obligation of Subgrantee, enforceable in accordance with its terms.
3. Subgrantee hereby assures and certifies that it will comply with all applicable state and federal laws and regulations, including, but not limited to, the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC §§ 5121-5206 (Public Law 93-288, as amended; hereafter "Stafford Act"); 44 CFR Parts 7, 13, 14, 17, 18 and 206, and Subchapters B, C and D; Office of Management and Budget Circulars A-21, A-87, A-102, A-110, A-122 and A-133; the Oregon State Public Assistance Administrative Plan dated September 1993; Wages, Hours and Records Laws (ORS Chapter 652) Conditions of Employment Laws (ORS Chapter 643) and Unemployment Insurance Laws (ORS Chapter 657).
4. The emergency or disaster relief work for which federal assistance is requested herein does not or will not duplicate benefits received for the same loss from any other source.
5. Subgrantee will operate and maintain the facilities being restored using funds provided under this Agreement in accordance with the minimum standards as may be required or prescribed by the applicable federal, state and local agencies for the maintenance and operation of such facilities.
6. Subgrantee will, for any repairs or construction financed herewith, comply with applicable standards of safety, decency and sanitation and in conformity with applicable codes, specifications and standards, and will evaluate the hazards in areas in which the proceeds of the grant are to be used and take appropriate action to mitigate such hazards, including safe land use and construction practices. Subgrantee will, prior to the start of any construction activity, ensure that all applicable federal, state and local permits and clearances are obtained including FEMA compliance with the

National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other federal and state environmental laws.

7. Subgrantee will not enter into a contract with a contractor who is on the General Services Administration (GSA) List of Parties Excluded from Federal Procurement or Non-procurement Programs.
8. Subgrantee will comply with minimum wage and maximum hours provision of the Federal Fair Labor Standards Act.
9. Subgrantee shall comply with all applicable federal and state non-discrimination laws, regulations, and policies. No person shall, on the grounds of age, race, color, sex, religion, national origin, marital status, or disability (physical or mental) be denied the benefits of, or otherwise be subjected to discrimination under any project, program, or activity, funded, in whole or in part, under this Agreement. A violation of this provision is a material breach and cause for termination under Section 16.0 of this Agreement.
10. Subgrantee shall utilize certified minority-owned and women-owned businesses (MWBE's) to the maximum extent possible in the performance of this Agreement.
11. Subgrantee does not have to comply with the provisions of the Davis-Bacon Act for grants made under the disaster assistance program. However, if FEMA and any other Federal agency are a party to a contract for the repair or restoration of a public building or public facility, the contract would have to comply with the Davis-Bacon Act.
12. Subgrantee and its contractors, subcontractors, and other employers providing work, labor, or materials as a result of the application are subject employers under the Oregon Workers' Compensation Law. All employers, including Subgrantee, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements. This shall include Employer's Liability Insurance with coverage limits of not less than \$100,000 for each accident.

## 22.0 OWNERSHIP OF PROJECT/CAPITAL FACILITIES

The Grantee makes no claim to any capital facilities or real property improved or constructed with funds under this Agreement, and by this grant of funds, does not and will not acquire any ownership or title to such property of the Subgrantee.

## 23.0 ACKNOWLEDGMENTS

Subgrantee shall include language which acknowledges the funding contribution of the Federal Emergency Management Agency (FEMA) to this Project in any information release or other publication developed or modified for, or referring to the Project.

## 24.0 INSURANCE

The Subgrantee will comply with the insurance requirements of the Stafford Act, as amended, and obtain and maintain any other insurance as may be reasonable, adequate, and necessary to protect against further loss to any property which was replaced, restored, repaired or constructed with this assistance.

## 25.0 SEVERABILITY

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 and applications of this Agreement shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

## 26.0 HEADINGS

The section headings in this Agreement are included for convenience only, do not give full notice of the terms of any portion of this Agreement, and are not relevant to the interpretation of any provision of this Agreement.

## 27.0 AGREEMENT ADMINISTRATION

The Parties' representatives for purposes of this agreement are:

For SUBGRANTEE:

Derrick I. Tokos, AICP  
Community Development Director  
169 SW Coast Hwy  
Newport  
Phone: 541-574-0626  
Fax: 541-574-0644

For OEM:

Paulina Layton  
Section Director, Mitigation & Recovery Section  
Oregon Emergency Management  
P.O. Box 14370  
Salem, OR 97309-5062  
Phone: (503)378-2911, ext 22227  
Fax:

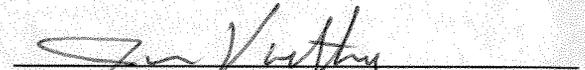
Notices under this agreement shall be given in writing by personal delivery, facsimile, email or by regular or certified mail to the person identified in this Section, or to such other person or at such other address as either party may hereafter indicate pursuant to this section. Any notice delivered personally shall be deemed received upon delivery. Notice by facsimile shall be deemed given when receipt of the transmission is generated by the transmitting machine. Notice by email is deemed received upon a return email or other acknowledgment of receipt by the receiver, and notice by certified or registered mail is deemed received on the date the receipt is signed or delivery is refused by the addressee.

## 28.0 ENTIRE AGREEMENT

This Agreement sets forth the entire Agreement between the Parties with respect to the subject matter hereof. Any additional terms or conditions imposed by FEMA or Grantee will be incorporated into an amendment to this Agreement. Commitments, warranties, representations, and understandings or agreements not contained, or referred to, in this Agreement or written amendment hereto shall not be binding on either party. Except as may be expressly provided herein, no alteration of any of the terms or conditions of this Agreement will be effective without the written consent of both parties.

IN WITNESS WHEREOF, Grantee and Subgrantee have executed this Agreement as of the date and year written below.

  
Governor's Authorized Representative  
Oregon Emergency Management

  
Authorized Agent Signature-Subgrantee  
Printed Name: Jim Voetberg  
Title: City Manager

DATE: 3/5/2013

DATE: 2/15/13

Oregon Emergency Management  
P.O Box 14370  
Salem, OR 97309-5062

Subgrantee - PLEASE PRINT THE  
FOLLOWING TO EXPEDITE  
PROCESSING:

CFDA: 97.039

DUNS No: 030794671  
Federal Tax ID No. (TIN): 936002222  
FIPS: 041-52450  
Organization: City of Newport

Approved as to form  
  
Keith Kutler  
Assistant Attorney General

Address: 169 SW Coast Hwy  
Newport, OR 97365  
Phone: 541-574-0615

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