

**OREGON MILITARY DEPARTMENT
OFFICE OF EMERGENCY MANAGEMENT
HAZARD MITIGATION GRANT PROGRAM**

CFDA # 97.039

City of Newport

City of Newport Advance Funding Request Project (Advance Assistance)

Not to Exceed \$345,000

Grant No: HMGP-PF-FM-5195-OR-2

This Agreement is made and entered into by and between the State of Oregon, acting by and through the Oregon Military Department, Office of Emergency Management, hereinafter referred to as "OEM," and City of Newport, hereinafter referred to as "Subrecipient," and collectively referred to as the "Parties."

1. **Effective Date.** This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law. Reimbursements will be made for Project Costs (as defined in Section 6.a.) incurred beginning on March 25, 2020 and shall terminate upon completion and approval of the Project (as defined in Section 4) by federal and state officials, including the completion of close-out and audit (the "Project Completion Date"). This period shall be known as the Grant Award Period. The Project shall be completed no later than January 29, 2023 (the "Expiration Date"), unless otherwise extended as provided in this Agreement. OEM's obligation to disburse Grant Funds under this Agreement is subject to Sections 6 and 10 of this Agreement.
2. **Agreement Documents.** This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:

Exhibit A: FEMA Project Description and Budget

Exhibit B: Federal Department of Homeland Security Standard Terms & Conditions

Exhibit C: Subcontractor Insurance

Exhibit D: Information required by 2 CFR 200.331(a)

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 shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: Exhibit B; this Agreement without Exhibits; Exhibit A; Exhibit C; Exhibit D.

3. **Project Cost, Grant Funds.** The total estimated cost of the Project for the purpose of this Grant Agreement is \$460,000. In accordance with the terms and conditions of this Agreement, OEM shall provide Subrecipient an amount not to exceed 75 percent of the Project Costs or \$345,000, whichever is less, in Grant Funds for eligible costs described in Section 6 hereof. Grant Funds for this Program are provided by the Federal Emergency Management Agency (FEMA) and are administered by OEM. Subrecipient will commit 25% to the Project, known as the non-Federal match. The non-Federal match can be cash, in-kind or a combination of both. For this sub-grant, the non-Federal share contribution shall be 25 percent of the Project Costs, up to \$115,000. Subrecipient shall apply any savings, rebates and reductions in cost to reduce the overall cost of the Project. Subrecipient is responsible for any costs in excess of the total Project Cost.

4. Project. The Grant Funds shall be used solely for the project described in Exhibit A (the "Project") and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by OEM by amendment pursuant to Section 11.d hereof.

5. Performance and Close-Out Reports.

- a. Subrecipient agrees to submit performance reports, using a form provided by OEM, on its progress in meeting each of its agreed upon milestones.
- b. Reports are due to OEM on or before 15 days following the end of each calendar quarter (March 31, June 30, September 30, and December 31).
- c. Subrecipient may request from OEM prior written approval to extend a performance report requirement past its due date. OEM, in its sole discretion, may approve or reject the request.
- d. Subrecipient shall submit final close-out report to OEM for review which must include a financial performance report, construction reports (if applicable), invention disclosure (if applicable), Federally-owned property report (if applicable), and final request for reimbursement (if applicable).
- e. Failure of Subrecipient to submit the required program, financial, or audit reports, or to resolve program, financial, or audit issues, may result in the suspension of grant payments, termination of this Agreement, or both.

6. Reimbursement Process.

- a. OEM shall reimburse Subrecipient's actual, reasonable and necessary costs of developing the Project (the "Project Costs") in an amount not to exceed the Grant Fund amount provided in Section 3. Project Costs do not include those costs that are excluded from reimbursement by either OEM or FEMA under this Agreement or as a result of a financial review or audit. Reimbursements shall be made by OEM within forty-five (45) days of OEM's receipt and approval of a Request for Reimbursement of Funds form (the "RfR") from Subrecipient. Subrecipient must pay its contractors, consultants and vendors before submitting RfRs to OEM for reimbursement.
- b. Not later than the end of each calendar quarter (March 31, June 30, September 30, and December 31), Subrecipient shall submit an RfR to OEM for review and approval. Each RfR shall include the appropriate Hazard Mitigation Assistance Project Number, FEMA Project Number, FEMA FIPS Number and DUNS Number, as well as supporting invoices and other appropriate documentation evidencing the Project Costs for which reimbursement is sought, e.g., timesheets/work logs for labor hours and receipts and other proof of Subrecipient's payment to vendors. RfRs must be based on actual expenses incurred and specify the percentage of Project completion. Subrecipient's deadline to submit its final RfR is 30 days after the earlier of the Project Completion Date or the Expiration Date, whichever occurs first.
- c. OEM will withhold reimbursements for Project Costs if Subrecipient fails to submit performance reports by the specified deadlines or if the performance reports submitted are incomplete.
- d. Reimbursement rates for travel expenses shall not exceed those allowed by the State of Oregon, however, travel expenses must be a part of the approved budget for the project. Requests for

reimbursement for travel must be supported with a detailed statement identifying the person who traveled, the purpose of the travel, the dates, times, and places of travel, and the actual expenses or authorized rates incurred.

- e. Reimbursements will only be made for actual expenses incurred during the Grant Award Period provided in Section 1. Subrecipient agrees that no grant or, if applicable, match funds may be used for expenses incurred before or after the Grant Award Period.
- f. **Conditions Precedent to Disbursement.** OEM's obligation to disburse Grant Funds to Subrecipient is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:
 - i. OEM has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to make the disbursement.
 - ii. Subrecipient is in compliance with the terms of this Agreement including, without limitation, Exhibit B and the requirements incorporated by reference in Exhibit B.
 - iii. Subrecipient's representations and warranties set forth in Section 7 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
 - iv. Subrecipient has provided to OEM an RfR in accordance with Section 6.b of this Agreement.
- g. **Recovery of Grant Funds.** Any funds disbursed to Subrecipient under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of termination or expiration of this Agreement ("Unexpended Funds") must be returned to OEM. Subrecipient shall return all Misexpended Funds to OEM promptly after OEM's written demand and no later than 15 days after OEM's written demand. Subrecipient shall return all Unexpended Funds to OEM within 14 days after the earlier of expiration or termination of this Agreement.

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

- 7. **Representations and Warranties of Subrecipient.** Subrecipient represents and warrants to OEM as follows:
 - a. **Organization and Authority.** Subrecipient is a city and political subdivision of the State of Oregon duly organized under the laws of the State of Oregon and is eligible to receive the Grant Funds. Subrecipient has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Subrecipient of this Agreement (1) have been duly authorized by all necessary action of Subrecipient and (2) 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, (3) 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 Subrecipient is a party or by which Subrecipient or any of its properties may be bound or affected. 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 Subrecipient of this Agreement.

- b. Binding Obligation.** This Agreement has been duly executed and delivered by Subrecipient and constitutes a legal, valid and binding obligation of Subrecipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- c. No Solicitation.** Subrecipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

The warranties set forth in this section are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

8. Records Maintenance and Access; Audit.

- a. Records, Access to Records and Facilities.** Subrecipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Subrecipient acknowledges and agrees, and Subrecipient will require its contractors, subcontractors, subrecipients (collectively hereafter "contractors"), successors, transferees, and assignees to acknowledge and agree, to provide OEM, Oregon Secretary of State (Secretary), Office of Inspector General (OIG), Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), or any of their authorized representatives, access to records, accounts, documents, information, facilities, and staff. Subrecipient and its contractors must cooperate with any compliance review or complaint investigation by any of the above listed agencies, providing them access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary. The right of access is not limited to the required retention period but shall last as long as the records are retained.

Subrecipient must prepare a Schedule of Expenditures of Federal Awards (SEFA) that includes: Federal grantor name, pass-through entity name, program name, Federal catalog number, identifying number assigned by the pass-through entity and current year expenditures.

- b. Retention of Records.** Subrecipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project until the latest of (a) six years following termination, completion or expiration of this Agreement, (b) upon resolution of any litigation or other disputes related to this Agreement, or (c) as required by 2 CFR 200.333. It is the responsibility of Subrecipient to obtain a copy of 2 CFR Part 200 and to apprise itself of all rules and regulations set forth.

c. Audits.

- i. If Subrecipient expends \$750,000 or more in Federal funds (from all sources) in its fiscal year, Subrecipient shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR 200 Subpart F. Copies of all audits must be submitted to OEM within 30 days of completion. If Subrecipient expends less than \$750,000 in its fiscal year in Federal funds, Subrecipient is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in Section 8.a. herein.
- ii. Audit costs for audits not required in accordance with 2 CFR Part 200, Subpart F are unallowable. If Subrecipient did not expend \$750,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the grant.
- iii. Subrecipient shall save, protect and hold harmless OEM from the cost of any audits or special investigations performed by the Secretary or any federal agency with respect to the funds expended under this Agreement. Subrecipient acknowledges and agrees that any audit costs incurred by Subrecipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Subrecipient and the State of Oregon.

9. Subrecipient Procurements; Property and Equipment Management and Records; Subcontractor Indemnity and Insurance

- a. **Subagreements.** Subrecipient may enter into agreements (hereafter "subagreements") for performance of the Project. Subrecipient shall use its own procurement procedures and regulations, provided that the procurement conforms to applicable Federal and State law (including without limitation ORS chapters 279A, 279B, 279C, and that for contracts for more than \$150,000, the contract shall address administrative, contractual or legal remedies for violation or breach of contract terms and provide for sanctions and penalties as appropriate, and for contracts for more than \$10,000 address termination for cause or for convenience including the manner in which termination will be effected and the basis for settlement).
- i. Subrecipient shall provide to OEM copies of all Requests for Proposals (RFPs) or other solicitations for procurements anticipated to be for \$100,000 or more and to provide to OEM, upon request by OEM, such documents for procurements for less than \$100,000. Subrecipient shall include with its RfR a list of all procurements issued during the period covered by the report.
- ii. All subagreements, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner that encourages fair and open competition to the maximum practical extent possible. All sole-source procurements in excess of \$100,000 must receive prior written approval from OEM in addition to any other approvals required by law applicable to Subrecipient. Justification for sole-source procurement in excess of \$100,000 should include a description of the program and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Interagency agreements between units of government are excluded from this provision.
- iii. Subrecipient shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade.

Contractors that develop or draft specifications, requirements, statements of work, or RFPs for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to OEM.

- iv. Subrecipient agrees that, to the extent it uses contractors, such contractors shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.
 - v. In the event that Subrecipient subcontracts for engineering services, Subrecipient 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 Subrecipient for the benefit of Subrecipient 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 the subcontract shall terminate immediately upon cancellation or lapse of the bond or insurance and shall require the subcontractor to notify Subrecipient immediately upon any change in insurance coverage or cancellation or lapse of the bond.
- b. **Purchases and Management of Property and Equipment; Records.** Subrecipient agrees to comply with all applicable federal requirements referenced in Exhibit B, Section II.C.1 to this Agreement and procedures for managing and maintaining records of all purchases of property and equipment will, at a minimum, meet the following requirements:
- i. All property and equipment purchased under this Agreement, whether by Subrecipient or a contractor, will be conducted in a manner providing full and open competition and in accordance with all applicable procurement requirements, including without limitation ORS chapters 279A, 279B, 279C, and purchases shall be recorded and maintained in Subrecipient's property or equipment inventory system.
 - ii. Subrecipient's property and equipment records shall include: a description of the property or equipment; the manufacturer's serial number, model number, or other identification number; the source of the property or equipment, including the Catalog of Federal Domestic Assistance (CFDA) number; name of person or entity holding title to the property or equipment; the acquisition date; cost and percentage of Federal participation in the cost; the location, use and condition of the property or equipment; and any ultimate disposition data including the date of disposal and sale price of the property or equipment.
For acquisition projects, Subrecipient shall retain real estate transaction and property tracking records indefinitely to enable FEMA to track the use of real property acquired with grant funds and ensure that the property is maintained for open space in perpetuity (see 44 CFR Part 80).
 - iii. A physical inventory of the property and equipment must be taken and the results reconciled with the property and equipment records at least once every two years.
 - iv. Subrecipient must develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of the property and equipment. Subrecipient shall investigate any loss, damage, or theft and shall provide the results of the investigation to OEM upon request.
 - v. Subrecipient must develop, or require its contractors to develop, adequate maintenance procedures to keep the property and equipment in good condition.

- vi. If Subrecipient is authorized to sell the property or equipment, proper sales procedures must be established to ensure the highest possible return.
 - vii. Subrecipient agrees to comply with 2 CFR 200.313 when original or replacement equipment acquired with Grant Funds is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency.
 - viii. Subrecipient shall require its contractors to use property and equipment management requirements that meet or exceed the requirements provided herein applicable to all property and equipment purchased with Grant Funds.
 - ix. Subrecipient shall retain, and shall require its contractors to retain, the records described in this Section 9.b. for a period of six years from the date of the disposition or replacement or transfer at the discretion of OEM. Title to all property and equipment purchased with Grant Funds shall vest in Subrecipient if Subrecipient provides written certification to OEM that it will use the property and equipment for purposes consistent with this Agreement.
- c. **Subagreement indemnity; insurance.** Subrecipient's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless OEM and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Subrecipient's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that OEM shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of OEM, be indemnified by the other party to Subrecipient's subagreement(s) from and against any and all Claims.

Any such indemnification shall also provide that neither Subrecipient's contractor(s) nor any attorney engaged by Subrecipient's contractor(s) shall defend any claim in the name of OEM or any agency of the State of Oregon (collectively "State"), nor purport to act as legal representative of the State or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Subrecipient's contractor is prohibited from defending State or that Subrecipient's contractor is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to pursue claims it may have against Subrecipient's contractor if State elects to assume its own defense.

10. Termination

- a. **Termination by OEM.** OEM may terminate this Agreement effective upon delivery of written notice of termination to Subrecipient, or at such later date as may be established by OEM in such written notice, if:
 - i. Subrecipient fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Subrecipient is, for any reason, rendered improbable, impossible, or illegal; or

- ii. OEM fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or
 - iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement;
 - iv. The Project would not produce results commensurate with the further expenditure of funds; or
 - v. Subrecipient takes any action pertaining to this Agreement without the approval of OEM and which under the provisions of this Agreement would have required the approval of OEM.
 - vi. OEM determines there is a material misrepresentation, error or inaccuracy in Subrecipient's application.
- b. **Termination by Subrecipient.** Subrecipient may terminate this Agreement effective upon delivery of written notice of termination to OEM, or at such later date as may be established by Subrecipient in such written notice, if:
- i. The requisite local funding to continue the Project becomes unavailable to Subrecipient; or
 - ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.
- c. **Termination by Either Party.** Either Party may terminate this Agreement upon at least thirty days' notice to the other Party.
- d. **Effect of Termination.** In the event of termination of this Agreement, each party shall be liable only for Project Costs and allowable expenses incurred by the other party, prior to the effective date of termination, and Subrecipient will return all Federal funds paid to Subrecipient for the Project which have not been expended or irrevocably committed to eligible activities.

11. General Provisions

- a. **Indemnity.** Subrecipient shall 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 Subrecipient, its agencies, officers, employees, agents, members, contractors, or subcontractors under this Agreement. If legal limitations apply to the indemnification ability of Subrecipient, this indemnification shall be for the maximum amount of funds available for expenditure, including any available contingency funds, funds available under ORS 30.260 to 30.300 or other available non-appropriated funds. If requested by OEM, Subrecipient shall purchase commercial insurance covering this indemnification.
- b. **Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out 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. Each party shall bear its own costs incurred under this Section 11.b.

- c. **Responsibility for Grant Funds.** Subrecipient shall assume sole liability for that Subrecipient's breach of the conditions of this Agreement, and shall, upon Subrecipient's breach of conditions that requires OEM to return funds to the FEMA, hold harmless and indemnify OEM for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Subrecipient, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
- d. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- e. **Duplicate Payment.** Subrecipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.
- f. **No Third Party Beneficiaries.** OEM and Subrecipient 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 a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

Subrecipient acknowledges and agrees that the Federal Government, absent express written consent by the Federal Government, is not a party to this Agreement and shall not be subject to any obligations or liabilities to Subrecipient, contractor or any other party (whether or not a party to the Agreement) pertaining to any matter resulting from this Agreement.

- g. **Notices.** Except as otherwise expressly provided in this Section, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, email or mailing the same by registered or certified mail, postage prepaid to the persons identified in the signature blocks or to such other persons, addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and sent by registered or certified mail shall be deemed delivered upon receipt or refusal of receipt. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. The parties also may communicate by telephone, regular mail or other means, but such communications shall not be deemed Notices under this Section unless receipt by the other party is expressly acknowledged in writing by the receiving party.
- h. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by, enforced under 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 (or any other agency or department of the State of Oregon) and Subrecipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State 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, from any Claim or from the jurisdiction of any court. Each party

hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

- i. Compliance with Law.** Subrecipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B. Without limiting the generality of the foregoing, Subrecipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- j. Insurance; Workers' Compensation.** All employers, including Subrecipient, that employ subject workers who provide services 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. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Subrecipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.

The Subrecipient 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.

- k. Independent Contractor.** Subrecipient shall perform the Project as an independent contractor and not as an agent or employee of OEM. Subrecipient has no right or authority to incur or create any obligation for or legally bind OEM in any way. OEM cannot and will not control the means or manner by which Subrecipient performs the Project, except as specifically set forth in this Agreement. Subrecipient is responsible for determining the appropriate means and manner of performing the Project. Subrecipient acknowledges and agrees that Subrecipient is not an "officer", "employee", or "agent" of OEM, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- l. 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.
- m. 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 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.
- n. Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- o. Integration and Waiver.** This Agreement, including all Exhibits and referenced documents, constitutes 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. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision. Subrecipient, 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.

THE PARTIES, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

City of Newport

By 

Date 04-29-30
Spencer Nebel, City Manager

Office of Emergency Management

By 

^{MS}
^{4/30/20} Clint Peña ANDREW PHELPS
Mitigation and Recovery Services Section Manager
OEM DIRECTOR
Date 30 April 2020 ^{MS}
^{4/30/20}

APPROVED AS TO LEGAL SUFFICIENCY
(If required for Subrecipient)

By N/A
Subrecipient's Legal Counsel

Date N/A

APPROVED AS TO LEGAL SUFFICIENCY

By: Sam Zeigler via email
Senior Assistant Attorney General

Date: April 9, 2020

Subrecipient Program Contact:
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Director of Public Works/City Engineer
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Finance Director
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EXHIBIT A

Attached Budget and Project Description

The State of Oregon Office of Emergency Management (OEM) has requested additional details on the City of Newport Big Creek Dam Remediation FEMA Advanced Assistance Grant application (OR-2019-003). OEM requested an expanded budget narrative as follows:

All cost estimates should match tasks, and source materials used to support the cost estimate should be referenced and include enough detail for a determination based on proposed activities and level of effort. All costs are lumped together for contractual services: identifying them in relation to the activities and schedule is necessary.

The design elements included in the grant pertain to the raw water pipeline design that conveys untreated water from the reservoir to the water treatment plant and an access road that provides a route to the upstream area of the dam. This exhibit estimates the associated fee with each element of the design as described in the grant application. The activities described below are general and detailed scope elements have not been developed for the pipeline, access road and other elements of the design. Additionally, the funding amount requested in the grant is not sufficient to complete the 90% design of either the pipeline or access road and additional funding will be required to finalize the design.

The narrative included in the grant is further described below.

Planning Goal A: Engineering Research, Planning & Design for Upgraded Raw Water Pipeline
As part of the dam remediation, upgrades to the system's raw water pipeline will be necessary, and the following tasks will need to be conducted as part of the design plans:

Task 1: Identify Operating Criteria

- Task Fee: \$20,000
- Task Duration: 1 month

Task 2: Perform hydraulic calculations and develop the hydraulic profile

- Task Fee: \$20,000
- Task Duration: 2 months

Task 3: Determine preliminary pipeline design criteria, alignment, and profile with connection details from the dam intake structure and the pump station

- Task Fee: \$30,000
- Task Duration: 1 month

Task 4: Evaluate pump-sizing calculations to specify modifications to the existing intake pumps

- Task Fee: \$20,000
- Task Duration: 2 months

Task 5: Develop design drawings and specifications

- Task Fee: \$110,000
- Task Duration: 6 months

Pipeline Design Assumptions:

- The fees and scope included above are preliminary and likely subject to change as the detailed work breakdown structure is defined.
- The funding provided by the grant is insufficient to bring the pipeline design to 90%; other funding sources will be used to pay for the difference.
- The raw water pipeline is connected to a valve house downstream of the dam and on the downstream end to the existing water treatment plant intake pump station.
- Supporting engineering studies (geotechnical, structural, survey, easements) are not included in this budget estimate.
- The design is based on current information and subject to change in case the dam design development requires adjustments to the pipeline design.
- The cost amounts listed are for the grant funded federal cost share only. Any cost beyond will be covered by the City.

Total expenses for the Planning Goal A are anticipated to be \$20,000. Expenses include travel expenses and meeting expenses. Any expense beyond will be covered by the City.

Planning Goal B: Engineering Research, Planning & Design for Replacement Access Road
Another feature of the dam remediation will include a new access road to provide safe access to upper reservoir public and private properties located upstream of the reservoir. The following tasks need to be conducted for the design of the upgraded road:

Task 1: Identify design criteria such as minimum and maximum speeds, curve radius, and drainage

- Task Fee: \$10,000
- Task Duration: 1 month

Task 2: Develop plan and profile of the new road including calculations of curves and slopes

- Task Fee: \$30,000
- Task Duration: 2 months

Task 3: Review the location of bridges and retaining walls

- Task Fee: \$10,000
- Task Duration: 3 months

Task 4: Develop design drawings and specifications

- Task Fee: \$150,000
- Task Duration: 6 months

Road Design Assumption:

- Road Design does not include geotechnical, structural and other engineering studies required for final design.
- The fees included above are preliminary and likely subject to change as the detailed work breakdown structure is defined.
- The funding provided by the grant is insufficient to bring the road design to 90%; other funding sources will be used to pay for the difference.
- Supporting engineering studies (geotechnical, structural, survey, easements) are not included in this budget estimate.
- The design is based on current information and subject to change in case the dam design development requires adjustments to the road design.

- The cost amounts listed are for the grant funded federal cost share only. Any cost beyond will be covered by the City.

Total expenses for the Planning Goal B are anticipated to be \$40,000. Expenses include travel expenses and meeting expenses. Any expense beyond will be covered by the City.

Budget & Work Schedule – 70% Access Road & Pipeline Design					
Project	Tasks	Starting Point	Duration	Cost	Total Cost
Raw Water Pipeline	Identify Operating Criteria	Month 1	1 Month	\$ 20,000	\$ 220,000
	Perform hydraulic calculations	Month 2	2 Months	\$ 20,000	
	Determine prelim pipeline design criteria	Month 4	1 Month	\$ 30,000	
	Evaluate pump-sizing calculations	Month 5	2 Months	\$ 20,000	
	Develop design drawings & specifications	Month 7	6 Months	\$ 130,000	
Access Road	Identify design criteria	Month 1	1 Month	\$ 10,000	\$ 240,000
	Develop plan & profile	Month 2	2 Months	\$ 60,000	
	Review location of bridges/walls	Month 4	3 Months	\$ 20,000	
	Develop design drawings & specifications	Month 7	6 Months	\$150,000	
Totals			12 Months	\$ 460,000	

EXHIBIT B

Federal Department of Homeland Security Standard Terms and Certifications

Subrecipient and any of its successors, transferees and assignees agrees to comply with all applicable provisions governing DHS access to record, accounts, documents, information, facilities, and staff members. In addition, recipients shall comply with the following provisions:

DEPARTMENT OF HOMELAND SECURITY (DHS) STANDARD TERMS AND CONDITIONS 2019

The 2019 DHS Standard Terms and Conditions apply to all new Federal financial assistance awards funded in FY 2019. These terms and conditions of DHS financial assistance flow down to subrecipients, unless a particular award term or condition specifically indicates otherwise.

Assurances, Administrative Requirements, Cost Principles, Representations and Certifications

DHS financial assistance recipients must complete either the Office of Management and Budget (OMB) Standard Form 424B Assurances – Non-Construction Programs, or OMB Standard Form 424D Assurances – Construction Programs, as applicable. Certain assurances in these documents may not be applicable to your program, and the DHS financial assistance office (DHS FAO) may require applicants to certify additional assurances. Applicants are required to fill out the assurances applicable to their program as instructed by the awarding agency. Please contact the financial assistance office if you have any questions.

DHS financial assistance recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at Title 2, Code of Federal Regulations (C.F.R.) Part 200, and adopted by DHS at 2 C.F.R. Part 3002.

DHS Specific Acknowledgements and Assurances

All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff.

1. Recipients must cooperate with any compliance reviews or compliance investigations conducted by DHS.
2. Recipients must give DHS access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations and other applicable laws or program guidance.
3. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.
4. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.
5. Recipients of federal financial assistance from DHS must complete the *DHS Civil Rights Evaluation Tool* within thirty (30) days of receipt of the Notice of Award or, for State Administering Agencies, thirty (30) days from receipt of the DHS Civil Rights Evaluation Tool from DHS or its awarding component agency. Recipients are required to provide this information once every two (2) years, not every time an award is made. After the initial submission for the first award under which this term applies, recipients are only required to submit updates every two years, not every time a grant is awarded. Recipients should submit the completed tool, including supporting materials, to CivilRightsEvaluation@hq.dhs.gov. This tool clarifies

the civil rights obligations and related reporting requirements contained in the DHS Standard Terms and Conditions. Subrecipients are not required to complete and submit this tool to DHS. The evaluation tool can be found at <https://www.dhs.gov/publication/dhs-civil-rights-evaluation-tool>.

Standard Terms & Conditions

I. Acknowledgement of Federal Funding from DHS

Recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposal, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

II. Activities Conducted Abroad

Recipients must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

III. Age Discrimination Act of 1975

Recipients must comply with the requirements of the *Age Discrimination Act of 1975*, Pub. L. No. 94-135 (1975) (codified as amended at Title 42, U.S. Code, § 6101 *et seq.*), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.

IV. Americans with Disabilities Act of 1990

Recipients must comply with the requirements of Titles I, II, and III of the *Americans with Disabilities Act*, Pub. L. No. 101-336 (1990) (codified as amended at 42 U.S.C. §§ 12101–12213), which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.

V. Best Practices for Collection and Use of Personally Identifiable Information (PII)

Recipients who collect PII are required to have a publicly available privacy policy that describes standards on the usage and maintenance of the PII they collect. DHS defines personally identifiable information (PII) as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. Recipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy Template as useful resources respectively.

VI. Civil Rights Act of 1964 – Title VI

Recipients must comply with the requirements of Title VI of the *Civil Rights Act of 1964* (codified as amended at 42 U.S.C. § 2000d *et seq.*), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. DHS implementing regulations for the Act are found at 6 C.F.R. Part 21 and 44 C.F.R. Part 7.

VII. Civil Rights Act of 1968

Recipients must comply with Title VII of the *Civil Rights Act of 1968*, Pub. L. No. 90-284, as amended through Pub. L. 113-4, which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (see 42 U.S.C. § 3601 *et seq.*), as implemented by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features. (See 24 C.F.R. Part 100, Subpart D.)

VIII. Copyright

Recipients must affix the applicable copyright notices of 17 U.S.C. §§ 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

IX. Debarment and Suspension

Recipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) 12549 and 12689, which are at 2 C.F.R. Part 180 as adopted by DHS at 2 C.F.R. Part 3002. These regulations restrict federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

X. Drug-Free Workplace Regulations

Recipients must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 C.F.R. Part 3001, which adopts the Government-wide implementation (2 C.F.R. Part 182) of Sec. 5152-5158 of the *Drug-Free Workplace Act of 1988* (41 U.S.C. §§ 8101-8106).

XI. Duplication of Benefits

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies; to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions; or for other reasons. However, these prohibitions would not preclude recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

XII. Education Amendments of 1972 (*Equal Opportunity in Education Act*) – Title IX

Recipients must comply with the requirements of Title IX of the *Education Amendments of 1972*, Pub. L. No. 92-318 (1972) (codified as amended at 20 U.S.C. § 1681 *et seq.*), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at 6 C.F.R. Part 17 and 44 C.F.R. Part 19

XIII. Energy Policy and Conservation Act

Recipients must comply with the requirements of the *Energy Policy and Conservation Act*, Pub. L. No. 94-163 (1975) (codified as amended at 42 U.S.C. § 6201 *et seq.*), which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

XIV. False Claims Act and Program Fraud Civil Remedies

Recipients must comply with the requirements of the *False Claims Act*, 31 U.S.C. §§ 3729-3733, which prohibits the submission of false or fraudulent claims for payment to the federal government. (See 31 U.S.C. §§ 3801-3812, which details the administrative remedies for false claims and statements made.)

XV. Federal Debt Status

All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. (See OMB Circular A-129.)

XVI. Federal Leadership on Reducing Text Messaging while Driving

Recipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513, including conducting initiatives described in Section 3(a) of the Order when on official government business or when performing any work for or on behalf of the federal government.

XVII. Fly America Act of 1974

Recipients must comply with Preference for U.S. Flag Air Carriers (air carriers holding certificates under 49 U.S.C. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the *International Air Transportation Fair Competitive Practices Act of 1974*, 49 U.S.C. § 40118, and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

XVIII. Hotel and Motel Fire Safety Act of 1990

In accordance with Section 6 of the *Hotel and Motel Fire Safety Act of 1990*, 15 U.S.C. § 2225a, recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of the *Federal Fire Prevention and Control Act of 1974*, (codified as amended at 15 U.S.C. § 2225.)

XIX. Limited English Proficiency (Civil Rights Act of 1964, Title VI)

Recipients must comply with Title VI of the *Civil Rights Act of 1964*, (42 U.S.C. § 2000d et seq.) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance: <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

XX. Lobbying Prohibitions

Recipients must comply with 31 U.S.C. § 1352, which provides that none of the funds provided under a federal financial assistance award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification.

XXI. National Environmental Policy Act

Recipients must comply with the requirements of the *National Environmental Policy Act of 1969*, Pub. L. No. 91-190 (1970) (codified as amended at 42 U.S.C. § 4321 et seq. (NEPA) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which requires recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

XXII. Nondiscrimination in Matters Pertaining to Faith-Based Organizations

It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Recipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.

XXIII. Non-Supplanting Requirement

Recipients receiving federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

XXIV. Notice of Funding Opportunity Requirements

All of the instructions, guidance, limitations, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this program are incorporated here by reference in the award terms and conditions. All recipients must comply with any such requirements set forth in the program NOFO.

XXV. Patents and Intellectual Property Rights

Recipients are subject to the *Bayh-Dole Act*, 35 U.S.C. § 200 et seq, unless otherwise provided by law. Recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from federal financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.

XXVI. Procurement of Recovered Materials

States, political subdivisions of states, and their contractors must comply with Section 6002 of the *Solid Waste Disposal Act*, Pub. L. No. 89-272 (1965), (codified as amended by the *Resource Conservation and Recovery Act*, 42 U.S.C. § 6962.) The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

XXVII. Rehabilitation Act of 1973

Recipients must comply with the requirements of Section 504 of the *Rehabilitation Act of 1973*, Pub. L. No. 93-112 (1973), (codified as amended at 29 U.S.C. § 794,) which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

XXVIII. Reporting of Matters Related to Recipient Integrity and Performance

1. General Reporting Requirements

If the total value of any currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this federal award, then the recipients during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under Pub. L. No. 110-417, § 872, as amended 41 U.S.C. § 2313. As required by Pub. L. No. 111-212, § 3010, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for federal procurement contracts, will be publicly available.

2. Proceedings about Which Recipients Must Report

Recipients must submit the required information about each proceeding that:

- a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the federal government;
- b. Reached its final disposition during the most recent five year period; and
- c. One or more of the following:
 - 1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
 - 2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
 - 3) An administrative proceeding, as defined in paragraph 5, that resulted in a finding of fault and liability and the recipient's payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
 - 4) Any other criminal, civil, or administrative proceeding if:
 - a) It could have led to an outcome described in this award term and condition;
 - b) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on the recipient's part; and
 - c) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures

Recipients must enter the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. Recipients do not need to submit the information a second time under financial assistance awards that the recipient received if the recipient already provided the information through SAM because it was required to do so under federal procurement contracts that the recipient was awarded.

4. Reporting Frequency

During any period of time when recipients are subject to the main requirement in paragraph 1 of this award term and condition, recipients must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that recipients have not reported previously or affirm that there is no new information to report. Recipients that have federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions

For the purpose of this award term and condition:

a. *Administrative proceeding*: means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the federal and state level but only in connection with performance of a federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

b. *Conviction*: means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

c. *Total value of currently active grants, cooperative agreements, and procurement contracts includes—*

- 1) Only the federal share of the funding under any federal award with a recipient cost share or match; and
- 2) The value of all expected funding increments under a federal award and options, even if not yet exercised.

XXIX. Reporting Subawards and Executive Compensation

1. Reporting of first-tier subawards.

a. *Applicability*. Unless the recipient is exempt as provided in paragraph 4 of this award term, the recipient must report each action that obligates \$25,000 or more in federal funds that does not include Recovery funds (as defined in Section 1512(a)(2) of the *American Recovery and Reinvestment Act of 2009*, Pub. L. 111-5) for a subaward to an entity (See definitions in paragraph 5 of this award term).

b. *Where and when to report*.

- 1) Recipients must report each obligating action described in paragraph 1 of this award term to the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS.)
- 2) For subaward information, recipients report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2016, the obligation must be reported by no later than December 31, 2016.)

c. *What to report*. The recipient must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov>.

2. Reporting Total Compensation of Recipient Executives.

a. Applicability and what to report. Recipients must report total compensation for each of the five most highly compensated executives for the preceding completed fiscal year, if—

- 1) The total federal funding authorized to date under this award is \$25,000 or more;
- 2) In the preceding fiscal year, recipient's received—
 - a) 80 percent or more of recipients annual gross revenues from federal procurement contracts (and subcontracts) and federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. 170.320 (and subawards); and
 - b) \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts) and federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. 170.320 (and subawards); and
- 3) The public does not have access to information about the compensation of the executives through periodic reports filed under Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or Section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

b. Where and when to report. Recipients must report executive total compensation described in paragraph 2.a. of this award term:

- 1) As part of the recipient's registration profile at <https://www.sam.gov>.
- 2) By the end of the month following the month in which this award is made, and annually thereafter.

3. Reporting of Total Compensation of Subrecipient Executives.

a. Applicability and what to report. Unless recipients are exempt as provided in paragraph 4. of this award term, for each first-tier subrecipient under this award, recipients shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

- 1) In the subrecipient's preceding fiscal year, the subrecipient received—
 - a) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. 170.320 (and subawards); and
 - b) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
- 2) The public does not have access to information about the compensation of the executives through periodic reports filed under Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or Section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

b. Where and when to report. Subrecipients must report subrecipient executive total compensation described in paragraph 3.a. of this award term:

- 1) To the recipient.

- 2) By the end of the month following the month during which recipients make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), subrecipients must report any required compensation information of the subrecipient by November 30 of that year.

4. Exemptions

If, in the previous tax year, recipients had gross income, from all sources, under \$300,000, then recipients are exempt from the requirements to report:

- a. Subawards, and
- b. The total compensation of the five most highly compensated executives of any subrecipient.

5. Definitions For purposes of this award term:

a. *Entity*: means all of the following, as defined in 2 C.F.R. Part 25:

- 1) A Governmental organization, which is a State, local government, or Indian tribe;
- 2) A foreign public entity;
- 3) A domestic or foreign nonprofit organization;
- 4) A domestic or foreign for-profit organization;
- 5) A federal agency, but only as a subrecipient under an award or subaward to a non-federal entity.

b. *Executive*: means officers, managing partners, or any other employees in management positions.

c. *Subaward*: means a legal instrument to provide support for the performance of any portion of the substantive project or program for which the recipient received this award and that the recipient awards to an eligible subrecipient.

- 1) The term does not include recipients procurement of property and services needed to carry out the project or program.
- 2) A subaward may be provided through any legal agreement, including an agreement that a recipient or a subrecipient considers a contract.

d. *Subrecipient*: means an entity that:

- 1) Receives a subaward from the recipient under this award; and
- 2) Is accountable to the recipient for the use of the federal funds provided by the subaward.

e. *Total compensation*: means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (See 17 C.F.R. § 229.402(c)(2)):

- 1) *Salary and bonus*.
- 2) *Awards of stock, stock options, and stock appreciation rights*. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

- 3) *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- 4) *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.
- 5) *Above-market earnings on deferred compensation which is not tax-qualified.*
- 6) *Other compensation,* if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

XXX. SAFECOM

Recipients receiving federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

XXXI. Terrorist Financing

Recipients must comply with E.O. 13224 and U.S. laws that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Recipients are legally responsible to ensure compliance with the Order and laws.

XXXII. Trafficking Victims Protection Act of 2000 (TVPA)

Trafficking in Persons.

1. Provisions applicable to a recipient that is a private entity.

a. Recipients, the employees, subrecipients under this award, and subrecipients' employees may not—

- 1) Engage in severe forms of trafficking in persons during the period of time the award is in effect;
- 2) Procure a commercial sex act during the period of time that the award is in effect; or
- 3) Use forced labor in the performance of the award or subawards under the award.

b. DHS may unilaterally terminate this award, without penalty, if a recipient or a subrecipient that is a private entity—

- 1) Is determined to have violated a prohibition in paragraph 1. a of this award term; or
- 2) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph 1. a of this award term through conduct that is either—
 - a) Associated with performance under this award; or
 - b) Imputed to recipients or subrecipients using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 C.F.R. Part 3000.

2. Provision applicable to recipients other than a private entity.

DHS may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

a. Is determined to have violated an applicable prohibition in paragraph 1. a. of this award term; or

b. has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph 1. a of this award term through conduct that is either—

- 1) Associated with performance under this award; or
- 2) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 C.F.R. Part 3000.

3. Provisions applicable to any recipient.

a. Recipients must inform DHS immediately of any information received from any source alleging a violation of a prohibition in paragraph 1. a of this award term.

b. It is DHS's right to terminate unilaterally that is described in paragraph 1.b or 2 of this section:

- 1) Implements TVPA, Section 106(g) as amended by 22 U.S.C. 7104(g)), and
- 2) Is in addition to all other remedies for noncompliance that are available to us under this award.

c. Recipients must include the requirements of paragraph 1. a of this award term in any subaward made to a private entity.

4. Definitions. For the purposes of this award term:

a. *Employee*: means either:

- 1) An individual employed by a recipient or a subrecipient who is engaged in the performance of the project or program under this award; or
- 2) Another person engaged in the performance of the project or program under this award and not compensated by the recipient including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

b. *Forced labor*: means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

c. *Private entity*: means any entity other than a state, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. § 175.25. It includes:

- 1) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. § 175.25(b).
- 2) A for-profit organization.

d. *Severe forms of trafficking in persons, commercial sex act, and coercion* are defined in TVPA, Section 103, as amended (22 U.S.C. § 7102)

XXXIII. Universal Identifier and System of Award Management

1. Requirement for System for Award Management

Unless the recipient is exempted from this requirement under 2 C.F.R. 25.110, the recipient must maintain the currency of their information in the SAM until the recipient submits the final financial report required under this award or receive the final payment, whichever is later. This requires that the recipient review and update the information at least annually after the initial registration, and more frequently if required by changes in the recipient's information or another award term.

2. Requirement for unique entity identifier

If recipients are authorized to make subawards under this award, they: a. Must notify potential subrecipients that no entity (see definition in paragraph 3 of this award term) may receive a subaward from the recipient unless the entity has provided its unique entity identifier to the recipient. b. May not make a subaward to an entity unless the entity has provided its unique entity identifier to the recipient.

3. Definitions

For purposes of this award term:

a. *System for Award Management (SAM)*: means the federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found on SAM.gov.

b. *Unique entity identifier*: means the identifier required for SAM registration to uniquely identify business entities.

c. *Entity*: means all of the following, as defined at 2 C.F.R. Part 25, Subpart C:

- 1) A Governmental organization, which is a State, local government, or Indian Tribe;
- 2) 2) A foreign public entity;
- 3) 3) A domestic or foreign nonprofit organization;
- 4) A domestic or foreign for-profit organization; and
- 5) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

d. *Subaward*: means a legal instrument to provide support for the performance of any portion of the substantive project or program for which a recipient received this award and that the recipient awards to an eligible subrecipient.

- 1) The term does not include the recipients procurement of property and services needed to carry out the project or program (for further explanation, see 2 C.F.R.200.330).
- 2) A subaward may be provided through any legal agreement, including an agreement that a recipient considers a contract.

e. *Subrecipient* means an entity that:

- 1) Receives a subaward from the recipient under this award; and
- 2) Is accountable to the recipient for the use of the Federal funds provided by the subaward.

XXXIV. USA PATRIOT Act of 2001

Recipients must comply with requirements of Section 817 of the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001* (USA PATRIOT Act), which amends 18 U.S.C. §§ 175-175c.

XXXV. Use of DHS Seal, Logo and Flags

Recipients must obtain permission from their DHS FAO prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

XXXVI. Whistleblower Protection Act

Recipients must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C § 2409, 41 U.S.C. § 4712, and 10 U.S.C. § 2324, 41 U.S.C. §§ 4304 and 4310.

EXHIBIT C

Subagreement Insurance Requirements

GENERAL.

Subrecipient shall require its first tier contractor(s) (Contractor) that are not units of Subrecipient as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before the contractors perform under contracts between Subrecipient 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 OEM. Subrecipient shall not authorize contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, Subrecipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Subrecipient 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 Subrecipient permit a contractor to work under a Subcontract when the Subrecipient 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 Subrecipient 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 OEM. 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.

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 OEM 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 OEM has received a waiver of subrogation endorsement from the Contractor or the Contractor's insurer(s).

TAIL COVERAGE:

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Contractor shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Subcontract, for a minimum of 24 months following the later of (i) Contractor's completion and Subrecipient's acceptance of all Services required under this Subcontract, or, (ii) Subrecipient's or Contractor termination of contract, or, iii) The expiration of all warranty periods provided under this Subcontract.

CERTIFICATE(S) AND PROOF OF INSURANCE:

Subrecipient 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 OEM 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 Subrecipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

INSURANCE REQUIREMENT REVIEW:

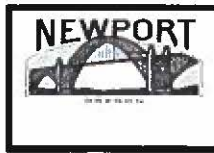
Contractor agrees to periodic review of insurance requirements by OEM under this agreement and to provide updated requirements as mutually agreed upon by Contractor and OEM.

STATE ACCEPTANCE:

All insurance providers are subject to OEM acceptance. If requested by OEM, Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to OEM's representatives responsible for verification of the insurance coverages required under this Exhibit C.

EXHIBIT D
Information required by 2 CFR 200.331(a)

1. Federal Award Identification: HMGP-PF-FM-5195-OR-2
 - (i) Sub-recipient name (which must match registered name in DUNS): City of Newport
 - (ii) Sub-recipient's DUNS number: 030794671
 - (iii) Federal Award Identification Number (FAIN): HMGP-PF-FM-5195-OR-2
 - (iv) Federal Award Date: March 31, 2020
 - (v) Sub-award Period of Performance: March 25, 2020 through January 29, 2023
 - (vi) Total Amount of Federal Funds Obligated by this Agreement: \$345,000
 - (vii) Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this agreement: \$1,998,126.62
 - (viii) Total Amount of Federal Award committed to the subrecipient by the pass-through entity: \$1,653,126.62
 - (ix) Federal award project description: City of Newport Advance Funding Request Project (Advance Assistance)
 - (x) Name of Federal awarding agency: U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA)
 - (a) Name of Pass-through entity: Oregon Military Department, Office of Emergency Management
 - (b) Contact information for awarding official of the pass-through entity: Andrew Phelps, Director, P.O. Box 14370, Salem, OR 97309-5062
 - (xi) CFDA Number and Name: 97.039 Hazard Mitigation Grant Program
Total Project Amount: \$460,000
 - (xii) Is Award R&D? No
 - (xiii) Indirect cost rate for the Federal award: 0%
2. Subrecipient's indirect cost rate: 12%



**AUTHORIZATION FOR
AGREEMENTS, MOUs, OR
OTHER DOCUMENTS OBLIGATING
THE CITY**

All contracts, agreements, grant agreements, memoranda of understanding, or any document obligating the city (with the exception of purchase orders), requires the completion of this form. The City Manager will sign these documents after all other required information and signatures are obtained.

Document: FEMA AA grant Date: 4/27/20

Statement of Purpose: \$345K grant for Big Creek Dams

Department Head Signature: [Signature]

Remarks, if any: Reviewed by Attorney and corrections/additions made

City Attorney Review and Signature: _____ Date: 4/13/20

Other Signatures as Requested by the City Attorney: _____

	Signature	Name/Position
Budget Confirmed:	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>	Date: _____
Certificate of Insurance Attached:	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	
City Council Approval Needed:	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Date: <u>4/20/20</u>

After all the above requested information is complete and signatures obtained, return this form, along with the original document to the City Manager for signature. No documents should be executed prior to the City Manager's approval as evidenced by signature of this document.

City Manager Signature: [Signature] Date: 4/27/20

Once all signatures and certificates of insurance have been obtained, return this document, along with the original, fully-executed agreement, MOU, or other document to the City Recorder. A copy of grant agreement and all project funding documents, must be forwarded to the Finance Department for tracking and audit purposes.

City Recorder Signature: [Signature] Date: 4/30/2020

Date posted on website: 5/4/20

