

STATE OF OREGON  
OREGON EMERGENCY MANAGEMENT  
INFRASTRUCTURE CONTRACT 4055-DR-OR

RECEIVED

APR 18 2012

Oregon Emergency Management

1.0 PARTIES TO THIS AGREEMENT

This Agreement is made and entered into by and between the State of Oregon, by and through the Oregon Military Department, Office of Emergency Management, hereinafter referred to as "OEM" and the City of Newport, hereinafter referred to as the "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 the Severe Winter Storm, Flooding, Landslides and Mudslides on January 17-21, 2012 and

WHEREAS OEM is authorized by the 2012 FEMA-State Agreement for the 2012 Severe Winter Storm, Flooding, Landslides and Mudslides to execute on behalf of the State of Oregon all necessary documents for public assistance, 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 OEM. Under the authority of Presidential Major Disaster Declaration FEMA 4055-DR-OR, OEM is reimbursing the SUBGRANTEE for those eligible costs and activities necessary for the repair and restoration of public facilities damaged during the period of January 17-21, 2011, in the manner described herein.

3.0 TIME OF PERFORMANCE

Activities payable under this Agreement and to be performed by the SUBGRANTEE under this Agreement shall be those activities which occurred on or subsequent to the incident period defined in the FEMA-State Agreement and shall terminate upon completion of the project(s) approved by federal and state officials, including completion of close out and audit. This period shall be referred to as the "Agreement Period."

4.0 CLOSE-OUT

It shall be the responsibility of OEM to issue close-out instructions to the SUBGRANTEE upon completion of the project(s).

5.0 FUNDING

OEM will administer the disaster assistance program and reimburse any eligible costs for eligible projects to the SUBGRANTEE which are identified under the auspices of the Presidential Major Disaster Declaration FEMA-4055-DR-OR. It is understood that no final dollar figure is committed to at the time that this Agreement is executed, but that financial commitments will be made by amendments to the project application as Project Worksheets are completed in the field and projects are authorized by state and federal officials.

The parties understand that FEMA will contribute 75 percent of the eligible costs for any eligible project, that a subgrantee allowance may be made at the end of a project, subject to FEMA approval of documentation submitted by OEM and as provided for in subsection 3 of Section 6.0 of this Agreement, and that no state funds are obligated for contribution under this Agreement.

The SUBGRANTEE will commit and is responsible for providing the required 25 percent match to any eligible project for the SUBGRANTEE which has been identified under the Presidential Major Disaster Declaration FEMA-4055-DR-OR and for which funding is authorized by state and federal officials.

## 6.0 PAYMENTS

OEM, using funds granted for the purposes of the Presidential Major Disaster Declaration from FEMA, shall issue payments to the SUBGRANTEE as follows:

1. Small Projects:
  - a) Small Projects are eligible for funding up to an amount designated by FEMA as provided in 44 CFR 206.205(a). For FEMA-4055-DR-OR, that amount is \$66,400.
  - b) Payments are made for all small projects to the SUBGRANTEE upon submission of a State of Oregon Disaster Assistance Payment Request to OEM, and the subsequent approval by OEM.
2. Large Projects
  - a) Large Projects are eligible for funding in excess of the amount allowed for Large Projects, as provided in 44 CFR 206.205(b).
  - b) Partial Payments: Partial payment of funds for costs already incurred on large projects may be made to the SUBGRANTEE upon submission of a State of Oregon Disaster Assistance Payment Request, with appropriate supporting documentation, to OEM, upon approval by OEM.
  - c) Final Payment: Final payment will be made upon submission by the SUBGRANTEE of CERTIFICATION OF LARGE PROJECT COST, completion of project(s), completion of all final inspections by OEM, and final approval by FEMA. Final payment may also be conditioned upon a financial review, if determined necessary by OEM 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.

All payment requests shall be made on a State of Oregon Disaster Assistance Payment Request Form to OEM, which references the appropriate Project Worksheet (PW), and appropriate documentation as required.

3. Funding shall not exceed the total federal contributions eligible for the repair and restoration costs under this Presidential Major Disaster Declaration FEMA-4055-DR-OR. On Large Projects, OEM 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 RECORDS MAINTENANCE

The SUBGRANTEE shall maintain 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 OEM personnel, other personnel duly authorized by OEM, the Secretary of State's Audits Division or the United States Inspector General. The 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.

## 8.0 PROPERTY/EQUIPMENT MANAGEMENT AND RECORDS CONTROL AND RETENTION OF RECORDS

1. Property/Equipment Management and Records Control. The Subgrantee agrees to comply with all requirements set forth in 44 CFR Part 13 for the active tracking and monitoring of property/equipment. Procedures for managing property/equipment. Procedures for managing property/equipment, whether acquired in whole or in part with grant funds, until disposition takes place, will, at a minimum, meet the following requirements:
  - a. All property/equipment purchased under this agreement, whether by the Subgrantee or a subcontractor, will be recorded and maintained in the Subgrantee's property/equipment inventory system.
  - b. The Subgrantee shall maintain property/equipment records that include: a description of the property/equipment, the manufacturer's serial number, model number, or other identification number, the source of the property/equipment, including the, Project Worksheet number, Catalog of Federal Domestic Assistance (CFDA) number, who holds title; the acquisition date; the cost of the property/equipment and the percentage of Federal participation in the cost, the location, use and condition of the property/equipment, and any ultimate disposition data including the date of disposition and sale price of the property/equipment.
  - c. A physical inventory of the property/equipment must be taken and the results reconciled with the property/equipment records, at least once every two years.
  - d. A control system must be developed to ensure adequate safeguards to prevent loss, damage or theft of the property/equipment. Any loss, damage or theft shall be investigated.
  - e. Adequate maintenance procedures must be developed to keep the property/equipment in good condition.
  - f. If the Subgrantee is authorized to sell the property/equipment, proper sales procedures must be established to ensure the highest possible return.

- g. The Subgrantee shall pass on property/equipment management requirements that meet or exceed the requirements outlined above for all subcontractors, consultants and the subgrantees who receive pass-through funding from this grant agreement.
2. Retention of Property/Equipment Records. Records for property/equipment shall be retained for a period of six years from the date of the disposition or replacement or transfer at the discretion of the awarding agency. Title to all property/equipment and supplies purchased with funds made available under the FEMA Public Assistance program shall vest in the Subgrantee agency that purchased the property/equipment.

## 9.0 AUDITS

Audits shall be in accordance with the Single Audit Act of 1984 as amended. The 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 OEM.
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 A-133.

As applicable, the 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.

The SUBGRANTEE must prepare a Schedule of Financial Assistance for federal funds that includes: Grantor name, program name, federal catalog number (CFDA-97.036), grantor agreement number, total award amount, beginning balance, current year revenues, current year expenditures and ending balance.

The SUBGRANTEE shall maintain records and accounts in such a way as to facilitate OEM's audit requirements, and shall ensure that Subcontractors also maintain records which are auditable. The SUBGRANTEE is responsible for any audit exceptions incurred by itself or by its Subcontractors. OEM reserves the right to recover from the SUBGRANTEE disallowed costs resulting from the final audit.

The SUBGRANTEE shall send the audit report to OEM'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 SUBGRANTEE receives any funds under this Agreement. Responses to previous management findings and disallowed or questioned costs shall be included with the audit report. The SUBGRANTEE will respond to OEM's requests for information or corrective action concerning audit issues within 30 days of the request.

The SUBGRANTEE shall include these requirements in any subcontracts.

#### 10.0 RECOVERY OF FUNDS

In the event that the SUBGRANTEE fails to complete the project(s), fails to expend or is overpaid federal funds in accordance with federal or state disaster assistance laws or programs, or is found by audit or investigation to owe funds to the State or to FEMA, OEM reserves the right to recapture funds in accordance with federal or state laws and requirements. Repayment by the SUBGRANTEE of funds under this recovery provision shall occur within 30 days of demand. In the event that OEM is required to initiate legal proceedings to enforce this recovery provision, OEM 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

The 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, is not assignable or delegable by the SUBGRANTEE either in whole or in part.

#### 14.0 SUBCONTRACTS FOR ENGINEERING SERVICES

In the event that the SUBGRANTEE subcontracts for engineering services, the 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 subcontract. If the firm is unable to obtain errors and omissions insurance, the firm shall post a bond with the SUBGRANTEE for the benefit of the 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 subcontract shall constitute a material breach of

the subcontract and cause for subcontract termination. The SUBGRANTEE shall cause the subcontractor to provide it with a 30 day notice of cancellation issued by the insurance company.

#### 15.0 APPEALS

Consistent with the Code of Federal Regulations, 44 CFR 206.206, the SUBGRANTEE may appeal any determination previously made related to the federal assistance for the 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.

Upon receipt of a SUBGRANTEE's appeal, OEM will review the material submitted, make such additional investigations as necessary, and shall forward the appeal with a written recommendation to FEMA within 60 days. Within 90 days following receipt of the appeal, FEMA shall advise OEM, in writing, as to the disposition of the appeal or the need for additional information. If the decision is to grant the appeal, then FEMA will take the appropriate implementing action.

#### 16.0 GOVERNING LAW AND VENUE

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 provided, however, if the Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively with the United States District Court for the District of Oregon. SUBGRANTEE, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

#### 17.0 TERMINATION

1. Except as otherwise provided in this Agreement, either party may terminate this Agreement upon giving thirty (30) days written notice to the other party. 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.
2. OEM may terminate all or part of this Agreement or may change project specifications if there is a reduction in federal funds which are the basis for this Agreement.
3. OEM may terminate this Agreement, in whole or in part, immediately upon written notice to SUBGRANTEE, or at such later date as OEM may establish in such notice, if SUBGRANTEE commits any material breach or default of any covenant, warranty, obligation or certification under this Agreement. In its notice, OEM may permit SUBGRANTEE an opportunity to cure the breach, default or Failure in such time and on such terms as OEM may specify in such notice.

## 18.0 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.

## 19.0 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, the SUBGRANTEE shall, as required by ORS 401.145(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.

## 20.0 SUBGRANTEE ASSURANCES

SUBGRANTEE represents and warrants to OEM as follows:

1. SUBGRANTEE is political subdivision of the State of Oregon. SUBGRANTEE has full power, authority and legal right to execute and deliver this Agreement and incur and perform its obligations hereunder.
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. The 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, 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 DR4055; 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. The 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. The 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. The 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. The SUBGRANTEE will comply with minimum wage and maximum hours provision of the Federal Fair Labor Standards Act.
9. The 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 (Executive Order 11246, 11375, 41 CFR Chapter 60). A violation of this provision is a material breach and cause for termination under Section 17.0 of this Agreement.
10. The SUBGRANTEE shall utilize certified minority-owned and women-owned businesses (MWBE's) to the maximum extent possible in the performance of this Agreement.
11. The SUBGRANTEE agrees to provide the existing prevailing rate of wage according to ORS 279C.800 to 279c.870 and, if applicable, the federal prevailing rate of wage required under the federal Davis-Bacon Act (40 U.S.C 3141 et seq.) that must be paid to workers in each trade or occupation that is used in performing all or part of this agreement.
12. The 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.
13. Subgrantee will comply, and will ensure that other entities comply, with the Buy American Act (41 USC 10a et seq.) when expending funds received under this Agreement.

14. Subgrantee will comply with the Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).
15. Subgrantee will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).
16. Notice of awarding agency requirements and regulations pertaining to reporting. – Reporting requirements: The Subgrantee will submit a Quarterly Project Status Report (OEM Form) on all Large projects to OEM on a 3-month interval. OEM will submit quarterly progress reports to FEMA that will contain the status of all large projects that have not received final payment. The first quarterly report will be submitted on a quarterly schedule mutually agreed upon between FEMA and OEM. Quarterly reports after that date will be due in OEM by July 15, October 15, January 15 and April 15.
17. Subgrantee will comply with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Air Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
18. Subgrantee shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conversation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

#### 21.0 OWNERSHIP OF PROJECT/CAPITAL FACILITIES

OEM 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 interest or title to such property of the SUBGRANTEE.

#### 22.0 ACKNOWLEDGMENTS

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

#### 23.0 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.

#### 24.0 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.

25.0 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.

26.0 AGREEMENT ADMINISTRATION

The Parties' representatives for purposes of this agreement are:

For SUBGRANTEE:

NAME Timothy Gross  
TITLE Director of Public Works / City Engineer  
ADDRESS 169 SW. Coast Hwy  
CITY Newport, OR 97365  
Phone: 541-574-3369  
Fax: 541-265-3301

For OEM:

Paulina Layton  
Alternate Governor's Authorized Representative  
Oregon Emergency Management  
P. O. Box 14370  
Salem, OR 97309-5062  
Phone: (503)378-2911, ext 22292  
Fax: 503-373-7833

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.

27.0 ENTIRE AGREEMENT

This Agreement sets forth the entire Agreement between the parties with respect to the subject matter hereof. Any additional terms and conditions imposed by the Federal Emergency Management Agency or OEM 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, OEM and the SUBGRANTEE have executed this Agreement as of the date and year written below.

*Paulina Layton*

Paulina Layton, Alternate GAR  
Office of Emergency Management  
Date: 4-23-12

*Timothy Gross*

Subgrantee Signature  
Printed Name: Timothy Gross  
Title: Director of Pub/City Engineer  
Date: 4/16/12

APPROVED  
FOR LEGAL SUFFICIENCY

Steve Wolf  
Assistant Attorney General  
By Email  
DATE: 3/23/12

Oregon Emergency Management  
P. O. Box 14370  
Salem, OR 97309-5062  
CFDA: 97-036

SUBGRANTEE - PLEASE PRINT THE  
FOLLOWING TO EXPEDITE PROCESSING

Federal Tax ID No. (TIN): 93-6002222

DUNS #: 030794671

Organization: City of Newport

Address: 169 SW Coast Hwy, Newport, OR 97366

Phone: 541-574-3369