

STATE OF OREGON

OREGON OFFICE OF EMERGENCY MANAGEMENT

PRE-DISASTER MITIGATION PROGRAM CONTRACT, FEMA PDM 2013

1.0 PARTIES TO THIS AGREEMENT

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

2.0 PURPOSE

Federal funding is provided by the Federal Emergency Management Agency, Department of Homeland Security (FEMA) and is administered by Grantee. Under the authority of section 203 of the Stafford Act, Grantee is reimbursing the Subgrantee for those eligible costs and activities necessary for the implementation of the Pre-Disaster Mitigation grant project entitled **City of Portland Natural Hazard Mitigation Plan** dated **July 8, 2014**, and described in the application materials submitted to Grantee as the work to be performed, hereinafter referred to as the "Project".

3.0 TIME OF PERFORMANCE

Activities payable under this Agreement and to be performed by Subgrantee under this Agreement shall be those activities which occurred starting **July 1, 2013**¹ and shall terminate upon completion of the Project approved by federal and state officials, including completion of close-out and audit. This period shall be referred to as the "Agreement Period." Except as otherwise provided in this Section 3.0, the Project shall be completed no later than **January 9, 2016**.

In the event of extenuating circumstances preventing Subgrantee from completing the Project on or before the FEMA performance deadline of **January 9, 2016** Grantee may, at its sole discretion and if approved beforehand by FEMA, grant a time extension to the approved Project. Request for an extension of time shall be submitted by Subgrantee in writing with an explanation of the extenuating circumstances.

¹ Performance period for this subgrant begins to include pre-award costs

4.0 CLOSE-OUT

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

5.0 FUNDING

The total estimated Project cost associated with this Grant Agreement is **\$385,482**.

The Grantee will administer the PDM program and reimburse any eligible costs for the Project to the Subgrantee which are identified in the Scope of Work – Budget and provided by the Subgrantee and approved by the Grantee and FEMA.

The parties understand that FEMA will contribute up to sixty nine percent (69%) of the costs for eligible grant expenses and that no state funds are obligated for contribution under this Agreement. Subgrantee understands that the Grantee has established a financial limitation for the obligation of federal funds for the PDM grant. The limit established for maximum obligation of federal funds is **\$265,982**.

Subgrantee will commit at least the required thirty one percent (31%) non-federal match to any eligible project. The non-federal match can be cash, in-kind or a combination of both.

6.0 PAYMENTS

The Grantee, using funds granted for the purposes of the Pre-Disaster Mitigation Grant Program program from FEMA, shall issue payments to the Subgrantee as follows:

1. Payments will be made to Subgrantee upon submission and approval of a State of Oregon PDM Payment Request to the Grantee. Partial payments of funds for costs already incurred may be requested at any time during the Project. This request must include appropriate supporting documentation of the incurred costs, and Subgrantee must be in compliance with Section 7.0, Reporting Requirements.
2. Final Payment will be made upon completion of the Project, completion of all final inspections and approvals by Grantee, and final approval by FEMA. Final payment will also be conditioned upon a financial review by Grantee or FEMA. Adjustments to the final payment may be made following any audits conducted by the Oregon Secretary of State's Audits Division or the United States Inspector General's Office.

3. All payment requests shall be made on a State of Oregon PDM Program Payment Request Form to the Grantee, which references the appropriate PDM grant number, FEMA FIPS Number, DUNS number and appropriate documentation as required.
4. Funding shall not exceed the total federal contributions available for the approved project costs under the Pre-Disaster Mitigation Program.
5. Grantee reserves the right to make any inspection of the Project prior to release of any payment or at any time during the duration of this Agreement.

7.0 REPORTING REQUIREMENTS

Subgrantee shall provide reports on the progress and financial status of the Project to Grantee within fifteen (15) days of the end of each calendar quarter on forms prescribed by Grantee. Reports are due to Grantee each January 15th, April 15th, July 15th and October 15th.

8.0 COST OVERRUNS

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

9.0 RECORDS MAINTENANCE

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

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

10.0 AUDITS

Audits shall be in accordance with the Single Audit Act of 1984 and 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 Grantee.
2. Subgrantee receiving \$50,000 to \$500,000 in total Federal funds in a fiscal year may choose to have an audit made in accordance with the Office of Management and Budget (OMB) Circular A-133 or a program audit.
3. Subgrantee receiving \$500,000 or more in a fiscal year in total Federal funds shall have a Single Audit made in accordance with OMB Circular A-133.

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

Subgrantee must prepare a Schedule of Expenditures of Federal Awards (SEFA) that includes: Federal grantor name, pass-through entity name, program name, Federal catalog number (CFDA-97.047), identifying number assigned by the pass-through entity and current year expenditures.

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

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

Subgrantee shall include these requirements in any contract or subcontracts.

11.0 RECOVERY OF FUNDS

In the event that the Subgrantee fails to complete the Project(s), fails to expend or is over paid federal funds in accordance with federal or state laws or programs, or is found by audit or investigation to be owing to the Grantee, the Grantee reserves the right to recapture funds in accordance with federal and state laws and requirements. Repayment by the Subgrantee of Agreement funds under this recovery provision shall occur within 30 days of demand. In the event that legal proceedings are instituted to enforce or interpret this Agreement, the prevailing party shall be entitled to its costs thereof, including reasonable attorney fees from the non-prevailing party.

12.0 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.

13.0 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.

14.0 ASSIGNMENT

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

15.0 AMENDMENTS

This Agreement may not be amended except in writing signed by the parties. Subgrantee acknowledges and agrees that FEMA may require changes to terms and conditions agreed to by the Grantee and Subgrantee and that failure to agree to changes required by FEMA shall be cause for termination of this Agreement.

16.0 GOVERNING LAW AND VENUE

1. This Agreement shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between Grantee and Subgrantee that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. Subgrantee, by execution of this Agreement, consents

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

2. Notwithstanding Section 1, if a claim must be brought in a Federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in Federal court. This section is also not a waiver by the State of Oregon of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

17.0 TERMINATION; CORRECTIVE ACTIONS

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, and Subgrantee will return all Federal funds paid to Subgrantee for the Project which have not been expended or irrevocably committed to eligible activities.
2. Grantee may unilaterally terminate all or part of this Agreement or may reduce its scope of work if there is:
 - a. A reduction in Federal funds which are the basis for this Agreement, or,
 - b. A material misrepresentation, error, or inaccuracy in Subgrantee's application.
3. Termination upon Noncompliance by Subgrantee
 - a. Grantee may terminate this Agreement, in whole or in part, immediately upon written notice to Subgrantee, or at such later date as Grantee 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, Grantee may permit Subgrantee an opportunity to cure the breach, default or failure in such time and on such terms as Grantee may specify in such notice.
 - b. 1. If Grantee's inspections and review of Subgrantee support documentation reveal deficiencies or unapproved variances in performance or documentation of the work, Grantee will notify the Subgrantee, which will correct deficiencies or variances before program closure.

2. If Subgrantee's corrective actions do not resolve deficiencies or variances from the approved Project, Grantee will so notify Subgrantee. If Grantee determines that the deficiencies or variances constitute noncompliance with or nonconformance to the Pre-Disaster Mitigation Grant Program requirements or conditions, Grantee will notify Subgrantee of that determination and recover obligated funds from the Subgrantee and take other actions authorized or required under 44 CFR 13.43 (Enforcement) or 44 CFR 13.44 (Termination for Convenience) that are appropriate in the circumstances.

18.0 SAVINGS

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

19.0 WAIVERS

The failure of Grantee to exercise, and any delay in exercising, any right, power, or privilege under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude any further exercise thereof or the exercise of any other such right, power, or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

20.0 INDEMNIFICATION

To the extent permitted by any constitutional and statutory limitations applicable to Subgrantee, including, but not limited to, provisions relating to debt limits, tort claims limits and workers' compensation, Subgrantee shall, as required by ORS 401.145(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.

The Subgrantee shall require any of its contractors or subcontractors to defend, save, hold harmless and indemnify the State of Oregon, Grantee, and their officers, employees, agents, and members, from all claims, suits or actions of whatsoever nature resulting from or arising out of the activities of subcontractor under or pursuant to this Agreement.

The Subgrantee shall, if liability insurance is required of any of its contractors or subcontractors, also require such contractors or subcontractors to provide that the State of Oregon, Grantee, and their officers, employees and members are

Additional Insureds, but only with respect to the contractor's or subcontractor's services performed under this Agreement.

21.0 SUBGRANTEE ASSURANCES

Subgrantee represents and warrants to Grantee as follows:

1. Subgrantee is a 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. The making and performance by the Subgrantee of this Agreement (a) have been duly authorized by all necessary action of the Subgrantee, (b) do not and will not violate any provision of any applicable law, rule, or regulation or order of any court, regulatory commission, board or other administrative agency or any provision of the Subgrantee's articles of incorporation or bylaws and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which the Subgrantee is a party or by which the Subgrantee or any of its properties are bound or affected.
3. 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.
4. Approvals. 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 the Subgrantee of this Agreement.
5. The Subgrantee hereby assures and certifies that it will comply with all applicable state and federal laws and regulations, including, but not limited to, requirements pertinent to Pre-Disaster Mitigation Assistance Program grants
6. Subgrantee hereby assures and certifies that it will comply with all applicable state and federal laws and regulations, including, but not limited to, the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC §§ 5121-5206 (Public Law 93-288, as amended; hereafter "Stafford Act"); 44 CFR Parts 7, 13, 14, 17, 18 and 206, and Subchapters B, C and D; Office of Management and Budget Circulars A-21(2 CFR Part 220), A-87(2 CFR Part 225), A-102, A-110 (2 CFR Part 215), A-122 (2 CFR Part 230) and A-133; the Oregon State Public Assistance Administrative Plan dated September 1993; Wages, Hours and Records Laws (ORS Chapter 652) Conditions of Employment Laws (ORS Chapter 643) and Unemployment Insurance Laws (ORS Chapter 657).

7. 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.
8. 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.
9. 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.
10. 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.
11. Subgrantee will comply with minimum wage and maximum hour's provision of the Federal Fair Labor Standards Act.
12. Subgrantee shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including without limitation the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270. Without limiting the generality of the foregoing, Subgrantee expressly agrees to comply with: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws,

regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(ee)), recycled PETE products (as defined in ORS 279A.010(1)(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(gg)).

13. Subgrantee shall utilize certified minority-owned and women-owned businesses (MWBE's) to the maximum extent possible in the performance of this Agreement.
14. Subgrantee does not have to comply with the provisions of the Davis-Bacon Act for grants made under the disaster assistance program, unless otherwise required by law. However, the State of Oregon Prevailing Wage Rates of Public Works Contracts in Oregon, or BOLI (Oregon Bureau of Labor and Industries) regulations must be followed. If FEMA or any other Federal agencies are a party to a contract for the repair or restoration of a public building or public facility, the contract would have to comply with the Davis-Bacon Act.
15. Subgrantee and its contractors, subcontractors, and other employers providing work, labor, or materials as a result of the application are subject employers under the Oregon Workers' Compensation Law. All employers, including Subgrantee, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements. This shall include Employer's Liability Insurance with coverage limits of not less than \$100,000 for each accident.

22.0 ACKNOWLEDGMENTS

The Subgrantee shall include language which acknowledges the funding contribution of FEMA to this Project in any information 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:

CONTACT: Jonna Papaefthimiou, Planning & Preparedness Manager
ADDRESS: 9911 SE Bush Street
CITY: Portland, OR 97266
Phone: (503) 823-3809
Fax: (503) 823-3903

For GRANTEE:

Sean McCormick
Section Manager, Mitigation and Recovery Services
Office of Emergency Management
P.O. Box 14370
Salem, OR 97309-5062
Phone: (503) 378-2911, ext. 22227
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 or conditions imposed by FEMA or Grantee will be incorporated into an amendment to this Agreement. Commitments, warranties, representations, and understandings or agreements not contained, or referred to, in this Agreement or written amendment hereto shall not be binding on either party. Except as may be expressly provided herein, no alteration of any of the terms or conditions of this Agreement will be effective without the written consent of both parties.

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

Governor's Alternate Authorized Representative
Oregon Emergency Management

DATE: _____

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

CFDA: 97.047

Approved for Legal Sufficiency:

Keith Kutler
Assistant Attorney General

Authorized Agent Signature
Subgrantee
Printed Name: _____
Title: _____
DATE: _____

Subgrantee - PLEASE PRINT THE
FOLLOWING TO EXPEDITE
PROCESSING:

Federal Tax ID No. (TIN): 93-6002236

DUNS #: 054971197

Organization: City of Portland

Address: 1120 SW Fifth Ave., Rm 1250
Portland, OR 97204-1912

Phone: 503-823-6944

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