

RESOLUTION NO. 1115

A RESOLUTION OF THE CITY OF CANBY, OREGON APPROVING AN AGREEMENT WITH THE STATE OF OREGON EMERGENCY MANAGEMENT DEPARTMENT FOR A PRE-DISASTER MITIGATION PROJECT TO COMPLETE A SEISMIC RETROFIT OF A WATER RESERVOIR LOCATED IN THE CITY OF CANBY.

WHEREAS, in the fall of 2010, Canby Utility applied to the State of Oregon for a Pre-Disaster Mitigation Grant offered by FEMA to proceed with a seismic retrofit of an existing water reservoir located in Southwest Canby, and

WHEREAS, the grant was approved by the State of Oregon for the project and as a condition of the grant required the City to enter into a contract with the State although the project will be administered by Canby Utility, and

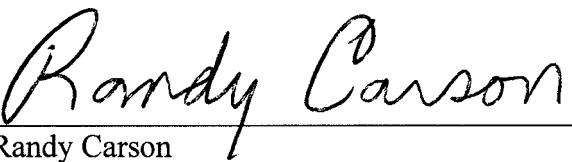
WHEREAS, the City Council wishes to enter into the agreement with the State of Oregon to implement the project, a copy of which is attached hereto as "Exhibit "A" to this Resolution, now therefore

IT IS HEREBY RESOLVED by the City of Canby as follows:

The Canby City Council approves the Pre-Disaster Mitigation Program Contract for FFY11 with the State of Oregon Emergency Management Department, identified as Exhibit "A" attached to this Resolution, and by this reference incorporated herein and hereby authorizes the Mayor of the City of Canby to execute the Agreement on behalf of the City.


This resolution will take effect on November 2, 2011.

ADOPTED this 2nd day of November 2011 by the City of Canby City Council.



Randy Carson
Mayor

ATTEST:



Kimberly Scheafer, CMC
City Recorder

STATE OF OREGON

OREGON EMERGENCY MANAGEMENT

PRE-DISASTER MITIGATION PROGRAM CONTRACT for FFY11 Project Grant (CFDA 97.0047)

1.0 PARTIES TO THIS AGREEMENT

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

WHEREAS the Pre- Disaster Mitigation (PDM) grant program was authorized by section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5133, as amended by section 102 of the Disaster Mitigation Act of 2000 (DMA), Public Law 106-390, 114 Stat. 1552, to assist States and communities to implement a sustained pre-disaster natural hazard mitigation program to reduce overall risk to the population and structures, while also reducing reliance on funding from actual disaster declarations.

WHEREAS funding was made available for the FY11 PDM competitive grant program in part provided from the National Pre-Disaster Mitigation Fund under Department of Homeland Security Appropriations Act, and the PDM program under Department of Homeland Security Appropriations Act, and that Oregon was successful in receiving a portion of that funding.

THEREFORE, the Parties mutually agree to the following.

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 Canby-Water reservoir Seismic Retrofit** dated **September 15, 2011**, 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 **September 15, 2011**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 **September 14, 2014**.

In the event of extenuating circumstances preventing Subgrantee from completing the Project on or before the FEMA performance deadline of **September 14, 2014**, Grantee may, at its sole discretion and if approved beforehand by FEMA, grant a time extension to the approved Project. Request for an extension of time shall be submitted by Subgrantee in writing with an explanation of the extenuating circumstances.

4.0 CLOSE-OUT

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

5.0 FUNDING

The total estimated cost associated with this Grant Agreement is **\$722,638.78**.

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 seventy-five percent (75%) 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 **\$539,297.79**.

Subgrantee will commit at least the required twenty-five percent (25%) non-federal match to any eligible project. The non-federal match can be cash, in-kind or a combination of both.

¹ Pre-award costs prior to this date as approved by FEMA

6.0 PAYMENTS

The Grantee, using funds granted for the purposes of the Pre-Disaster Mitigation Grant Program (PDM) 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.
2. Final Payment will be made upon completion of Project, completion of all final inspections by Grantee, and final approval by FEMA. Final payment will also be conditioned upon a financial review by Grantee or FEMA. Adjustments to the final payment may be made following any audits conducted by the Oregon Secretary of State's Audits Division or the United States Inspector General's Office.
3. 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, 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 prior to release of any payment or at any time during the duration of this Agreement.

7.0 COST OVERRUNS

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

8.0 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 for six years after date of final payment, or an extended period as established by FEMA in 44 CFR 13.42.

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

9.0 AUDITS

Audits shall be in accordance with the Single Audit Act of 1984 and as amended (most recently June 24, 1997). The Subgrantee is to procure audit services based on the following guideline:

Subgrantee receiving \$500,000 or more in a fiscal year in total federal funds (not just from FEMA alone) 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; Government Auditing Standards developed by the comptroller General, dated July 1988; 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-97.029, grantor agreement number, total award amount, beginning balance, current year revenues, current year expenditures and ending balances.

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

The Subgrantee is responsible for sending the audit report to the Grantee's Project Coordinator when requested. Responses to previous management findings and disallowed or questioned costs shall be included with the audit report. The Subgrantee will respond to the Grantee'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 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.

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, may not be assigned or delegated by the Subgrantee either in whole or in part.

14.0 TERMS AND CONDITIONS

This Agreement contains these terms and conditions agreed to by the Grantee and the Subgrantee. Any additional terms and conditions imposed by FEMA or the Grantee will be incorporated into an amendment. Such amendments shall not be binding unless they are in writing and signed by persons authorized to bind the parties. Failure to agree to FEMA imposed requirements shall be cause for termination. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind any of the parties hereto.

15.0 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, suite 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 PERSONAM JURISDICTION OF SAID COURTS.

16.0 TERMINATION

If inspections and review of Subgrantee support documentation reveal noncompliance in performance of the work and/or documentation of the work, the Subgrantee will be required to correct deficiencies or variances before program closure.

If corrective actions required do not resolve variances from the approved project, the Grantee will notify the Subgrantee of such. The grantee may then make the determination that the Subgrantee variances constitutes noncompliance or nonconformance to the FMA program and/or conditions. In the event of such determination, the Grantee will notify the Subgrantee of such action and recover obligated funds from the Subgrantee and take other actions as specified under 44 CFR 13.43 Enforcement or 13.44 Termination for Convenience.

Subgrantee may terminate this contract with thirty (30) days notice and the return of all unexpended federal funds paid to the Subgrantee for the project.

The Grantee may upon thirty (30) days advance notice to Subgrantee unilaterally terminate all or part of this Agreement or may reduce its scope of work if there is:

1. A reduction in federal funds which are the basis for this Agreement, and/ or
2. A material misrepresentation, error or inaccuracy in Subgrantee's application.

17.0 SAVINGS

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

18.0 WAIVERS

No conditions or provisions of this Agreement can be waived unless approved by the Grantee in writing. The Grantee's failure to insist upon strict performance of any provision of the Agreement, or to exercise any right bases upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any right under this Agreement.

19.0 INDEMNIFICATION

The Subgrantee shall, to the extent permitted by the Oregon Constitution and by the Oregon Tort Claims Act, defend, save, hold harmless, and indemnify the State of Oregon, OEM, and their officers, employees, agents, and members from all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature resulting from or arising out of, or relating to the activities of the Subgrantee, its officers, employees, subcontractors, or agents under this grant.

The Subgrantee shall require any of its contractors or subcontractors to defend, save, hold harmless and indemnify the State of Oregon, OEM, 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 grant.

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, OEM, and their officers, employees and members are Additional Insureds, but only with respect to the contractor's or subcontractor's services performed under this grant.

20.0 SUBGRANTEE ASSURANCES

Subgrantee represents and warrants to OEM 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 Flood Mitigation Assistance Program grants set forth in FEMA's Hazard Mitigation Assistance Program Guidance for FY 2009.
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, A-87, A-102, A-110, A-122 and A-133; the Oregon State Public Assistance Administrative Plan dated September 1993; Wages, Hours and Records Laws (ORS Chapter 652) Conditions of Employment Laws (ORS Chapter 643) and Unemployment Insurance Laws (ORS Chapter 657).
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 in accordance with applicable law.
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 agency are a party to a contract for the repair or restoration of a public building or public facility, the contract would have to comply with the Davis-Bacon Act.
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.

21.0 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.

22.0 SEVERABILITY

In the event any term or condition of the Agreement or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other terms, conditions, or applications of this Agreement which can be given effect without the invalid term, condition, or application. To this end, the terms and conditions of this Agreement are declared severable.

23.0 AGREEMENT ADMINISTRATION

- Subgrantee's Authorized Agent shall be **Randy Carson, Mayor, City of Canby.**
- The Grantee's representative shall be the Section Director, Mitigation and Recovery Services.

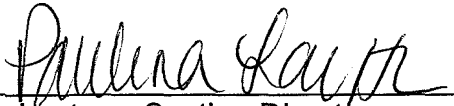
Notices under this agreement shall be given in writing by personal delivery facsimile, email or by regular or certified mail to the person identified in this Section, or to such other person or at such other address as either party may hereafter indicated pursuant to this section. Any notice delivered 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 ore registered mail is deemed received on the date the receipt is signed or delivery is refused by the addressee.

25.0 ENTIRE AGREEMENT

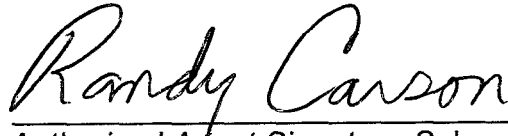
This Agreement sets forth the entire Agreement between the parties with respect to the subject matter hereof. Commitments, warranties, representations and understandings or agreements not contained, or referred to, in this Agreement or written amendment hereto shall not be binding on either party. Except 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, the Grantee and the Subgrantee have executed this Agreement as of the date and year written below.



Paulina Layton - Section Director,
Mitigation and Recovery
Oregon Emergency Management



Authorized Agent Signature-Subgrantee
Printed Name: **Randy Carson**
Title: Mayor, **City of Canby**

DATE: 11-8-11

Oregon Emergency Management
PO Box 14370
Salem, OR 97309

DATE: 11.2.11

Subgrantee - PLEASE PRINT THE
FOLLOWING TO EXPEDITE
PROCESSING:

Approved for Legal Sufficiency:

Steven Wolf
Assistant Attorney General

CFDA:97-0047

DUNS #:

Federal Tax ID No. (TIN):

Organization:

Address:

Phone:

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