copy only – original to come

Peggy
3/13/96

COPY

City of Newberg

City Manager
(503) 538-9421

City Attorney
(503) 537-1208

414 E. First St.
Newberg, Oregon 97132

City FAX
(503) 538-5393

March 12, 1996

Abby Kershaw
Deputy State Coordinating Officer
Oregon Emergency Management
595 Cottage St. NE
Salem, Oregon 97310

SUBJECT: Infrastructure Contract

Dear Ms. Kershaw:

I have enclosed a signed copy of the Infrastructure Contract in order to receive disaster assistance here in the City of Newberg.

Thanks very much for providing Newberg the opportunity to seek funding for the disaster damage due to the flood of '96.

If you have concerns regarding the contract or the projects proposed, please contact Greg Scoles, Community Development Director. His phone number is (503) 537-1214.

Sincerely,

Duane R. Cole

Duane R. Cole
City Manager

DRC/bjm

Enc.

pc: Greg Scoles, Community Development Director

pj\flood.con

COPY

STATE OF OREGON
OREGON STATE POLICE
OFFICE OF EMERGENCY MANAGEMENT

1.0 PARTIES TO THIS AGREEMENT

This agreement is made and entered into by and between the Oregon State Police, Office of Emergency Management, hereinafter referred to as "DEPARTMENT" and the CITY OF NEWBERG, hereinafter referred to as the "APPLICANT".

WHEREAS, the DEPARTMENT is authorized by the 1996 FEMA-State Agreement for the February 1996 Flood Event 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, both parties mutually agree to the following:

2.0 PURPOSE

Federal funding is provided by the Federal Emergency Management Agency (FEMA) and is administered by the DEPARTMENT. Under the authority of Presidential Major Disaster Declaration FEMA 1099-DR-OR, the DEPARTMENT is reimbursing the APPLICANT for those eligible costs and activities necessary for the repair and restoration of public facilities damaged during the period of February 4, 1996 and continuing.

3.0 TIME OF PERFORMANCE

Activities payable under this agreement and to be performed by the APPLICANT 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 the DEPARTMENT to issue close-out instructions to the APPLICANT upon completion of the project(s).

5.0 FUNDING

The DEPARTMENT will administer the disaster assistance program and reimburse any eligible costs for eligible projects to the APPLICANT which are identified under the auspices of the Presidential Major Disaster Declaration FEMA-1099-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 Damage Survey Reports are completed in the field and projects are authorized by state and federal officials.

The parties understand that the Federal Emergency Management Agency will contribute 75 percent of the eligible costs for any eligible project and also will contribute an administrative allowance, as provided for in subsection 4 of Section 6.0 of this agreement, and that no state funds are obligated for contribution under this agreement.

The APPLICANT will commit the required 25 percent match to any eligible project for the APPLICANT which has been identified under the Presidential Major Disaster Declaration FEMA-1099-DR-OR.

6.0 PAYMENTS

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

1. Small project payments: Payments are made for all small projects to the APPLICANT upon submission and approval of a State of Oregon Disaster Assistance Payment Request to the DEPARTMENT.

2. Partial Payments: Partial payment of funds for costs already incurred on large projects may be made to the APPLICANT upon submission and approval of a State of Oregon Disaster Assistance Payment Request, with appropriate supporting documentation, from the APPLICANT to the DEPARTMENT.

3. Final Payment: Final payment will be made upon submission by the APPLICANT of CERTIFICATION OF LARGE PROJECT COST, completion of project(s), completion of all final inspections by the DEPARTMENT, and final approval by FEMA. Final payment may also be conditioned upon a financial review, if determined necessary by the DEPARTMENT 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.

4. The APPLICANT is eligible to receive federal administrative monies, upon completion and closure of the project, for the costs of requesting, obtaining, and administering the disaster assistance grant based upon the following percentages of total eligible costs.

   - For the first $100,000 of eligible costs, three percent of such costs;
   - For the next $900,000, two percent of such costs;
   - For the next $4,000,000, one percent of such costs; and
   - For those costs over $5,000,000, one-half percent of such costs.

5. All payment requests shall be made on a State of Oregon Disaster Assistance Payment Request to the DEPARTMENT, which references the appropriate Damage Survey Report Number (DSR #), and appropriate documentation as required.

6. Funding shall not exceed the total federal contributions eligible for the repair and restoration costs under this Presidential Major Disaster Declaration FEMA-1099-DR-OR.

7.0 RECORDS MAINTENANCE

The APPLICANT 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 DEPARTMENT personnel, other personnel duly authorized by the DEPARTMENT, the Secretary of State's Audits Division or the United States Inspector General. The APPLICANT will retain all books, records, documents, and other material relevant to this agreement for three years after date of final payment, or an extended period as established by FEMA in 44 CFR § 13.42.

8.0 AUDITS

Audits shall be in accordance with the Single Audit Act of 1984. The APPLICANT is to procure audit services based on the following guidelines:

1. APPLICANT receiving less than $25,000 in federal funds in a fiscal year is exempt from compliance with the Single Audit Act. However, records must be available for review by the DEPARTMENT.

2. APPLICANT receiving $25,000 to $100,000 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-128 or a program audit.

3. APPLICANT receiving $100,000 or more in a fiscal year in total federal funds shall have a Single Audit made in accordance with OMB Circular 1-28.

As applicable, the APPLICANT 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 APPLICANT must prepare a Schedule of Financial Assistance for federal funds that includes: Grantor name, program name, federal catalog number (CFDA-83.516), grantor agreement number, total award amount, beginning balance, current year revenues, current year expenditures and ending balance.

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

The APPLICANT is responsible for sending the audit report to the DEPARTMENT's Project Administrator as soon as it is available, but no later than thirteen months after the end of the APPLICANT's fiscal year. Responses to previous management findings and disallowed or questioned costs shall be included with the audit report. The APPLICANT will respond to the DEPARTMENT's requests for information or corrective action concerning audit issues within 30 days of the date of the request.

The APPLICANT shall include these requirements in any subcontracts.

9.0 RECOVERY OF FUNDS

In the event that the APPLICANT failed to complete the project(s), fails to expend or is over paid federal funds in accordance with federal or state disaster assistance laws or programs, or is found by audit or investigation to be owing to the state, the DEPARTMENT reserves the right to recapture funds in accordance with federal or state laws and requirements. Repayment by the APPLICANT of agreement funds under this recovery provision shall occur within 30 days of demand. In the event that the DEPARTMENT is required to institute legal proceedings to enforce this recovery provision, the DEPARTMENT shall be entitled to its costs thereof, including reasonable attorney fees.

The APPLICANT shall be responsible for pursuing recovery of monies paid under this agreement in providing disaster assistance against any part that might be liable, and further the APPLICANT 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 APPLICANT obtains recovery from a responsible party, the APPLICANT shall first be reimbursed its reasonable costs of litigation from such recovered funds. The APPLICANT shall pay to the state the proportionate federal share of all project funds recovered in excess of costs of litigation.

10.0 CONFLICT OF INTEREST

The APPLICANT 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.

11.0 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 issue.

12.0 ASSIGNMENT

This Agreement, and any claim arising under this agreement, is not assignable or delegable by the APPLICANT either in whole or in part.

13.0 SUBCONTRACTS FOR ENGINEERING SERVICES

In the event that the APPLICANT subcontracts for engineering services, the APPLICANT 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 APPLICANT for the benefit of the APPLICANT 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 APPLICANT shall cause the subcontractor to provide it with a 30 day notice of cancellation issued by the insurance company.

14.0 This agreement contains the terms and conditions agreed to by the DEPARTMENT and the APPLICANT. Any additional terms and conditions imposed by the Federal Emergency Management Agency or the DEPARTMENT 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. 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 APPEALS

Consistent with the Code of Federal Regulations, 44 CFR Chapter 1, Section 206.206, the APPLICANT may appeal any determination previously made related to the federal assistance for the APPLICANT. The APPLICANT's appeal shall be made in writing and submitted to the DEPARTMENT within 60 days after receipt of notice of the action which is being appealed. The appeal shall contain documented justification supporting the APPLICANT's position.

Upon receipt of an APPLICANT's appeal, the DEPARTMENT will review the material submitted, make such additional investigations as necessary, and shall forward the appeal with a written recommendation to the FEMA within 60 days. Within 90 days following receipt of the appeal, FEMA shall advise the DEPARTMENT, 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 construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the State of Oregon. Venue of any suit between the parties arising out of this agreement shall be in the Circuit Court of Oregon for Marion County.

17.0 TERMINATION

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 services rendered by the other party, prior to the effective date of termination.

18.0 SAVINGS

The DEPARTMENT may unilaterally terminate all or part of this agreement or may reduce its scope of work if there is a reduction in federal funds which are the basis for this agreement.

19.0 WAIVERS

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

20.0 INDEMNIFICATION

To the extent permitted by each party's constitutional and statutory limitations, including but not limited to provisions relating to debt limits, tort claims limits and workers' compensation, the APPLICANT, and its employees, contractors, and subcontractors shall defend, save, and hold harmless the United States, and its agents and employees, the state and its agents and employees, from and against all claims, damages, losses, and expenses arising out of or resulting from the approved work, regardless of whether or not such claim, damage, loss, or expense is caused entirely or in part by the United States or the State of Oregon.

21.0 APPLICANT ASSURANCES

In addition to the Terms and Conditions specified herein, the APPLICANT also agrees to the following assurances:

1. The APPLICANT hereby assures and certifies that it will comply with state and federal laws and regulations, including but not limited to the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended; 44 CFR Parts 13 and 206; and the Oregon State Public Assistance Administrative Plan dated September, 1993. These regulations and requirements are hereby incorporated into this agreement by reference.

2. 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.

3. The APPLICANT will operate and maintain the facilities 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.

4. The APPLICANT 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.

5. The APPLICANT 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.

6. The APPLICANT will comply with minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act.

7. The APPLICANT shall comply with all applicable federal and state non-discrimination laws, regulations, and policies. No person shall, on the grounds of age, race, color, sex, religion, national origin, marital status, or disability (physical or mental) be denied the benefits of, or otherwise be subjected to discrimination under any project, program, or activity, funded, in whole or in part, under this Agreement. A violation of this provision is a material breach and cause for termination under Section 17.0 of this Agreement.

8. The APPLICANT shall utilize certified minority-owned and women-owned businesses (MWBE's) to the maximum extent possible in the performance of this agreement.

9. The APPLICANT does not have to comply with the provisions of the Davis-Bacon Act for grants made under the disaster assistance program. However, if FEMA and any other Federal agency are a party to a contract for the repair or restoration of a public building or public facility, the contract would have to comply with the Davis-Bacon Act.

10. Eligible private non-profit organizations are required to obtain an independent audit in accordance with the Single Audit Act requirements. All costs of said audit are the responsibility of the private non-profit organization. Additional funds beyond those provided in the administrative allowance are not available for payment of said audit. Eligible private non-profit organizations must comply with the audit requirements of OMB Circular A-133, Audits of Institutions of Higher Education and other Nonprofit Organizations.

11. The applicant 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 and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon Law for all their subject workers. This shall include Employer's Liability Insurance with coverage

limits of not less than $100,000 for each accident. Contractors, subcontractors or others who perform the work without the assistance or labor of any employee need not obtain coverage.

22.0 OWNERSHIP OF PROJECT/CAPITAL FACILITIES

The DEPARTMENT 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 APPLICANT. The APPLICANT shall assume all liabilities arising from the ownership and operation of the project and agrees to hold the DEPARTMENT and the state of Oregon harmless from any and all causes of action arising from the ownership and operation of the project.

23.0 ACKNOWLEDGMENTS

The APPLICANT 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.

24.0 INSURANCE

The APPLICANT will comply with the insurance requirements of Public Law 93-288, as amended, and obtain and maintain any other insurance as may be reasonable, adequate, and necessary to protect against further loss to any property which was replaced, restored, repaired or constructed with this assistance.

25.0 SEVERABILITY

In the event any term or condition of this 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.

26.0 ORDER OF PRECEDENCE

In the event of an inconsistency in this agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

a: Applicable Federal and State statutes and regulations.

b. Applicable approved Damage Survey Reports; and
c. Any other provisions of the agreement whether incorporated by reference or otherwise.

27.0 AGREEMENT ADMINISTRATION

APPLICANT's representative shall be DUANE R. COLE.

The DEPARTMENT's representative shall be Abby Kershaw.

28.0 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 DEPARTMENT and the APPLICANT have executed this agreement as of the date and year written below.

Myra Thompson Lee, Director
Office of Emergency Management
Oregon State Police

Duane R. Cole 3-

Applicant Signature
Printed Name: DUANE R. COLE
Title: CITY MANAGER

APPROVED AS TO FORM

Jim G. Russell
Assistant Attorney General

DATE: 3-4-96

Oregon Emergency Management
595 Cottage St. N.E.
Salem, OR 97310

CFDA: 83-516

APPLICANT - PLEASE PRINT THE FOLLOWING TO EXPEDITE PROCESSING

Federal Tax ID No. (TIN): 93-6002221

Organization: CITY OF NEWBERG

Address: 414 E. First St.
Newberg, Oregon 97132

Phone: (503) 538-9421

INTERNAL ROUTING SLIP #1485

FROM: Duane **DATE:** March 20, 1996

1 DUANE R. COLE, City Mgr
___TERRENCE MAHR, City Atty.
___Peggy Hall, Paralegal
___KATHY TRI, Fin. Director
___Diane Padilla, Asst Fin. Dr.
___Pauline Maben, Sr Acct Clk
___MICHAEL SHERMAN, FD Chief
___LEAH GRIFFITH, Librarian
___Carol Foutts, Asst. Lib.
___ROBERT TARDIFF, PD Chief
___GREG SCOLES, Com. Dev. Dir
___Larry Anderson, Eng. Mgr.
___Darla Baldoni, Office Mgr.
___Michael Hailey, Bldg. Off.
___John Knight Planning Mgr.
___Alan Lee, Oper. Sup.
___Chuck Liebert, Utly. Mgr.
___Barb Mingay, Plan. Tech
___Russ Thomas, Maint. Sup.
___Hal Turpen, PW Sup.

__(Other)____________________

Copy Greg ; Copy Diane Padilla / KT
Original to Peggy for Agt. File.

F:\SHARED\RTE.SLP

Oregon

DEPARTMENT OF STATE POLICE

OREGON EMERGENCY MANAGEMENT

3/20/96

RECEIVED MAR 2 0 1996

March 13, 1996

Duane R. Cole
City Manager
City of Newberg
414 E. 1st
Newberg, OR 97132

Dear Mr. Cole:

Enclosed for your records is a copy of the executed Application Agreement between the State of Oregon Office of Emergency Management and City of Newberg. Once the Federal Emergency Management Administration provides us with your Disaster Survey Report funding approval and you submit a Disaster Assistance Payment Request along with backup documentation, we may begin disbursing funds.

Sincerely,

Abby Kershaw

Abby Kershaw
Deputy State Coordinating Officer

Enclosure

John A. Kitzhaber
Governor

595 Cottage Street NE
Salem, OR 97310
(503) 378-2911
FAX (503) 588-1378
TTY (503) 373-7857
oemd@oem.state.or.us

071 52100

STATE OF OREGON
OREGON STATE POLICE
OFFICE OF EMERGENCY MANAGEMENT

1.0 PARTIES TO THIS AGREEMENT

This agreement is made and entered into by and between the Oregon State Police, Office of Emergency Management, hereinafter referred to as "DEPARTMENT" and the CITY OF NEWBERG, hereinafter referred to as the "APPLICANT".

WHEREAS, the DEPARTMENT is authorized by the 1996 FEMA-State Agreement for the February 1996 Flood Event 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, both parties mutually agree to the following:

2.0 PURPOSE

Federal funding is provided by the Federal Emergency Management Agency (FEMA) and is administered by the DEPARTMENT. Under the authority of Presidential Major Disaster Declaration FEMA 1099-DR-OR, the DEPARTMENT is reimbursing the APPLICANT for those eligible costs and activities necessary for the repair and restoration of public facilities damaged during the period of February 4, 1996 and continuing.

3.0 TIME OF PERFORMANCE

Activities payable under this agreement and to be performed by the APPLICANT 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 the DEPARTMENT to issue close-out instructions to the APPLICANT upon completion of the project(s).

5.0 FUNDING

The DEPARTMENT will administer the disaster assistance program and reimburse any eligible costs for eligible projects to the APPLICANT which are identified under the auspices of the Presidential Major Disaster Declaration FEMA-1099-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 Damage Survey Reports are completed in the field and projects are authorized by state and federal officials.

The parties understand that the Federal Emergency Management Agency will contribute 75 percent of the eligible costs for any eligible project and also will contribute an administrative allowance, as provided for in subsection 4 of Section 6.0 of this agreement, and that no state funds are obligated for contribution under this agreement.

The APPLICANT will commit the required 25 percent match to any eligible project for the APPLICANT which has been identified under the Presidential Major Disaster Declaration FEMA-1099-DR-OR.

6.0 PAYMENTS

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

1. Small project payments: Payments are made for all small projects to the APPLICANT upon submission and approval of a State of Oregon Disaster Assistance Payment Request to the DEPARTMENT.

2. Partial Payments: Partial payment of funds for costs already incurred on large projects may be made to the APPLICANT upon submission and approval of a State of Oregon Disaster Assistance Payment Request, with appropriate supporting documentation, from the APPLICANT to the DEPARTMENT.

3. Final Payment: Final payment will be made upon submission by the APPLICANT of CERTIFICATION OF LARGE PROJECT COST, completion of project(s), completion of all final inspections by the DEPARTMENT, and final approval by FEMA. Final payment may also be conditioned upon a financial review, if determined necessary by the DEPARTMENT 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.

4. The APPLICANT is eligible to receive federal administrative monies, upon completion and closure of the project, for the costs of requesting, obtaining, and administering the disaster assistance grant based upon the following percentages of total eligible costs.

   - For the first $100,000 of eligible costs, three percent of such costs;
   - For the next $900,000, two percent of such costs;
   - For the next $4,000,000, one percent of such costs; and
   - For those costs over $5,000,000, one-half percent of such costs.

5. All payment requests shall be made on a State of Oregon Disaster Assistance Payment Request to the DEPARTMENT, which references the appropriate Damage Survey Report Number (DSR #), and appropriate documentation as required.

6. Funding shall not exceed the total federal contributions eligible for the repair and restoration costs under this Presidential Major Disaster Declaration FEMA-1099-DR-OR.

7.0 RECORDS MAINTENANCE

The APPLICANT 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 DEPARTMENT personnel, other personnel duly authorized by the DEPARTMENT, the Secretary of State's Audits Division or the United States Inspector General. The APPLICANT will retain all books, records, documents, and other material relevant to this agreement for three years after date of final payment, or an extended period as established by FEMA in 44 CFR § 13.42.

8.0 AUDITS

Audits shall be in accordance with the Single Audit Act of 1984. The APPLICANT is to procure audit services based on the following guidelines:

1. APPLICANT receiving less than $25,000 in federal funds in a fiscal year is exempt from compliance with the Single Audit Act. However, records must be available for review by the DEPARTMENT.

2. APPLICANT receiving $25,000 to $100,000 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-128 or a program audit.

3. APPLICANT receiving $100,000 or more in a fiscal year in total federal funds shall have a Single Audit made in accordance with OMB Circular 1-28.

As applicable, the APPLICANT 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 APPLICANT must prepare a Schedule of Financial Assistance for federal funds that includes: Grantor name, program name, federal catalog number (CFDA-83.516), grantor agreement number, total award amount, beginning balance, current year revenues, current year expenditures and ending balance.

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

The APPLICANT is responsible for sending the audit report to the DEPARTMENT's Project Administrator as soon as it is available, but no later than thirteen months after the end of the APPLICANT's fiscal year. Responses to previous management findings and disallowed or questioned costs shall be included with the audit report. The APPLICANT will respond to the DEPARTMENT's requests for information or corrective action concerning audit issues within 30 days of the date of the request.

The APPLICANT shall include these requirements in any subcontracts.

9.0 RECOVERY OF FUNDS

In the event that the APPLICANT failed to complete the project(s), fails to expend or is over paid federal funds in accordance with federal or state disaster assistance laws or programs, or is found by audit or investigation to be owing to the state, the DEPARTMENT reserves the right to recapture funds in accordance with federal or state laws and requirements. Repayment by the APPLICANT of agreement funds under this recovery provision shall occur within 30 days of demand. In the event that the DEPARTMENT is required to institute legal proceedings to enforce this recovery provision, the DEPARTMENT shall be entitled to its costs thereof, including reasonable attorney fees.

The APPLICANT shall be responsible for pursuing recovery of monies paid under this agreement in providing disaster assistance against any part that might be liable, and further the APPLICANT 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 APPLICANT obtains recovery from a responsible party, the APPLICANT shall first be reimbursed its reasonable costs of litigation from such recovered funds. The APPLICANT shall pay to the state the proportionate federal share of all project funds recovered in excess of costs of litigation.

10.0 CONFLICT OF INTEREST

The APPLICANT 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.

11.0 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 issue.

12.0 ASSIGNMENT

This Agreement, and any claim arising under this agreement, is not assignable or delegable by the APPLICANT either in whole or in part.

13.0 SUBCONTRACTS FOR ENGINEERING SERVICES

In the event that the APPLICANT subcontracts for engineering services, the APPLICANT 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 APPLICANT for the benefit of the APPLICANT 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 APPLICANT shall cause the subcontractor to provide it with a 30 day notice of cancellation issued by the insurance company.

14.0 This agreement contains the terms and conditions agreed to by the DEPARTMENT and the APPLICANT. Any additional terms and conditions imposed by the Federal Emergency Management Agency or the DEPARTMENT 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. 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 APPEALS

Consistent with the Code of Federal Regulations, 44 CFR Chapter 1, Section 206.206, the APPLICANT may appeal any determination previously made related to the federal assistance for the APPLICANT. The APPLICANT's appeal shall be made in writing and submitted to the DEPARTMENT within 60 days after receipt of notice of the action which is being appealed. The appeal shall contain documented justification supporting the APPLICANT's position.

Upon receipt of an APPLICANT's appeal, the DEPARTMENT will review the material submitted, make such additional investigations as necessary, and shall forward the appeal with a written recommendation to the FEMA within 60 days. Within 90 days following receipt of the appeal, FEMA shall advise the DEPARTMENT, 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 construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the State of Oregon. Venue of any suit between the parties arising out of this agreement shall be in the Circuit Court of Oregon for Marion County.

17.0 TERMINATION

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 services rendered by the other party, prior to the effective date of termination.

18.0 SAVINGS

The DEPARTMENT may unilaterally terminate all or part of this agreement or may reduce its scope of work if there is a reduction in federal funds which are the basis for this agreement.

19.0 WAIVERS

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

20.0 INDEMNIFICATION

To the extent permitted by each party's constitutional and statutory limitations, including but not limited to provisions relating to debt limits, tort claims limits and workers' compensation, the APPLICANT, and its employees, contractors, and subcontractors shall defend, save, and hold harmless the United States, and its agents and employees, the state and its agents and employees, from and against all claims, damages, losses, and expenses arising out of or resulting from the approved work, regardless of whether or not such claim, damage, loss, or expense is caused entirely or in part by the United States or the State of Oregon.

21.0 APPLICANT ASSURANCES

In addition to the Terms and Conditions specified herein, the APPLICANT also agrees to the following assurances:

1. The APPLICANT hereby assures and certifies that it will comply with state and federal laws and regulations, including but not limited to the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended; 44 CFR Parts 13 and 206; and the Oregon State Public Assistance Administrative Plan dated September, 1993. These regulations and requirements are hereby incorporated into this agreement by reference.

2. 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.

3. The APPLICANT will operate and maintain the facilities 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.

4. The APPLICANT 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.

5. The APPLICANT 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.

6. The APPLICANT will comply with minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act.

7. The APPLICANT shall comply with all applicable federal and state non-discrimination laws, regulations, and policies. No person shall, on the grounds of age, race, color, sex, religion, national origin, marital status, or disability (physical or mental) be denied the benefits of, or otherwise be subjected to discrimination under any project, program, or activity, funded, in whole or in part, under this Agreement. A violation of this provision is a material breach and cause for termination under Section 17.0 of this Agreement.

8. The APPLICANT shall utilize certified minority-owned and women-owned businesses (MWBE's) to the maximum extent possible in the performance of this agreement.

9. The APPLICANT does not have to comply with the provisions of the Davis-Bacon Act for grants made under the disaster assistance program. However, if FEMA and any other Federal agency are a party to a contract for the repair or restoration of a public building or public facility, the contract would have to comply with the Davis-Bacon Act.

10. Eligible private non-profit organizations are required to obtain an independent audit in accordance with the Single Audit Act requirements. All costs of said audit are the responsibility of the private non-profit organization. Additional funds beyond those provided in the administrative allowance are not available for payment of said audit. Eligible private non-profit organizations must comply with the audit requirements of OMB Circular A-133, Audits of Institutions of Higher Education and other Nonprofit Organizations.

11. The applicant 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 and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon Law for all their subject workers. This shall include Employer's Liability Insurance with coverage

limits of not less than $100,000 for each accident. Contractors, subcontractors or others who perform the work without the assistance or labor of any employee need not obtain coverage.

22.0 OWNERSHIP OF PROJECT/CAPITAL FACILITIES

The DEPARTMENT 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 APPLICANT. The APPLICANT shall assume all liabilities arising from the ownership and operation of the project and agrees to hold the DEPARTMENT and the state of Oregon harmless from any and all causes of action arising from the ownership and operation of the project.

23.0 ACKNOWLEDGMENTS

The APPLICANT 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.

24.0 INSURANCE

The APPLICANT will comply with the insurance requirements of Public Law 93-288, as amended, and obtain and maintain any other insurance as may be reasonable, adequate, and necessary to protect against further loss to any property which was replaced, restored, repaired or constructed with this assistance.

25.0 SEVERABILITY

In the event any term or condition of this 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.

26.0 ORDER OF PRECEDENCE

In the event of an inconsistency in this agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

a: Applicable Federal and State statutes and regulations.

b. Applicable approved Damage Survey Reports; and
c. Any other provisions of the agreement whether incorporated by reference or otherwise.

27.0 AGREEMENT ADMINISTRATION

APPLICANT's representative shall be DUANE R. COLE.

The DEPARTMENT's representative shall be Abby Kershaw.

28.0 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 DEPARTMENT and the APPLICANT have executed this agreement as of the date and year written below.

Myra Thompson Lee

Myra Thompson Lee, Director
Office of Emergency Management
Oregon State Police

Duane R. Cole

Applicant Signature
Printed Name: DUANE R. COLE
Title: CITY MANAGER

APPROVED AS TO FORM

Jim G. Russell
Assistant Attorney General

DATE: 3-4-96

Oregon Emergency Management
595 Cottage St. N.E.
Salem, OR 97310

CFDA: 83-516

APPLICANT - PLEASE PRINT THE FOLLOWING TO EXPEDITE PROCESSING

Federal Tax ID No. (TIN): 93-6002221

Organization: CITY OF NEWBERG

Address: 414 E. First St.
Newberg, Oregon 97132

Phone: (503) 538-9421