

## AGENDA

**DES MOINES CITY COUNCIL  
REGULAR MEETING  
City Council Chambers  
21630 11th Avenue S, Des Moines, Washington  
Thursday, October 10, 2024 - 6:00 PM**

City Council meeting can be viewed live on the City's website, Comcast Channel 21/321 or on the City's [YouTube](#) channel.

### CALL TO ORDER

### PLEDGE OF ALLEGIANCE

### ROLL CALL

### CORRESPONDENCE NOT PREVIOUSLY RECEIVED BY COUNCIL

### COMMENTS FROM THE PUBLIC

### COMMITTEE CHAIR REPORT

- MUNICIPAL FACILITIES COMMITTEE: Chair Jeremy Nutting
- ECONOMIC DEVELOPMENT COMMITTEE: Chair Jeremy Nutting
- FINANCE COMMITTEE: Chair Matt Mahoney
- ENVIRONMENT COMMITTEE: Chair JC Harris
- PUBLIC SAFETY/EMERGENCY MANAGEMENT: Chair Traci Buxton

### CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS

Item 1. SOUND TRANSIT UPDATE

Item 2. COMMUNITY DEVELOPMENT DIRECTOR INTRODUCTION

### CONSENT AGENDA

Item 1. APPROVAL OF VOUCHERS

**Motion** is to approve the payment vouchers through October 03, 2024 and payroll transfers through October 04, 2024 in the attached list and further described as follows:

EFT Vendor Payments	#10729-10797	\$ 536,654.91
Wires	#2717-2717	\$ 1,556.37
Accounts Payable Checks	#166100-166150	\$1,056,557.23

Accounts Payable	#164698, 164753	\$ (85.99)
Check Voids		
Payroll Voided Advice	#10998-10998	\$ (2,449.29)
Payroll Check	# 19898-19898	\$ 2,449.29
Payroll Checks	#19899-19902	\$ 10,488.82
Payroll Advice	#11097-11268	\$ 675,487.04

Total Checks and Wires for A/P & Payroll: \$2,280,658.38

[Approval of Vouchers](#)

- Item 2. EMERGENCY MANAGEMENT PERFORMANCE GRANT  
**Motion** is to accept the 2024 Emergency Management Performance Grant in the amount of \$15,164.00 and to authorize the Acting City Manager to sign the grant agreement substantially in the form as presented.

[Emergency Management Performance Grant](#)

- Item 3. STATE PARKS GRANT AGREEMENT FOR FUEL DOCK SEWAGE TANK PUMP-OUT EQUIPMENT PURCHASE  
**Motion** is to to approve Grant Agreement No. 325-309 to provide \$20,165.00 from the State’s Clean Vessel Act Program for the purchase of new replacement sewage tank pump-out equipment for the Marina’s fuel dock and to authorize the City Manager to sign the grant agreement substantially in the form as attached.

[State Parks Grant Agreement For Fuel Dock Sewage Tank Pump-Out Equipment Purchase](#)

**NEW BUSINESS**

- Item 1. CITY COUNCIL “MISSION, VISION, VALUES” RETREAT DISCUSSION

[City Council “Mission, Vision, Values” Retreat Discussion](#)

- Item 2. NEW AGENDA ITEMS FOR CONSIDERATION – 10 Minutes

**COUNCILMEMBER REPORTS**

(4 minutes per Councilmember) - 30 minutes

**PRESIDING OFFICER’S REPORT**

**EXECUTIVE SESSION**

**NEXT MEETING DATE**

October 24, 2024 City Council Regular Meeting

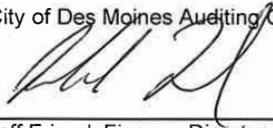
**ADJOURNMENT**

**CITY OF DES MOINES**  
**Voucher Certification Approval**  
**October 10, 2024**  
**Auditing Officer Certification**

Voucher transfers audited and certified by the auditing officer as required by RCW 42.24.080, and those expense reimbursement claims certified as required by RCW 42.24.090, have been recorded on a listing, which has been made available to the City Council.

As of **October 10, 2024** the Des Moines City Council, by unanimous vote, does approve for payment those vouchers through October 3, 2024 and payroll transfers through October 4, 2024 included in the attached list and further described as follows:

The vouchers below have been reviewed and certified by individual departments and the City of Des Moines Auditing Officer:

  
 \_\_\_\_\_  
 Jeff Friend, Finance Director

		# From	# To	Amounts
<b>Claims Vouchers:</b>				
EFT's		10729	10797	536,654.91
Wires		2717	2717	1,556.37
AP Checks		166100	166150	1,056,557.23
AP Check Voids		164698, 164753		(85.99)
<b>Total Vouchers paid</b>				<b>1,594,682.52</b>
<b>Payroll Vouchers</b>				
Payroll Check Voided	9/24/2024	10998	10998	(2,449.29)
Payroll Check		19898	19898	2,449.29
Payroll Checks	10/4/2024	19899	19902	10,488.82
Payroll Advice		11097	11268	675,487.04
<b>Total Paychecks &amp; Direct Deposits</b>				<b>685,975.86</b>
<b>Total checks and wires for A/P &amp; Payroll</b>				<b>2,280,658.38</b>

**AGENDA ITEM**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: Emergency Management Performance Grant

FOR AGENDA OF: October 10, 2024

DEPT. OF ORIGIN: Emergency Management

ATTACHMENTS:

- 1. Agreement: Emergency Management Performance Grant

DATE SUBMITTED: October 2, 2024

CLEARANCES:

- City Clerk \_\_\_\_\_
- Community Development \_\_\_\_\_
- Courts \_\_\_\_\_
- Emergency Management *[Signature]*
- Finance \_\_\_\_\_
- Human Resources \_\_\_\_\_
- Legal /s/ MH
- Marina \_\_\_\_\_
- Police \_\_\_\_\_
- Parks, Recreation & Senior Services \_\_\_\_\_
- Public Works \_\_\_\_\_

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *[Signature]*

**Purpose and Recommendation**

The purpose of this agenda item is to seek City Council approval for the City of Des Moines to accept the 2024 Emergency Management Performance Grant.

**Suggested Motion**

**Motion:** "I move to accept the 2024 Emergency Management Performance Grant in the amount of \$15,164.00 and to authorize the Acting City Manager to sign the grant agreement substantially in the form as presented."



**Background**

The Federal Emergency Management Agency (FEMA) has the statutory authority to deliver numerous disaster and non-disaster financial assistance programs in support of its mission, and that of the U.S. Department of Homeland Security (DHS), largely through grants and cooperative agreements. These programs account for a significant amount of the federal assistance funds for which FEMA is accountable.

Washington State Military Department receives Emergency Management Performance Grant (EMPG) funding from DHS/FEMA, to assist state, local, and tribal governments to enhance and sustain all-hazards emergency management capabilities as authorized by Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. §§ 5121 et seq.) and Section 662 of the Post Katrina Emergency Management Act (6 U.S.C. § 762).

A portion of the grant program is passed through to local jurisdictions and tribes with emergency management programs to supplement their local/tribal operating budgets to help sustain and enhance emergency management capabilities pursuant to Washington Administrative Code (WAC) 118-09.

**Discussion**

The Emergency Management Performance Grant (EMPG) provides state, local, tribal and territorial emergency management agencies with the resources required for implementation of the National Preparedness System and works toward the National Preparedness Goal of a secure and resilient nation. The EMPG’s allowable costs support efforts to build and sustain core capabilities across the prevention, protection, mitigation, response and recovery mission areas.

For the first time, the Washington State Military Department has awarded a grant to the city of Des Moines Emergency Management Department to support Office of Emergency Management departmental costs associated with personnel and supplies. Planned programs to be funded by the grant include Get Ready King County training classes; CERT Class in fall 2024; CERT Monthly Meetings and Community Outreach Activities; EOC Team Tabletop exercises.

**Alternatives**

The Council could decline to approve the grant. Should the City decline, the funds would be awarded to King County.

**Financial Impact**

Accepting the grant would provide \$15,164.00 to support Emergency Management programs for the City. Declining these funds would mean funding the programs out of the general fund or foregoing the programs.

**Recommendation**

Finance, Legal and Emergency Management recommend the approval of the agreement

**Washington State Military Department**  
**EMERGENCY MANAGEMENT PERFORMANCE GRANT AGREEMENT FACE SHEET**

1. Subrecipient Name and Address: <b>City of Des Moines</b> <b>21630 11th Avenue S Suite A</b> <b>Des Moines, WA 98198-6340</b>		2. Grant Agreement Amount: <b>\$15,614</b>		3. Grant Agreement Number: <b>E25-077</b>			
4. Subrecipient Contact, phone/email: <b>Shannon Kirchberg, 206-870-6562</b> <b>skirchberg@desmoineswa.gov</b>		5. Grant Agreement Start Date: <b>June 1, 2024</b>		6. Grant Agreement End Date: <b>September 30, 2025</b>			
7. Department Contact, phone/email: <b>Deborah Henderson, 253-512-7470</b> <b>deborah.henderson@mil.wa.gov</b>		8. Unique Entity Identifier (UEI): <b>NY7AZ9H2VK25</b>		9. UBI # (state revenue): <b>601161113</b>			
10. Funding Authority: <b>Washington State Military Department</b> (the "DEPARTMENT") and the <b>U.S. Department of Homeland Security (DHS)</b>							
11. Federal Award ID # (FAIN): <b>EMS-2024-EP-05000</b>		12. Federal Award Date: <b>9/9/2024</b>		13. Assistance Listings # & Title: <b>97.042 (24EMPG)</b>			
14. Total Federal Amount: <b>\$6,821,397</b>		15. Program Index # & OBJ/SUB-OBJ: <b>743PT NZ</b>			16. EIN: <b>91-6016496</b>		
17. Service Districts: (BY LEGISLATIVE DISTRICT): <b>33</b> (BY CONGRESSIONAL DISTRICT): <b>9</b>		18. Service Area by County(ies): <b>King</b>		19. Women/Minority-Owned, State Certified: <input checked="" type="checkbox"/> N/A <input type="checkbox"/> NO <input type="checkbox"/> YES, OMBE # _____			
20. Agreement Classification: <input type="checkbox"/> Personal Services <input type="checkbox"/> Client Services <input checked="" type="checkbox"/> Public/Local Gov't <input type="checkbox"/> Research/Development <input type="checkbox"/> A/E <input type="checkbox"/> Other			21. Contract Type (check all that apply): <input type="checkbox"/> Contract <input checked="" type="checkbox"/> Grant <input checked="" type="checkbox"/> Agreement <input type="checkbox"/> Intergovernmental (RCW 39.34) <input type="checkbox"/> Interagency				
22. Subrecipient Selection Process: <input checked="" type="checkbox"/> "To all who apply & qualify" <input type="checkbox"/> Competitive Bidding <input type="checkbox"/> Sole Source <input type="checkbox"/> A/E RCW <input type="checkbox"/> N/A <input type="checkbox"/> Filed w/OFM? <input type="checkbox"/> Advertised? <input type="checkbox"/> YES <input type="checkbox"/> NO			23. Subrecipient Type (check all that apply): <input type="checkbox"/> Private Organization/Individual <input type="checkbox"/> For-Profit <input checked="" type="checkbox"/> Public Organization/Jurisdiction <input type="checkbox"/> Non-Profit <input type="checkbox"/> CONTRACTOR <input checked="" type="checkbox"/> SUBRECIPIENT <input type="checkbox"/> OTHER				
24. PURPOSE & DESCRIPTION: <b>The purpose of the Fiscal Year (FY) 2024 Emergency Management Performance Grant (24EMPG) program is to provide U.S. Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA) Federal award funds to states to assist state, local, territorial, and tribal governments in preparing for all hazards through sustainment and enhancement of those programs as described in the Work Plan.</b> <b>The Department is the Recipient and Pass-through Entity of the 24EMPG DHS Award Letter for Grant No. EMS-2024-EP-05000 ("Grant"), which is incorporated in and attached hereto as Attachment C and has made a subaward of Federal award funds to the Subrecipient pursuant to this Agreement. The Subrecipient is accountable to the Department for use of Federal award funds provided under this Agreement and the associated matching funds.</b>							
IN WITNESS WHEREOF, the Department and Subrecipient acknowledge and accept the terms of this Agreement, including all referenced Attachments which are hereby incorporated in and made a part hereof, and have executed this Agreement as of the date below. This Agreement Face Sheet; Special Terms & Conditions (Attachment A); General Terms and Conditions (Attachment B); 24EMPG Award Letter EMS-2024-EP-05000 (Attachment C); Work Plan (Attachment D); Timeline (Attachment E); Budget (Attachment F); Build America, Buy America Act Self-Certification (Attachment G); and all other documents expressly referenced and incorporated herein contain all the terms and conditions agreed upon by the parties and govern the rights and obligations of the parties to this Agreement. 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.							
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: <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> <b>1. Applicable Federal and State Statutes and Regulations</b>  <b>2. DHS/FEMA Award and program documents</b>  <b>3. Work Plan, Timeline, and Budget</b> </td> <td style="width: 50%; vertical-align: top;"> <b>4. Special Terms and Conditions</b>  <b>5. General Terms and Conditions, and,</b>  <b>6. Other provisions of the Agreement incorporated by reference</b> </td> </tr> </table>						<b>1. Applicable Federal and State Statutes and Regulations</b> <b>2. DHS/FEMA Award and program documents</b> <b>3. Work Plan, Timeline, and Budget</b>	<b>4. Special Terms and Conditions</b> <b>5. General Terms and Conditions, and,</b> <b>6. Other provisions of the Agreement incorporated by reference</b>
<b>1. Applicable Federal and State Statutes and Regulations</b> <b>2. DHS/FEMA Award and program documents</b> <b>3. Work Plan, Timeline, and Budget</b>	<b>4. Special Terms and Conditions</b> <b>5. General Terms and Conditions, and,</b> <b>6. Other provisions of the Agreement incorporated by reference</b>						
WHEREAS, the parties hereto have executed this Agreement on the day and year last specified below.							
FOR THE DEPARTMENT:			FOR THE SUBRECIPIENT:				
_____ Signature		_____ Date		_____ Signature			
Regan Anne Hesse, Chief Financial Officer Washington State Military Department				Tim George, City Manager City of Des Moines			
BOILERPLATE APPROVED AS TO FORM: Dierk Meierbachtol Assistant Attorney General			APPROVED AS TO FORM (if applicable): _____ Signature				
July 12, 2024			_____ Date				

## SPECIAL TERMS AND CONDITIONS

**ARTICLE I. KEY PERSONNEL**

The individuals listed below shall be considered key personnel for point of contact under this Agreement. Any substitution of key personnel by either party shall be made by written notification to the current key personnel.

SUBRECIPIENT		DEPARTMENT	
Name	<b>Shannon Kirchberg</b>	Name	<b>Deborah Henderson</b>
Title	<b>Director of Emergency Management and Workplace Safety</b>	Title	<b>Program Coordinator</b>
Email	<b>skirchberg@desmoineswa.gov</b>	Email	<b>deborah.henderson@mil.wa.gov</b>
Phone	<b>206-870-6562</b>	Phone	<b>253-512-7470</b>
Name	<b>Jackson Sweigart</b>	Name	<b>Peter Drance</b>
Title	<b>Senior Accountant</b>	Title	<b>Program Manager</b>
Email	<b>jsweigart@desmoineswa.gov</b>	Email	<b>peter.drance@mil.wa.gov</b>
Phone	<b>206-870-6512</b>	Phone	<b>253-512-7322</b>
Name		Name	<b>Grant Miller</b>
Title		Title	<b>Program Assistant</b>
Email		Email	<b>grant.miller@mil.wa.gov</b>
Phone		Phone	<b>253-512-7061</b>

**ARTICLE II. ADMINISTRATIVE AND/OR FINANCIAL REQUIREMENTS**

The Subrecipient shall comply with all applicable state and federal laws, rules, regulations, requirements and program guidance identified or referenced in this Agreement and the informational documents published by DHS/FEMA applicable to the 24EMPG Program, including, but not limited to, all criteria, restrictions, and requirements of "The U.S. Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) Fiscal Year 2024 Emergency Management Performance Grant Program" (hereafter "the NOFO"), the *Preparedness Grants Manual*, FM-207-23-0001 April 2024 (hereafter "the Manual"), the DHS Award Letter for the Grant, and the federal regulations commonly applicable to DHS/FEMA grants, all of which are incorporated herein by reference. The *DHS Award Letter* is incorporated in this Agreement as Attachment C.

The Subrecipient acknowledges that since this Agreement involves federal award funding, the performance period may begin prior to the availability of appropriated federal funds. The Subrecipient agrees that it will not hold the Department, the State of Washington, or the United States liable for any damages, claim for reimbursement, or any type of payment whatsoever for services performed under this Agreement prior to distribution of appropriated federal funds, or if federal funds are not appropriated or in a particular amount.

**A. STATE AND FEDERAL REQUIREMENTS FOR DHS/FEMA PREPAREDNESS GRANTS:**

The following requirements apply to all DHS/FEMA Preparedness Grants administered by the Department.

**1. SUBAWARDS & CONTRACTS BY SUBRECIPIENT**

- a. The Subrecipient must make a case-by-case determination whether each agreement it makes for the disbursement of 24EMPG funds received under this Agreement casts the party receiving the funds in the role of a subrecipient or contractor in accordance with 2 CFR 200.331.
- b. If the Subrecipient becomes a pass-through entity by making a subaward to a non-federal entity as its subrecipient:
  - i. The Subrecipient must comply with all federal laws and regulations applicable to pass-through entities of 24EMPG funds, including, but not limited to, those contained in 2 CFR 200.
  - ii. The Subrecipient shall require its subrecipient(s) to comply with all applicable state and federal laws, rules, regulations, requirements, and program guidance identified or referenced in this Agreement and the informational documents published by DHS/FEMA applicable to the 24EMPG Program, including, but not

limited to, all criteria, restrictions, and requirements of the NOFO, the Manual, the DHS Award Letter for the Grant in Attachment C, and the federal regulations commonly applicable to DHS/FEMA grants.

- iii. The Subrecipient shall be responsible to the Department for ensuring that all 24EMPG federal award funds provided to its subrecipients, and associated matching funds, are used in accordance with applicable federal and state statutes and regulations, and the terms and conditions of the federal award set forth in Attachment C of this Agreement.
- iv. The Subrecipient must follow their own policies and procedures to eliminate or reduce the impact of conflicts of interest when making subawards, adhering to any applicable federal or state statutes or regulations. Any real or potential conflicts of interest must be reported to the Department in writing upon discovery.

## 2. BUDGET, REIMBURSEMENT, AND TIMELINE

- a. Within the total Grant Agreement Amount, travel, subcontracts, salaries, benefits, printing, equipment, and other goods and services or other budget categories will be reimbursed on an actual cost basis upon completion unless otherwise provided in this Agreement.
- b. The maximum amount of all reimbursement requests permitted to be submitted under this Agreement, including the final reimbursement request, is limited to and shall not exceed the total Grant Agreement Amount.
- c. If the Subrecipient chooses to include indirect costs within the Budget (Attachment F), additional documentation is required based on the applicable situation. As described in 2 CFR 200.414 and Appendix VII to 2 CFR 200:
  - i. If the Subrecipient receives direct funding from any Federal agency(ies), documentation of the rate must be submitted to the Department Key Personnel per the following:
    - A. More than \$35 million, the approved indirect cost rate agreement negotiated with its federal cognizant agency.
    - B. Less than \$35 million, the indirect cost proposal developed in accordance with Appendix VII of 2 CFR 200 requirements.
  - ii. If the Subrecipient does not receive direct federal funds (i.e., only receives funds as a subrecipient), the Subrecipient must either elect to charge a de minimis rate of ten percent (10%) or 10% of modified total direct costs or choose to negotiate a higher rate with the Department. If the latter is preferred, the Subrecipient must contact Department Key Personnel to request approval from FEMA per 2CFR 200.102(b)..
- d. For travel costs, the Subrecipient shall comply with 2 CFR 200.475 and should consult their internal policies, state rates set pursuant to RCW 43.03.050 and RCW 43.03.060 as now existing or amended, and federal maximum rates set forth at <https://www.gsa.gov>, and follow the most restrictive. If travel costs exceed set state or federal limits, travel costs shall not be reimbursed without written approval by Department Key Personnel. All international travel requires prior FEMA approval.
- e. Reimbursement requests will include a properly completed State A-19 Invoice Form and Reimbursement Spreadsheet (in the format provided by the Department) detailing the expenditures for which reimbursement is sought. Reimbursement requests must be submitted to [Reimbursements@mil.wa.gov](mailto:Reimbursements@mil.wa.gov) no later than the due dates listed within the Timeline (Attachment E).

Reimbursement request totals should be commensurate to the time spent processing by the Subrecipient and the Department.
- f. Receipts and/or backup documentation for any approved items that are authorized under this Agreement must be maintained by the Subrecipient consistent with record retention

requirements of this Agreement and be made available upon request by the Department and auditors.

- g. The Subrecipient must request **prior** written approval from Department Key Personnel to waive or extend a due date in the Timeline (Attachment E). Waiving or missing deadlines serves as an indicator for assessing an agency's level of risk of noncompliance with the regulations, requirements, and the terms and conditions of the Agreement and may increase required monitoring activities. For waived or extended reimbursement due dates, all allowable costs should be submitted on the next scheduled reimbursement due date contained in the Timeline. Any request for a waiver or extension of a due date in the Timeline will be treated as a request for Amendment of the Agreement. This request must be submitted to the Department Key Personnel **sufficiently in advance** of the due date to provide adequate time for Department review and consideration and may be granted or denied within the Department's sole discretion.
- h. All work under this Agreement must end on or before the Grant Agreement End Date, and the final reimbursement request must be submitted to the Department within the time period notated in the Timeline (Attachment E) except as otherwise authorized by either (1) written amendment of this Agreement or (2) written notification from the Department to the Subrecipient to provide additional time for completion of the Subrecipient's project(s). If funds are not required, the Subrecipient shall notify the Department Key Personnel.
- i. All costs for equipment and supplies must be incurred, and items received, before the Grant Agreement End Date.
- j. Failure to submit timely, accurate, and complete reports and reimbursement requests as required by this Agreement (including, but not limited to, those reports in the Timeline (Attachment E)) will prohibit the Subrecipient from being reimbursed until such reports and reimbursement requests are submitted and the Department has had reasonable time to conduct its review.
- k. Final reimbursement requests will not be approved for payment until the Subrecipient is current with all reporting requirements contained in this Agreement.
- l. A written amendment will be required if the Subrecipient expects cumulative transfers to approved, direct budget categories, as identified in the Budget (Attachment F), to exceed ten percent (10%) of the Grant Agreement Amount. Any changes to budget category totals not in compliance with this paragraph will not be reimbursed without approval from the Department.
- m. Subrecipients shall only use federal award funds under this Agreement to supplement existing funds and will not use them to replace (supplant) non-federal funds that have been budgeted for the same purpose. The Subrecipient may be required to demonstrate and document that a reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

### **3. REPORTING**

- a. With each reimbursement request, the Subrecipient shall report how the expenditures, for which reimbursement is sought, relate to the Work Plan (Attachment D) activities in the format provided by the Department.
- b. With the final reimbursement request, the Subrecipient shall submit to the Department Key Personnel a final report (in the format provided by the Department) describing all completed activities under this Agreement, status of training course completion by individual personnel, how the match was met and documented, and progress made with NQS implementation.
- c. The Subrecipient shall comply with the Federal Funding Accountability and Transparency Act (FFATA) and related OMB Guidance consistent with Public Law 109-282 as amended by section 6202(a) of Public Law 110-252 (see 31 U.S.C. 6101 note) and complete and return to the Department an Audit Certification/FFATA Form. This form is required to be completed once per calendar year, per Subrecipient, and not per agreement. The

Department's Contracts Office will request the Subrecipient submit an updated form at the beginning of each calendar year in which the Subrecipient has an active agreement.

- d. To document compliance with the National Incident Management System (NIMS), the Subrecipient shall complete the annual NIMS survey conducted by Washington Emergency Management Division (EMD).

#### **4. NIMS COMPLIANCE**

- a. The National Incident Management System (NIMS) identifies concepts and principles that answer how to manage emergencies from preparedness to recovery regardless of their cause, size, location, or complexity. NIMS provides a consistent, nationwide approach and vocabulary for multiple agencies or jurisdictions to work together to build, sustain, and deliver the core capabilities needed to achieve a secure and resilient nation.
- b. Consistent implementation of NIMS provides a solid foundation across jurisdictions and disciplines to ensure effective and integrated preparedness, planning, and response. NIMS empowers the components of the National Preparedness System, a requirement of Presidential Policy Directive 8, to guide activities within the public and private sector and describes the planning, organizational activities, equipping, training, and exercising needed to build and sustain the core capabilities in support of the National Preparedness Goal.
- c. In order to receive federal preparedness funding from the Department, the Subrecipient must ensure and maintain adoption and implementation of NIMS. See Agreement Attachment A, Article II section 3.c. for associated reporting requirements. The list of objectives used for progress and achievement reporting can be found at <https://www.fema.gov/emergency-managers/nims/implementation-training>.
- d. FEMA requires phased implementation of the National Qualification System (NQS) for EMPG subrecipients. The NQS Implementation Objectives reflect the concepts and principles contained in NQS doctrine and aim to promote consistency in NQS implementation nationwide. Subrecipients will be considered in compliance with NQS requirements as long as they are working towards implementing the NQS Implementation Objectives can be found at [https://www.fema.gov/sites/default/files/documents/fema\\_nims-nqs-implementation-objectives\\_fact-sheet.pdf](https://www.fema.gov/sites/default/files/documents/fema_nims-nqs-implementation-objectives_fact-sheet.pdf). Only EMPG-funded deployable personnel (determined by the Subrecipient) will be required to meet NQS certification requirements.

For 24EMPG NQS Phase 2 of implementation, Subrecipients must:

- i. Design procedures for an organizational qualification system and subsequently document approval.
- ii. Ensure designated EMPG-funded deployable personnel meet the minimum training requirements for their job title/position qualification.
- iii. Track qualification, certification and credentialing for EMPG-funded deployable personnel.
- iv. Describe the status of implementation as a part of the annual NIMS survey conducted by EMD staff at the end of the calendar year.
- v. Note within the EMPG final report which EMPG funded personnel are categorized as deployable and status of implementation, as applicable.

#### **5. EQUIPMENT AND SUPPLY MANAGEMENT**

- a. The Subrecipient and any non-federal entity to which the Subrecipient makes a subaward shall comply with 2 CFR 200.317 through 200.327, and all Washington State procurement statutes, when procuring any equipment or supplies under this Agreement, 2 CFR 200.313 for management of equipment, and 2 CFR 200.314 for management of supplies, to include, but not limited to:

- i. Upon successful completion of the terms of this Agreement, all equipment and supplies purchased through this Agreement will be owned by the Subrecipient, or a recognized non-federal entity to which the Subrecipient has made a subaward, for which a contract, Subrecipient grant agreement, or other means of legal transfer of ownership is in place.
- ii. All equipment, and supplies as applicable, purchased under this Agreement will be recorded and maintained in the Subrecipient's inventory system.
- iii. Inventory system records shall include:
  - A. Description of the property
  - B. Manufacturer's serial number, or other identification number
  - C. Funding source for the property, including the Federal Award Identification Number (FAIN) (Face Sheet, Box 11)
  - D. Assistance Listings Number (Face Sheet, Box 13)
  - E. Who holds the title
  - F. Acquisition date
  - G. Cost of the property and the percentage of federal participation in the cost
  - H. Location, use, and condition of the property at the date the information was reported
  - I. Disposition data including the date of disposal and sale price of the property.
- iv. The Subrecipient shall take a physical inventory of the equipment, and supplies as applicable, and reconcile the results with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the records shall be investigated by the Subrecipient to determine the cause of the difference. The Subrecipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.
- v. The Subrecipient shall be responsible for any and all operational and maintenance expenses and for the safe operation of the equipment and supplies including all questions of liability. The Subrecipient shall develop appropriate maintenance schedules and procedures to ensure the equipment, and supplies as applicable, are well maintained and kept in good operating condition.
- vi. The Subrecipient shall develop a control system to ensure adequate safeguards to prevent loss, damage, and theft of the property. Any loss, damage, or theft shall be investigated, and a report generated and sent to the Department's Key Personnel.
- vii. The Subrecipient must obtain and maintain all necessary certifications and licenses for the equipment.
- viii. If the Subrecipient is authorized or required to sell the property, proper sales procedures must be established and followed to ensure the highest possible return. For disposition, if upon termination or at the Grant Agreement End Date, when original or replacement supplies or equipment acquired under a federal award are no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, the Subrecipient must comply with the following procedures:
  - A. For Supplies: If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federal

award, the Subrecipient must retain the supplies for use on other activities or sell them, but must, in either case, compensate the federal government for its share. The amount of compensation must be computed in the same manner as for equipment.

B. For Equipment:

- 1) Items with a current per-unit fair-market value of \$5,000 or less may be retained, sold, transferred, or otherwise disposed of with no further obligation to the federal awarding agency.
- 2) Items with a current per-unit fair-market value in excess of \$5,000 may be retained or sold. The Subrecipient shall compensate the federal awarding agency in accordance with the requirements of 2 CFR 200.313 (e) (2).

C. Notify Department Key Personnel to initiate the disposition process by the federal awarding agency.

- ix. Records for equipment shall be retained by the Subrecipient for a period of six years from the date of the disposition, replacement, or transfer. If any litigation, claim, or audit is started before the expiration of the six-year period, the records shall be retained by the Subrecipient until all litigation, claims, or audit findings involving the records have been resolved.
- b. The Subrecipient shall comply with the Department's Purchase Review Process, which is incorporated by reference and made part of this Agreement. No reimbursement will be provided unless the appropriate approval has been received.
- c. Allowable equipment categories for the grant program are listed on the Authorized Equipment List (AEL) located on the FEMA website at <https://www.fema.gov/grants/guidance-tools/authorized-equipment-list>. It is important that the Subrecipient and any non-federal entity to which the Subrecipient makes a subaward regard the AEL as an authorized purchasing list identifying items allowed under the specific grant program; the AEL includes items that may not be categorized as equipment according to the federal, state, local, and tribal definitions of equipment. The Subrecipient is solely responsible for ensuring and documenting purchased items under this Agreement are authorized as allowed items by the AEL at time of purchase.  
  
If the item is not identified on the AEL as allowable under the grant program, the Subrecipient must contact the Department Key Personnel for assistance in seeking FEMA approval **prior** to acquisition.
- d. Equipment might require more than one waiver. The Subrecipient must contact the Department Key Personnel for assistance in identifying what waivers are needed and in seeking FEMA approval prior to acquisition.
- e. Equipment purchases (those with a current per-unit fair market value in excess of \$5,000) must be identified and explained to the Department. Use, management, and disposition of such equipment is subject to requirements outlined in 2 CFR 200.313. Before making such purchases, the Subrecipient should analyze the cost benefits of purchasing versus leasing equipment, especially those subject to rapid technical advances.
- f. Unless expressly provided otherwise, all equipment must meet all mandatory regulatory state and DHS/FEMA adopted standards to be eligible for purchase using federal award funds.
- g. If funding is allocated to support emergency communications activities, the Subrecipient must ensure that all projects comply with SAFECOM Guidance on Emergency Communications Grants, located at <https://www.cisa.gov/safecom/funding>, including provisions on technical standards that ensure and enhance interoperable communications.



- h. Effective August 13, 2020, FEMA recipients and subrecipients, as well as their contractors and subcontractors, may not obligate or expend any FEMA award funds to:
  - i. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
  - ii. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system; or
  - iii. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

This prohibition regarding certain telecommunications and video surveillance services or equipment is mandated by section 889 of the *John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA)*, *Pub. L. No. 115-232 (2018)* and *2 CFR 200.216, 200.327, 200.471, and Appendix II to 2CFR200*. Recipients and subrecipients may use DHS/FEMA grant funding to procure replacement equipment and services impacted by this prohibition, provided the costs are otherwise consistent with the requirements of the Manual and the NOFO.

Per subsections 889(f)(2)-(3) of the FY 2019 NDAA, and 2 CFR 200.216, covered telecommunications equipment or services means:

- iv. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- v. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- vi. Telecommunications or video surveillance services provided by such entities or using such equipment; or
- vii. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- i. The Subrecipient must pass through equipment and supply management requirements that meet or exceed the requirements outlined above to any non-federal entity to which the Subrecipient makes a subaward under this Agreement.

**6. ENVIRONMENTAL AND HISTORICAL PRESERVATION**

- a. The Subrecipient shall ensure full compliance with the DHS/FEMA Environmental Planning and Historic Preservation (EHP) program. EHP program information can be found at <https://www.fema.gov/grants/guidance-tools/environmental-historic> all of which are incorporated in and made a part of this Agreement.
- b. Projects that have historical impacts or the potential to impact the environment, **including, but not limited to**, construction of communication towers; modification or renovation of existing buildings, structures and facilities; installation of sonar system; or new construction including replacement of facilities, must participate in the DHS/FEMA EHP review process prior to initiation. Modification of existing buildings, including minimally invasive improvements such as attaching monitors to interior walls, and training or exercises occurring outside in areas not considered previously disturbed, also require a DHS/FEMA EHP review before project initiation.

- c. The EHP review process involves the submission of a detailed project description that includes the entire scope of work, including any alternatives that may be under consideration, along with supporting documentation so FEMA may determine whether the proposed project has the potential to impact environmental resources and/or historic properties.
- d. The Subrecipient agrees that to receive any federal preparedness funding, all EHP compliance requirements outlined in applicable guidance must be met. The EHP review process **must be completed and FEMA approval received by the Subrecipient before any work is started** for which reimbursement will be later requested. Expenditures for projects started before completion of the EHP review process and receipt of approval by the Subrecipient will not be reimbursed.

**7. PROCUREMENT**

The Subrecipient shall comply with all procurement requirements of 2 CFR Part 200.317 through 200.327 and as specified in the General Terms and Conditions (Attachment B, A.10).

- a. For all contracts expected to exceed the simplified acquisition threshold, per 2 CFR 200.1, the Subrecipient must notify the Department. The Department may request pre-procurement documents, such as request for proposals, invitations for bids and independent cost estimates. This requirement must be passed on to any non-federal entity to which the Subrecipient makes a subaward, at which point the Subrecipient will be responsible for requesting and reviewing pre-procurement documents.
- b. For all sole source contracts expected to exceed the micro-purchase threshold per 2 CFR 200.1, the Subrecipient must submit justification to the Department for review and approval. This requirement must be passed on to any non-federal entity to which the Subrecipient makes a subaward, at which point the Subrecipient will be responsible for reviewing and approving sole source justifications to any non-federal entity to which Subrecipient makes any award.
- c. The Subrecipient as well as its contractors and subcontractors must comply with the Build America, Buy America Act (BABAA), which was enacted as a part of the Infrastructure Investment and Jobs Act §§ 70901-70297, Pub. L. No. 117-58 (2021); and Executive Order 14005, Ensuring the Future is Made in All of America by All of America's Workers. BABAA requires any infrastructure project receiving federal funding must ensure:
  - i. All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from initial melting stage through the application of coatings, occurred in the United States.
  - ii. All manufactured products must be produced in the United States. For a manufactured product to be considered produced in the United States, the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States must be greater than 55% of the total cost of all minimum amount of domestic content of manufactured product, unless subject to another standard.
  - iii. All construction materials are manufactured in the United States. This means that all manufacturing processes for construction material occurred in the United States.

Additionally, applicable infrastructure projects are subject to domestic preference requirements. A domestic preference does not apply to non-infrastructure spending under an award that also includes a covered project. A domestic preference applies to an entire infrastructure project, even if it is funded by both federal and non-federal funds under one or more awards.

- i. Domestic preferences under BABAA only apply to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a domestic preference apply to

equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of or permanently affixed to the structure.

- ii. Infrastructure, for the purposes of BABAA, includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways and bridges; public transportation; dams, ports, harbors and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.
- iii. The Subrecipient's contractors and their subcontractors who apply or bid for an award for an infrastructure project subject to the domestic preference requirement in the BABAA shall file a required certification to the Subrecipient with each bid or offer for an infrastructure project, unless a domestic preference requirement is waived by FEMA. Contractors and subcontractors must certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52. Contractors and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that does not ensure compliance with BABAA domestic preference requirement. Such disclosures shall be forwarded to the Subrecipient who will forward them to the Department who, in turn, will forward the disclosures to FEMA. The Build America, Buy America Act Self-Certification form is included herein as Attachment G.

If the Subrecipient is interested in applying for a waiver, the Subrecipient should contact the Department Key Personnel to determine the requirements. All waiver requests must include a detailed justification for the use of goods, products, or materials mined, produced, or manufactured outside the United States and a certification that there was a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with potential suppliers.

## **8. SUBRECIPIENT MONITORING**

- a. The Department will monitor the activities of the Subrecipient from award to closeout. The goal of the Department's monitoring activities is to ensure that subrecipients receiving federal pass-through funds are in compliance with this Agreement, federal and state audit requirements, federal grant guidance, and applicable federal and state financial regulations, as well as 2 CFR Part 200 Subpart F.
- b. To document compliance with 2 CFR Part 200 Subpart F requirements, the Subrecipient shall complete and return to the Department an Audit Certification/FFATA form. Reporting requirements are referenced in section 3.c.
- c. Monitoring activities may include, but are not limited to:
  - i. Review of financial and performance reports
  - ii. Monitoring and documenting the completion of Agreement deliverables
  - iii. Documentation of phone calls, meetings (e.g. agendas, sign-in sheets, meeting minutes), e-mails and correspondence
  - iv. Review of reimbursement requests and supporting documentation to ensure allowability and consistency with Agreement work plan, budget, and federal requirements
  - v. Observation and documentation of Agreement related activities, such as exercises, training, events, and equipment demonstrations

- vi. On-site visits to review equipment records and inventories, to verify source documentation for reimbursement requests and performance reports, and to verify completion of deliverables.
- d. The Subrecipient is required to meet or exceed the monitoring activities, as outlined above, for any non-federal entity to which the Subrecipient makes a subaward as a pass-through entity under this Agreement.
- e. Compliance will be monitored throughout the performance period to assess risk. Concerns will be addressed through a Corrective Action Plan.

**9. LIMITED ENGLISH PROFICIENCY (CIVIL RIGHTS ACT OF 1964 TITLE VI)**

- a. The Subrecipient must comply with the Title VI of the Civil Rights Act of 1964 (Title VI) prohibition against discrimination on the basis of national origin, which requires that subrecipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. FEMA Policy FP-256-23-001 ([www.fema.gov/sites/default/files/documents/fema\\_policy-language-access.pdf](http://www.fema.gov/sites/default/files/documents/fema_policy-language-access.pdf)) further stresses this requirement applies to anyone awarded FEMA funding. Providing meaningful access for persons with LEP may entail providing language assistance services, including oral interpretation and written translation. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (August 11, 2000), requires federal agencies to issue guidance to recipients, assisting such organizations and entities in understanding their language access obligations. DHS published the required recipient guidance in April 2011, DHS Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 76 Fed. Reg. 21755-21768, (April 18, 2011). The Guidance provides helpful information such as how a recipient can determine the extent of its obligation to provide language services, selecting language services, and elements of an effective plan on language assistance for LEP persons. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance at <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <https://www.lep.gov>.
- b. Subrecipients are encouraged to perform and document their analysis of the most appropriate language assistance services necessary to ensure a LEP individual has meaningful access to the Subrecipient's programs and activities. The analysis should consider
  - i. The number or proportion of LEP individuals eligible to be served or likely encountered by the program
  - ii. The frequency with which LEP individuals come in contact with the program
  - iii. The nature and importance of the program, activity, or service provided by the program to people's lives
  - iv. The resources available to the program and costs

**B. EMPG PROGRAM SPECIFIC REQUIREMENTS**

The Department receives EMPG funding from DHS/FEMA, to assist state, local, and tribal governments to enhance and sustain all-hazards emergency management capabilities as authorized by Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. §§ 5121 et seq.) and Section 662 of the Post Katrina Emergency Management Act (6 U.S.C. § 762).

A portion of the grant program is passed through to local jurisdictions and tribes with emergency management programs to supplement their local/tribal operating budgets to help sustain and enhance emergency management capabilities pursuant to Washington Administrative Code (WAC) 118-09.

- a. The Subrecipient shall use the EMPG funds authorized under this Agreement only to perform tasks as described in the Work Plan (Attachment D) and the Subrecipient's approved application for funding, incorporated into this Agreement.

- b. Funding may not be used to replace or supplant non-federal funding of emergency management programs.
- c. The Subrecipient shall provide a fifty percent (50%) cash match from non-federal source(s). The Federal share applied toward the EMPG budget shall not exceed fifty percent of the total budget as submitted and approved in the application and documented in the Budget (Attachment F). To meet matching requirements, the Subrecipient's cash matching contributions must be verifiable, reasonable, allowable, allocable, and necessary under the grant program and must comply with all state and Federal requirements and regulations, including, but not limited to, 2 CFR Part 200. An appropriate mechanism must be in place to capture, track, and document matching funds.
- d. To gather data for the required FEMA deliverables (i.e., Stakeholder Preparedness Review [SPR], Threat Hazard Identification and Risk Assessment [THIRA]), EMD is piloting a three-year County Emergency Preparedness Assessment (CEPA) process with workshops, occurring in a third of the 39 counties each calendar year 2024-2026. The Subrecipient **must** participate in a CEPA workshop located in their county and in any follow-on data calls to receive EMPG funding.
- e. Subrecipients shall participate in the State's Integrated Preparedness Planning Workshop (IPPW). Non-participation may result in withholding of funding under future grant years.
- f. If funding is allocated to non-FEMA training, the Subrecipient must request **prior** written approval from the Department Key Personnel before attending the training. The Department will coordinate approval with the State Training Point of Contact. Pursuant to DHS/FEMA Grant Programs Directorate Information Bulletin No. 432, Review and Approval Requirements for Training Courses Funded Through Preparedness Grants, [https://www.fema.gov/sites/default/files/2020-04/Training\\_Course\\_Review\\_and\\_Approval\\_IB\\_Final\\_7\\_19\\_18.pdf](https://www.fema.gov/sites/default/files/2020-04/Training_Course_Review_and_Approval_IB_Final_7_19_18.pdf), the training must fall within the FEMA mission scope and be in alignment with the Subrecipient's Emergency Operations Plan. This requirement only applies to training courses and does not include attendance at conferences. Furthermore, additional federal approvals are required for courses that relate to Countering Violent Extremism prior to attendance.
- g. All personnel funded in any part through federal award or matching funds under this Agreement shall complete and record proof of completion of:
  - i. NIMS training Independent Study (IS): IS-100, IS-200, IS-700, and IS-800, and
  - ii. **Either** the FEMA Professional Development Series (PDS) IS-120, IS-230, IS-235, IS-240, IS-241, IS-242, and IS-244, **or** the Emergency Management Professionals Program (EMPP) Basic Academy IS-230, E/L101, E/L 102, E/L103, E/L104 and E/L105.

**C. DHS TERMS AND CONDITIONS**

As a Subrecipient of 24EMPG funding, the Subrecipient shall comply with all applicable DHS terms and conditions of the 24EMPG Award Letter and its incorporated documents for the Grant, which are incorporated and made a part of this Agreement as Attachment C.

**Washington State Military Department  
GENERAL TERMS AND CONDITIONS  
Department of Homeland Security (DHS)/  
Federal Emergency Management Agency (FEMA)  
Grants**

**A.1 DEFINITIONS**

As used throughout this Agreement, the terms will have the same meaning as defined in 2 CFR 200 Subpart A (which is incorporated herein by reference), except as otherwise set forth below:

- a. **“Agreement”** means this Grant Agreement.
- b. **“Department”** means the Washington State Military Department, as a state agency, any division, section, office, unit or other entity of the Department, or any of the officers or other officials lawfully representing that Department. The Department is a recipient of a federal award directly from a federal awarding agency and is the pass-through entity making a subaward to a Subrecipient under this Agreement.
- c. **“Monitoring Activities”** means all administrative, financial, or other review activities that are conducted to ensure compliance with all state and federal laws, rules, regulations, authorities, and policies.
- d. **“Subrecipient”** when capitalized is primarily used throughout this Agreement in reference to the non-federal entity identified on the Face Sheet of this Agreement that has received a subaward from the Department. However, the definition of “Subrecipient” is the same as in 2 CFR 200.1 for all other purposes.

**A.2 ADVANCE PAYMENTS PROHIBITED**

The Department shall make no payments in advance or in anticipation of goods or services to be provided under this Agreement. Subrecipient shall not invoice the Department in advance of delivery and invoicing of such goods or services.

**A.3 AMENDMENTS AND MODIFICATIONS**

The Subrecipient or the Department may request, in writing, an amendment or modification of this Agreement. However, such amendment or modification shall not be binding, take effect or be incorporated herein until made in writing and signed by the authorized representatives of the Department and the Subrecipient. No other understandings or agreements, written or oral, shall be binding on the parties.

The Agreement performance period shall only be extended by (1) written notification of DHS/FEMA approval of the Award performance period, followed up with a mutually agreed written amendment, or (2) written notification from the Department to the Subrecipient to provide additional time for completion of the Subrecipient’s project(s).

**A.4 AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, 42 U.S.C. 12101 ET SEQ. AND ITS IMPLEMENTING REGULATIONS ALSO REFERRED TO AS THE “ADA” 28 CFR Part 35.**

Except as provided herein, the Subrecipient must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunication. If the ADA does not apply to the Subrecipient because the Subrecipient is a federal recognized Indian Tribe, then the acceptance by the Tribe of, or acquiescence to, these General Terms and Conditions does not change or alter its inapplicability to the Indian Tribe. The execution of grant documents is not intended to change, alter, amend, or impose additional liability or responsibility upon the Tribe where it does not already exist.

**A.5 ASSURANCES**

The Department and Subrecipient agree that all activity pursuant to this Agreement will be in accordance with all the applicable current federal, state and local laws, rules and regulations.

A.6 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, OR INELIGIBILITY

As federal funds are a basis for this Agreement, the Subrecipient certifies that the Subrecipient is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency.

The Subrecipient shall complete, sign, and return a *Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion* form located at <https://mil.wa.gov/requiredgrantforms>. Any such form completed by the Subrecipient for this Agreement shall be incorporated into this Agreement by reference.

Further, the Subrecipient agrees to comply with all applicable federal regulations concerning the federal debarment and suspension system, including 2 CFR Part 180. The Subrecipient certifies that it will ensure that potential contractors or subrecipients or any of their principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in "covered transactions" by any federal department or agency. "Covered transactions" include procurement contracts for goods or services awarded under a non-procurement transaction (e.g., grant or cooperative agreement) that are expected to equal or exceed \$25,000, and subawards to subrecipients for any amount. With respect to covered transactions, the Subrecipient may comply with this provision by obtaining a certification statement from the potential contractor or subrecipient or by checking the System for Award Management (<https://sam.gov/SAM/>) maintained by the federal government. The Subrecipient also agrees not to enter into any arrangements or contracts with any party on the Washington State Department of Labor and Industries' "Debarred Contractor List" (<https://secure.lni.wa.gov/debarandstrike/ContractorDebarList.aspx>). The Subrecipient also agrees not to enter into any agreements or contracts for the purchase of goods and services with any party on the Department of Enterprise Services' *Debarred Vendor List* (<https://www.des.wa.gov/services/contracting-purchasing/doing-business-state/vendor-debarment>).

A.7 CERTIFICATION REGARDING RESTRICTIONS ON LOBBYING

As required by 44 CFR Part 18, the Subrecipient hereby certifies that to the best of its knowledge and belief: (1) no federally appropriated funds have been paid or will be paid by or on behalf of the Subrecipient to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; (2) that if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, grant, loan, or cooperative agreement, the Subrecipient will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; (3) and that, as applicable, the Subrecipient will require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352.

A.8 COMPLIANCE WITH APPLICABLE STATUTES, RULES AND DEPARTMENT POLICIES

The Subrecipient and all its contractors and subrecipients shall comply with, and the Department is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, executive orders, OMB Circulars, and/or policies. This obligation includes, but is not limited to: nondiscrimination laws and/or policies, Energy Policy and Conservation Act (PL 94-163, as amended), the Americans with Disabilities Act (ADA), Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Civil Rights Act of 1968, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (PL 93-288, as amended), Ethics in Public Service (RCW 42.52), Covenant Against Contingent Fees (48 CFR Section 52.203-5), Public Records Act (RCW 42.56), Prevailing Wages on Public Works (RCW 39.12), State Environmental Policy Act (RCW 43.21C), Shoreline Management Act of 1971 (RCW 90.58), State Building Code (RCW 19.27), Energy Related Building Standards (RCW 19.27A), Provisions in Buildings for Aged and Handicapped Persons (RCW 70.92), and safety and health regulations.

In the event of noncompliance or refusal to comply with any applicable law, regulation, executive order, OMB Circular or policy by the Subrecipient, its contractors or subrecipients, the Department may rescind, cancel, or terminate the Agreement in whole or in part in its sole discretion. The Subrecipient is responsible for all costs or liability arising from its failure, and that of its contractors and subrecipients, to comply with applicable laws, regulations, executive orders, OMB Circulars or policies.

A.9 CONFLICT OF INTEREST

No officer or employee of the Department; no member, officer, or employee of the Subrecipient or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of the Subrecipient who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this Agreement.

The Subrecipient shall incorporate, or cause to incorporate, in all such contracts or subawards, a provision prohibiting such interest pursuant to this provision.

A.10 CONTRACTING & PROCUREMENT

a. The Subrecipient shall use a competitive procurement process in the procurement and award of any contracts with contractors or subcontractors that are entered into under the original agreement award. The procurement process followed shall be in accordance with 2 CFR Part 200.318, General procurement standards, through 200.327, Contract provisions.

As required by Appendix II to 2 CFR Part 200, all contracts entered into by the Subrecipient under this Agreement must include the following provisions, as applicable:

- 1) Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- 2) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-federal entity including the manner by which it will be effected and the basis for settlement.
- 3) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "*Equal Employment Opportunity*" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "*Amending Executive Order 11246 Relating to Equal Employment Opportunity*," and implementing regulations at 41 CFR part 60, "*Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor*."
- 4) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "*Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction*"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or Subrecipient must



be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency.

- 5) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- 6) Rights to Inventions Made Under a Contract or Agreement. If the federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, "*Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements*," and any implementing regulations issued by the awarding agency.
- 7) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 8) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "*Debarment and Suspension*." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 9) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.
- 10) Procurement of recovered materials -- As required by 2 CFR 200.323, a non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds

\$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- 11) Notice of federal awarding agency requirements and regulations pertaining to reporting.
- 12) Federal awarding agency requirements and regulations pertaining to copyrights and rights in data.
- 13) Access by the Department, the Subrecipient, the federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- 14) Retention of all required records for six (6) years after the Subrecipient has made final payments and all other pending matters are closed.
- 15) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871).
- 16) Pursuant to Executive Order 13858 “*Strengthening Buy-American Preferences for Infrastructure Projects*,” and as appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States, as required in 2 CFR Part 200.322, in every contract, subcontract, purchase order, or sub-award that is chargeable against federal financial assistance awards.
- 17) Per 2 C.F.R. § 200.216, prohibitions regarding certain telecommunications and video surveillance services or equipment are mandated by *section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA), Pub. L. No. 115-232 (2018)*.

- b. The Department reserves the right to review the Subrecipient’s procurement plans and documents and require the Subrecipient to make changes to bring its plans and documents into compliance with the requirements of 2 CFR Part 200.317 through 200.327. The Subrecipient must ensure that its procurement process requires contractors and subcontractors to provide adequate documentation with sufficient detail to support the costs of the project and to allow both the Subrecipient and Department to make a determination on eligibility of project costs.
- c. All contracting agreements entered into pursuant to this Agreement shall incorporate this Agreement by reference.

A.11 DISCLOSURE

The use or disclosure by any party of any information concerning the Department for any purpose not directly connected with the administration of the Department’s or the Subrecipient’s responsibilities with respect to services provided under this Agreement is prohibited except by prior written consent of the Department or as required to comply with the state Public Records Act, other law or court order.

A.12 DISPUTES

Except as otherwise provided in this Agreement, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute resolution board to resolve the dispute. A request for a dispute resolution board shall be in writing, state the disputed issues, state the relative positions of the parties, and be sent to all parties. The board shall consist of a representative appointed by the Department, a representative appointed by the Subrecipient, and a third party mutually agreed upon by both parties. The determination of the dispute resolution board shall be final and binding on the parties hereto. Each party shall bear the cost for its member of the dispute resolution board and its attorney fees and costs and share equally the cost of the third board member.

A.13 LEGAL RELATIONS

It is understood and agreed that this Agreement is solely for the benefit of the parties to the Agreement and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement.

To the extent allowed by law, the Subrecipient, its successors or assigns, will protect, save and hold harmless the Department, the state of Washington, and the United States Government and their authorized agents and employees, from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the acts or omissions of the Subrecipient, its subcontractors, subrecipients, assigns, agents, contractors, consultants, licensees, invitees, employees or any person whomsoever arising out of or in connection with any acts or activities authorized by this Agreement.

To the extent allowed by law, the Subrecipient further agrees to defend the Department and the state of Washington and their authorized agents and employees in any litigation; including payment of any costs or attorneys' fees for any claims or action commenced thereon arising out of or in connection with acts or activities authorized by this Agreement.

This obligation shall not include such claims, costs, damages or expenses which may be caused by the sole negligence of the Department; provided, that if the claims or damages are caused by or result from the concurrent negligence of (1) the Department, and (2) the Subrecipient, its agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Subrecipient, or the Subrecipient's agents or employees.

Insofar as the funding source, FEMA is an agency of the Federal government, the following shall apply:

44 CFR 206.9 Non-liability. The Federal government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Federal government in carrying out the provisions of the Stafford Act.

A.14 LIMITATION OF AUTHORITY – AUTHORIZED SIGNATURE

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement. Only the Department's Authorized Signature representative and the Authorized Signature representative of the Subrecipient or Alternate for the Subrecipient, formally designated in writing, shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement. Any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing and signed by both parties' Authorized Signature representatives, except as provided for time extensions in Article A.3.

Further, only the Authorized Signature representative or Alternate for the Subrecipient shall have signature authority to sign reimbursement requests, time extension requests, amendment and modification requests, requests for changes to projects or work plans, and other requests, certifications and documents authorized by or required under this Agreement.

A.15 LOSS OR REDUCTION OF FUNDING

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion or end date, the Department may unilaterally reduce the work plan and budget or unilaterally terminate all or part of the Agreement as a "Termination for Cause" without providing the Subrecipient an opportunity to cure. Alternatively, the parties may renegotiate the terms of this Agreement under "Amendments and Modifications" to comply with new funding limitations and conditions, although the Department has no obligation to do so.

A.16 NONASSIGNABILITY

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Subrecipient.

A.17 NONDISCRIMINATION

During the performance of this agreement, the Subrecipient shall comply with all federal and state nondiscrimination statutes and regulations. These requirements include, but are not limited to:

- a. Nondiscrimination in Employment: The Subrecipient shall not discriminate against any employee or applicant for employment because of race, color, sex, sexual orientation, religion, national origin, creed, marital status, age, Vietnam era or disabled veteran status, or the presence of any sensory,

mental, or physical handicap. This requirement does not apply, however, to a religious corporation, association, educational institution or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its activities.

- b. The Subrecipient shall take action to ensure that employees are employed and treated during employment without discrimination because of their race, color, sex, sexual orientation religion, national origin, creed, marital status, age, Vietnam era or disabled veteran status, or the presence of any sensory, mental, or physical handicap. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment selection for training, including apprenticeships and volunteers.

A.18 NOTICES

The Subrecipient shall comply with all public notices or notices to individuals required by applicable local, state and federal laws and regulations and shall maintain a record of this compliance.

A.19 OCCUPATIONAL SAFETY/HEALTH ACT and WASHINGTON INDUSTRIAL SAFETY/HEALTH ACT (OSHA/WISHA)

The Subrecipient represents and warrants that its workplace does now or will meet all applicable federal and state safety and health regulations that are in effect during the Subrecipient's performance under this Agreement. To the extent allowed by law, the Subrecipient further agrees to indemnify and hold harmless the Department and its employees and agents from all liability, damages and costs of any nature, including, but not limited to, costs of suits and attorneys' fees assessed against the Department, as a result of the failure of the Subrecipient to so comply.

A.20 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 subaward of funds does not and will not acquire any ownership interest or title to such property of the Subrecipient. The Subrecipient shall assume all liabilities and responsibilities arising from the ownership and operation of the project and agrees to defend, indemnify, and hold the Department, the state of Washington, and the United States government harmless from any and all causes of action arising from the ownership and operation of the project.

A.21 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.

A.22 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The assistance provided under this Agreement shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such assistance or any other approval or concurrence under this Agreement provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

A.23 PUBLICITY

The Subrecipient agrees to submit to the Department prior to issuance all advertising and publicity matters relating to this Agreement wherein the Department's name is mentioned, or language used from which the connection of the Department's name may, in the Department's judgment, be inferred or implied. The Subrecipient agrees not to publish or use such advertising and publicity matters without the prior written consent of the Department. The Subrecipient may copyright original work it develops in the course of or under this Agreement; however, pursuant to 2 CFR Part 200.315, FEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the work for government purposes.

Publication resulting from work performed under this Agreement shall include an acknowledgement of FEMA's financial support, by the Assistance Listings Number (formerly CFDA Number), and a statement that the publication does not constitute an endorsement by FEMA or reflect FEMA's views.

A.24 RECAPTURE PROVISION

In the event the Subrecipient fails to expend funds under this Agreement in accordance with applicable federal, state, and local laws, regulations, and/or the provisions of the Agreement, the Department reserves the right to recapture funds in an amount equivalent to the extent of noncompliance. Such right

of recapture shall exist for the life of the project following Agreement termination. Repayment by the Subrecipient of funds under this recapture provision shall occur within 30 days of demand. In the event the Department is required to institute legal proceedings to enforce the recapture provision, the Department shall be entitled to its costs and expenses thereof, including attorney fees from the Subrecipient.

A.25 RECORDS

- a. The Subrecipient agrees to maintain all books, records, documents, receipts, invoices and all other electronic or written records necessary to sufficiently and properly reflect the Subrecipient's contracts, subawards, grant administration, and payments, including all direct and indirect charges, and expenditures in the performance of this Agreement (the "records").
- b. The Subrecipient's records related to this Agreement and the projects funded may be inspected and audited by the Department or its designee, by the Office of the State Auditor, DHS, FEMA or their designees, by the Comptroller General of the United States or its designees, or by other state or federal officials authorized by law, for the purposes of determining compliance by the Subrecipient with the terms of this Agreement and to determine the appropriate level of funding to be paid under the Agreement.
- c. The records shall be made available by the Subrecipient for such inspection and audit, together with suitable space for such purpose, at any and all times during the Subrecipient's normal working day.
- d. The Subrecipient shall retain and allow access to all records related to this Agreement and the funded project(s) for a period of at least six (6) years following final payment and closure of the grant under this Agreement. Despite the minimum federal retention requirement of three (3) years, the more stringent State requirement of six (6) years must be followed.

A.26 RESPONSIBILITY FOR PROJECT/STATEMENT OF WORK/WORK PLAN

While the Department undertakes to assist the Subrecipient with the project/statement of work/work plan (project) by providing federal award funds pursuant to this Agreement, the project itself remains the sole responsibility of the Subrecipient. The Department undertakes no responsibility to the Subrecipient, or to any third party, other than as is expressly set out in this Agreement.

The responsibility for the design, development, construction, implementation, operation and maintenance of the project, as these phrases are applicable to this project, is solely that of the Subrecipient, as is responsibility for any claim or suit of any nature by any third party related in any way to the project.

Prior to the start of any construction activity, the Subrecipient shall ensure that all applicable federal, state, and local permits and clearances are obtained, including, but not limited to, FEMA compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other environmental laws, regulations, and executive orders.

The Subrecipient shall defend, at its own cost, any and all claims or suits at law or in equity, which may be brought against the Subrecipient in connection with the project. The Subrecipient shall not look to the Department, or to any state or federal agency, or to any of their employees or agents, for any performance, assistance, or any payment or indemnity, including, but not limited to, cost of defense and/or attorneys' fees, in connection with any claim or lawsuit brought by any third party related to any design, development, construction, implementation, operation and/or maintenance of a project.

A.27 SEVERABILITY

If any court of rightful jurisdiction holds any provision or condition under this Agreement or its application to any person or circumstances invalid, this invalidity does not affect other provisions, terms or conditions of the Agreement, which can be given effect without the invalid provision. To this end, the terms and conditions of this Agreement are declared severable.

A.28 SINGLE AUDIT ACT REQUIREMENTS (including all AMENDMENTS)

The Subrecipient shall comply with and include the following audit requirements in any subawards.

Non-federal entities, as Subrecipients of a federal award, that expend **\$750,000** or more in one fiscal year of federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F. Non-federal entities that spend less than **\$750,000** a year in federal awards are exempt from federal audit requirements for that year, except as noted in 2 CFR Part 200 Subpart F. As defined in 2 CFR Part 200, the term "non-federal entity"

means a state, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a federal award as a recipient or subrecipient.

Subrecipients that are required to have an audit must ensure the audit is performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) as found in the Government Auditing Standards (the Revised Yellow Book) developed by the United States Comptroller General and the OMB Compliance Supplement. The Subrecipient has the responsibility of notifying its auditor and requesting an audit in compliance with 2 CFR Part 200 Subpart F, to include the Washington State Auditor's Office, a federal auditor, or a public accountant performing work using GAGAS, as appropriate. Costs of the audit may be an allowable grant expenditure as authorized by 2 CFR Part 200.425.

The Subrecipient shall maintain auditable records and accounts so as to facilitate the audit requirement and shall ensure that any subcontractors also maintain auditable records. The Subrecipient is responsible for any audit exceptions incurred by its own organization or that of its subcontractors. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Subrecipient must respond to Department requests for information or corrective action concerning audit issues or findings within 30 days of the date of request. The Department reserves the right to recover from the Subrecipient all disallowed costs resulting from the audit.

After the single audit has been completed, and if it includes any audit findings, the Subrecipient must send a full copy of the audit and its Corrective Action Plan to the Department at the following address no later than nine (9) months after the end of the Subrecipient's fiscal year(s):

**Contracts Office  
Washington Military Department  
Finance Division, Building #1 TA-20  
Camp Murray, WA 98430-5032**

**OR**

[Contracts.Office@mil.wa.gov](mailto:Contracts.Office@mil.wa.gov)

The Department retains the sole discretion to determine whether a valid claim for an exemption from the audit requirements of this provision has been established.

Conducting a single or program-specific audit in compliance with 2 CFR Part 200 Subpart F is a material requirement of this Agreement. In the absence of a valid claim of exemption from the audit requirements of 2 CFR Part 200 Subpart F, the Subrecipient's failure to comply with said audit requirements may result in one or more of the following actions in the Department's sole discretion: a percentage of federal awards being withheld until the audit is completed in accordance with 2 CFR Part 200 Subpart F; the withholding or disallowing of overhead costs; the suspension of federal awards until the audit is conducted and submitted; or termination of the federal award.

**A.29 SUBRECIPIENT NOT EMPLOYEE**

The Subrecipient, and/or employees or agents performing under this Agreement, are not employees or agents of the Department in any manner whatsoever. The Subrecipient will not be presented as nor claim to be an officer or employee of the Department or of the state of Washington by reason hereof, nor will the Subrecipient make any claim, demand, or application to or for any right, privilege or benefit applicable to an officer or employee of the Department or of the state of Washington, including, but not limited to, Workers' Compensation coverage, unemployment insurance benefits, social security benefits, retirement membership or credit, or privilege or benefit which would accrue to a civil service employee under Chapter 41.06 RCW; OFM Reg. 4.3.1.1.8.

It is understood that if the Subrecipient is another state department, state agency, state university, state college, state community college, state board, or state commission, that the officers and employees are employed by the state of Washington in their own right.

If the Subrecipient is an individual currently employed by a Washington State agency, the Department shall obtain proper approval from the employing agency or institution before entering into this contract. A statement of "no conflict of interest" shall be submitted to the Department.

**A.30 TAXES, FEES AND LICENSES**

Unless otherwise provided in this Agreement, the Subrecipient shall be responsible for, pay and maintain in current status all taxes, unemployment contributions, fees, licenses, assessments, permit charges and

expenses of any other kind for the Subrecipient or its staff required by statute or regulation that are applicable to Agreement performance.

A.31 TERMINATION FOR CONVENIENCE

Notwithstanding any provisions of this Agreement, the Subrecipient may terminate this Agreement by providing written notice of such termination to the Department Key Personnel identified in the Agreement, specifying the effective date thereof, at least thirty (30) days prior to such date.

Except as otherwise provided in this Agreement, the Department, in its sole discretion and in the best interests of the state of Washington, may terminate this Agreement in whole or in part ten (10) business days after emailing notice. Upon notice of termination for convenience, the Department reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Subrecipient from incurring additional obligations of funds. In the event of termination, the Subrecipient shall be liable for all damages as authorized by law. The rights and remedies of the Department provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

A.32 TERMINATION OR SUSPENSION FOR LOSS OF FUNDING

The Department may unilaterally terminate or suspend all or part of this Grant Agreement, or may reduce its scope of work and budget, if there is a reduction in funds by the source of those funds, and if such funds are the basis for this Grant Agreement. The Department will email the Subrecipient ten (10) business days prior to termination.

A.33 TERMINATION OR SUSPENSION FOR CAUSE

In the event the Department, in its sole discretion, determines the Subrecipient has failed to fulfill in a timely and proper manner its obligations under this Agreement, is in an unsound financial condition so as to endanger performance hereunder, is in violation of any laws or regulations that render the Subrecipient unable to perform any aspect of the Agreement, or has violated any of the covenants, agreements or stipulations of this Agreement, the Department has the right to immediately suspend or terminate this Agreement in whole or in part.

The Department may notify the Subrecipient in writing of the need to take corrective action and provide a period of time in which to cure. The Department is not required to allow the Subrecipient an opportunity to cure if it is not feasible as determined solely within the Department's discretion. Any time allowed for cure shall not diminish or eliminate the Subrecipient's liability for damages or otherwise affect any other remedies available to the Department. If the Department allows the Subrecipient an opportunity to cure, the Department shall notify the Subrecipient in writing of the need to take corrective action. If the corrective action is not taken within ten (10) calendar days or as otherwise specified by the Department, or if such corrective action is deemed by the Department to be insufficient, the Agreement may be terminated in whole or in part.

The Department reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Subrecipient from incurring additional obligations of funds during investigation of the alleged compliance breach, pending corrective action by the Subrecipient, if allowed, or pending a decision by the Department to terminate the Agreement in whole or in part.

In the event of termination, the Subrecipient shall be liable for all damages as authorized by law, including, but not limited to, any cost difference between the original Agreement and the replacement or cover Agreement and all administrative costs directly related to the replacement Agreement, e.g., cost of administering the competitive solicitation process, mailing, advertising and other associated staff time. The rights and remedies of the Department provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

If it is determined that the Subrecipient: (1) was not in default or material breach, or (2) failure to perform was outside of the Subrecipient's control, fault or negligence, the termination shall be deemed to be a termination for convenience.

A.34 TERMINATION PROCEDURES

In addition to the procedures set forth below, if the Department terminates this Agreement, the Subrecipient shall follow any procedures specified in the termination notice. Upon termination of this Agreement and in addition to any other rights provided in this Agreement, the Department may require the Subrecipient to deliver to the Department any property specifically produced or acquired for the performance of such part of this Agreement as has been terminated.

If the termination is for convenience, the Department shall pay to the Subrecipient as an agreed upon price, if separately stated, for properly authorized and completed work and services rendered or goods delivered to and accepted by the Department prior to the effective date of Agreement termination, the amount agreed upon by the Subrecipient and the Department for (i) completed work and services and/or equipment or supplies provided for which no separate price is stated, (ii) partially completed work and services and/or equipment or supplies provided which are accepted by the Department, (iii) other work, services and/or equipment or supplies which are accepted by the Department, and (iv) the protection and preservation of property.

Failure to agree with such amounts shall be a dispute within the meaning of the "Disputes" clause of this Agreement. If the termination is for cause, the Department shall determine the extent of the liability of the Department. The Department shall have no other obligation to the Subrecipient for termination. The Department may withhold from any amounts due the Subrecipient such sum as the Department determines to be necessary to protect the Department against potential loss or liability.

The rights and remedies of the Department provided in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

After receipt of a notice of termination, and except as otherwise directed by the Department in writing, the Subrecipient shall:

- a. Stop work under the Agreement on the date, and to the extent specified, in the notice;
- b. Place no further orders or contracts for materials, services, supplies, equipment and/or facilities in relation to this Agreement except as may be necessary for completion of such portion of the work under the Agreement as is not terminated;
- c. Assign to the Department, in the manner, at the times, and to the extent directed by the Department, all of the rights, title, and interest of the Subrecipient under the orders and contracts so terminated, in which case the Department has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and contracts;
- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and contracts, with the approval or ratification of the Department to the extent the Department may require, which approval or ratification shall be final for all the purposes of this clause;
- e. Transfer title to the Department and deliver in the manner, at the times, and to the extent directed by the Department any property which, if the Agreement had been completed, would have been required to be furnished to the Department;
- f. Complete performance of such part of the work as shall not have been terminated by the Department in compliance with all contractual requirements; and
- g. Take such action as may be necessary, or as the Department may require, for the protection and preservation of the property related to this Agreement which is in the possession of the Subrecipient and in which the Department has or may acquire an interest.

**A.35 MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES**

In accordance with the legislative findings and policies set forth in Chapter 39.19 RCW, the state of Washington encourages participation in all its contracts by MWBE firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). To the extent possible, the Subrecipient will solicit and encourage minority-owned and women-owned business enterprises who are certified by the OMWBE under the state of Washington certification program to apply and compete for work under this contract. Voluntary numerical MWBE participation goals have been established and are indicated herein: Minority Business Enterprises: (MBEs): 10% and Woman's Business Enterprises (WBEs): 6%.

**A.36 VENUE**

This Agreement shall be construed and enforced in accordance with, and the validity and performance shall be governed by, the laws of the state of Washington. Except for as provided herein, venue of any suit between the parties arising out of this Agreement shall be the Superior Court of Thurston County, Washington, and the Subrecipient, by execution of this Agreement, acknowledges the jurisdiction of the courts of the state of Washington. Provides, that if the Subrecipient is a federally recognized Indian Tribe, the parties agree that, in the event either party to this Agreement commences any suit relating to or arising from the Agreement, the United States District Court for the Western District of the State of Washington shall have the sole and exclusive jurisdiction over such proceeding. If the court lacks federal



subject matter jurisdiction, then the Tribe agrees to waive its sovereign immunity from suit for the limited purpose of permitting the State to enforce the terms of this Agreement in the Superior Court of Washington under Washington law, and venue for such suit shall be the Superior Court of Thurston County, Washington. This limited waiver of sovereign immunity is solely for the benefit of the State. This limited waiver of sovereign immunity shall not be for, nor shall it be construed as for, the benefit of any other person or entity, and the Tribe does not waive its immunity with respect to any action brought by, or on behalf of, any other entity or person.

A.37 WAIVERS

No conditions or provisions of this Agreement can be waived unless approved in advance 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.

**24EMPG Award Letter  
EMS-2024-EP-05000**

**Award Letter**

U.S. Department of Homeland Security  
Washington, D.C. 20472



Effective date: 09/09/2024

Sierra Wardell  
MILITARY DEPARTMENT, WASHINGTON STATE  
BUILDING 1 MILITIA DR STATE FINANCIAL SERVICES  
CAMP MURRAY, WA 98430

EMS-2024-EP-05000

Dear Sierra Wardell,

Congratulations on behalf of the Department of Homeland Security, your application submitted for the Fiscal Year (FY) 2024 Emergency Management Performance Grants, has been approved in the amount of \$6,821,397.00 in Federal funding. This award of federal assistance is executed as a Grant. As a condition of this award, you are required to contribute non-Federal funds equal to or greater than \$6,821,397.00 for a total approved budget of \$13,642,794.00. Please see the FY24 Emergency Management Performance Grant (EMPG) Program for information on how to meet this cost share requirement.

Before you request and receive any of the Federal funds awarded to you, you must establish acceptance of the award through the FEMA Grants Outcomes (FEMA GO) system. By accepting this award, you acknowledge that the terms of the following documents are incorporated into the terms of your award:

- Award Summary - included in this document
- Agreement Articles - included in this document
- Obligating Document - included in this document
- FY 2024 Emergency Management Performance Grants Notice of Funding Opportunity
- FEMA Preparedness Grants Manual

Please make sure you read, understand, and maintain a copy of these documents in your official file for this award.

Sincerely,

A photograph of a handwritten signature in black ink on a white background. The signature appears to be "Patrick Marcham" written in a cursive style.

**Patrick Marcham**  
Grants Program Division Director  
Region 10

## Award Summary

**Program:** Fiscal Year 2024 Emergency Management Performance Grant  
**Recipient:** MILITARY DEPARTMENT, WASHINGTON STATE  
**UEI-EFT:** D2EJRGZ2PLG8-0001  
**DUNS number:** 8088833830001  
**Award number:** EMS-2024-EP-05000

## Summary description of award

The Fiscal Year (FY) 2024 Emergency Management Performance Grant (EMPG) Program is one of the grant programs that constitute DHS/FEMA's focus on all-hazards emergency preparedness. These grant programs are part of a comprehensive set of measures authorized by Congress and implemented by DHS/FEMA to assist state, local, tribal, and territorial emergency management agencies to implement the National Preparedness System and the National Preparedness Goal of a secure and resilient nation

## Amount awarded table

The amount of the award is detailed in the attached Obligating Document for Award.

The following are the budgeted estimates for object classes for this award (including Federal share plus your cost share, if applicable):

## Approved scope of work

After review of your application, FEMA has approved the below scope of work. Justifications are provided for any differences between the scope of work in the original application and the approved scope of work under this award. You must submit scope or budget revision requests for FEMA's prior approval, via an amendment request, as appropriate per 2 C.F.R. § 200.308 and the FY2024 EMPG NOFO.

*// due to new system inclusion of information with no context, pages 5-12 not included – available on request //*

## Agreement Articles

**Program:** Fiscal Year 2024 Emergency Management Performance Grant  
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**Article 1      Assurances, Administrative Requirements, Cost Principles, Representations, and Certifications**

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

**Article 2      General Acknowledgements and Assurances**

Recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in effect as of the federal award date and located at 2 C.F.R. Part 200 and adopted by DHS at 2 C.F.R. § 3002.10. All recipients and subrecipients must acknowledge and agree to provide DHS access to records, accounts, documents, information, facilities, and staff pursuant to 2 C.F.R. § 200.337. I. Recipients must cooperate with any DHS compliance reviews or compliance investigations. II. Recipients must give DHS access to examine and copy records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities and personnel. III. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports. IV. Recipients must comply with all other special reporting, data collection, and evaluation requirements required by law, federal regulation, Notice of Funding Opportunity, federal award specific terms and conditions, and/or federal awarding agency program guidance. V. Recipients must complete the DHS Civil Rights Evaluation Tool within thirty (30) days of receiving the Notice of Award for the first award under which this term applies. Recipients of multiple federal awards from DHS should only submit one completed tool for their organization, not per federal award. After the initial submission, recipients are required to complete the tool once every two (2) years if they have an active federal award, not every time a federal award is made. Recipients must submit the completed tool, including supporting materials, to [CivilRightsEvaluation@hq.dhs.gov](mailto:CivilRightsEvaluation@hq.dhs.gov). This tool clarifies the civil rights obligations and related reporting requirements contained in these DHS Standard Terms and Conditions. Subrecipients are not required to complete and submit this tool to DHS. The evaluation tool can be found at <https://www.dhs.gov/publication/dhs-civil-rights-evaluation-tool>. DHS Civil Rights Evaluation Tool | Homeland Security. The DHS Office for Civil Rights and Civil Liberties will consider, in its discretion, granting an extension to the 30-day deadline if the recipient identifies steps and a timeline for completing the tool. Recipients must request extensions by emailing the request to [CivilRightsEvaluation@hq.dhs.gov](mailto:CivilRightsEvaluation@hq.dhs.gov) prior to expiration of the 30-day deadline.

**Article 3      Acknowledgement of Federal Funding from DHS**

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

<b>Article 4</b>	<p><b>Activities Conducted Abroad</b>  Recipients must coordinate with appropriate government authorities when performing project activities outside the United States obtain all appropriate licenses, permits, or approvals.</p>
<b>Article 5</b>	<p><b>Age Discrimination Act of 1975</b>  Recipients must comply with the requirements of the Age Discrimination Act of 1975, Pub. L. No. 94-135 (codified as amended at 42 U.S.C. § 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.</p>
<b>Article 6</b>	<p><b>Americans with Disabilities Act of 1990</b>  Recipients must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, Pub. L. No. 101-336 (1990) (codified as amended at 42 U.S.C. §§ 12101– 12213), which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.</p>
<b>Article 7</b>	<p><b>Best Practices for Collection and Use of Personally Identifiable Information</b>  Recipients who collect personally identifiable information (PII) as part of carrying out the scope of work under a federal award are required to have a publicly available privacy policy that describes standards on the usage and maintenance of the PII they collect. DHS defines PII as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. Recipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy Template as useful resources respectively.</p>
<b>Article 8</b>	<p><b>Civil Rights Act of 1964 – Title VI</b>  Recipients must comply with the requirements of Title VI of the Civil Rights Act of 1964, Pub. L. No. 88-352 (codified as amended at 42 U.S.C. § 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. DHS implementing regulations for the Act are found at 6 C.F.R. Part 21. Recipients of an award from the Federal Emergency Management Agency (FEMA) must also comply with FEMA's implementing regulations at 44 C.F.R. Part 7.</p>

**Article 9****Civil Rights Act of 1968**

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

**Article 10****Copyright**

Recipients must affix the applicable copyright notices of 17 U.S.C. §§ 401 or 402 to any work first produced under federal awards and also include an acknowledgement that the work was produced under a federal award (including the federal award number and federal awarding agency). As detailed in 2 C.F.R. § 200.315, a federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the work for federal purposes and to authorize others to do so.

**Article 11****Debarment and Suspension**

Recipients must comply with the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) 12549 and 12689 set forth at 2 C.F.R. Part 180 as implemented by DHS at 2 C.F.R. Part 3000. These regulations prohibit recipients from entering into covered transactions (such as subawards and contracts) with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

**Article 12****Drug-Free Workplace Regulations**

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

**Article 13****Duplicative Costs**

Recipients are prohibited from charging any cost to this federal award that will be included as a cost or used to meet cost sharing or matching requirements of any other federal award in either the current or a prior budget period. (See 2 C.F.R. § 200.403(f)). However, recipients may shift costs that are allowable under two or more federal awards where otherwise permitted by federal statutes, regulations, or the federal financial assistance award terms and conditions.



<b>Article 14</b>	<p><b>Education Amendments of 1972 (Equal Opportunity in Education Act) – Title IX</b>  Recipients must comply with the requirements of Title IX of the Education Amendments of 1972, Pub. L. No. 92-318 (codified as amended at 20 U.S.C. § 1681 et seq.), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at 6 C.F.R. Part 17. Recipients of an award from the Federal Emergency Management Agency (FEMA) must also comply with FEMA's implementing regulations at 44 C.F.R. Part 19.</p>
<b>Article 15</b>	<p><b>E.O. 14074 – Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety</b>  Recipient State, Tribal, local, or territorial law enforcement agencies must comply with the requirements of section 12(c) of E.O. 14074. Recipient State, Tribal, local, or territorial law enforcement agencies are also encouraged to adopt and enforce policies consistent with E.O. 14074 to support safe and effective policing.</p>
<b>Article 16</b>	<p><b>Energy Policy and Conservation Act</b>  Recipients must comply with the requirements of the Energy Policy and Conservation Act, Pub. L. No. 94-163 (1975) (codified as amended at 42 U.S.C. § 6201 et seq.), which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.</p>
<b>Article 17</b>	<p><b>False Claims Act and Program Fraud Civil Remedies</b>  Recipients must comply with the requirements of the False Claims Act, 31 U.S.C. §§ 3729- 3733, which prohibit the submission of false or fraudulent claims for payment to the Federal Government. (See 31 U.S.C. §§ 3801-3812, which details the administrative remedies for false claims and statements made.)</p>
<b>Article 18</b>	<p><b>Federal Debt Status</b>  All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. (See OMB Circular A-129.)</p>
<b>Article 19</b>	<p><b>Federal Leadership on Reducing Text Messaging while Driving</b>  Recipients are encouraged to adopt and enforce policies that ban text messaging while driving recipient-owned, recipient-rented, or privately owned vehicles when on official government business or when performing any work for or on behalf of the Federal Government. Recipients are also encouraged to conduct the initiatives of the type described in Section 3(a) of E.O. 13513.</p>

**Article 20 Fly America Act of 1974**

Recipients must comply with Preference for U.S. Flag Air Carriers (a list of certified air carriers can be found at: Certificated Air Carriers List | US Department of Transportation, <https://www.transportation.gov/policy/aviation-policy/certificated-air-carriers-list>) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. § 40118, and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

**Article 21 Hotel and Motel Fire Safety Act of 1990**

Recipients must ensure that all conference, meeting, convention, or training space funded entirely or in part by federal award funds complies with the fire prevention and control guidelines of Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. § 2225a.

**Article 22 John S. McCain National Defense Authorization Act of Fiscal Year 2019**

Recipients, subrecipients, and their contractors and subcontractors are subject to the prohibitions described in section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232 (2018) and 2 C.F.R. §§ 200.216, 200.327, 200.471, and Appendix II to 2 C.F.R. Part 200. The statute – as it applies to DHS recipients, subrecipients, and their contractors and subcontractors – prohibits obligating or expending federal award funds on certain telecommunications and video surveillance products and contracting with certain entities for national security reasons.

**Article 23 Limited English Proficiency (Civil Rights Act of 1964, Title VI)**

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

**Article 24 Lobbying Prohibitions**

Recipients must comply with 31 U.S.C. § 1352 and 6 C.F.R. Part 9, which provide that none of the funds provided under a federal award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification. Per 6 C.F.R. Part 9, recipients must file a lobbying certification form as described in Appendix A to 6 C.F.R. Part 9 or available on Grants.gov as the Grants.gov Lobbying Form and file a lobbying disclosure form as described in Appendix B to 6 C.F.R. Part 9 or available on Grants.gov as the Disclosure of Lobbying Activities (SF-LLL).

<b>Article 25</b>	<p><b>National Environmental Policy Act</b>  Recipients must comply with the requirements of the National Environmental Policy Act of 1969, Pub. L. No. 91-190 (1970) (codified as amended at 42 U.S.C. § 4321 et seq.) (NEPA) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which require recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.</p>
<b>Article 26</b>	<p><b>Nondiscrimination in Matters Pertaining to Faith-Based Organizations</b>  It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Recipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.</p>
<b>Article 27</b>	<p><b>Non-Supplanting Requirement</b>  Recipients of federal awards under programs that prohibit supplanting by law must ensure that federal funds supplement but do not supplant non-federal funds that, in the absence of such federal funds, would otherwise have been made available for the same purpose.</p>
<b>Article 28</b>	<p><b>Notice of Funding Opportunity Requirements</b>  All the instructions, guidance, limitations, scope of work, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this federal award are incorporated by reference. All recipients must comply with any such requirements set forth in the NOFO. If a condition of the NOFO is inconsistent with these terms and conditions and any such terms of the Award, the condition in the NOFO shall be invalid to the extent of the inconsistency. The remainder of that condition and all other conditions set forth in the NOFO shall remain in effect.</p>
<b>Article 29</b>	<p><b>Patents and Intellectual Property Rights</b>  Recipients are subject to the Bayh-Dole Act, 35 U.S.C. § 200 et seq. and applicable regulations governing inventions and patents, including the regulations issued by the Department of Commerce at 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Awards, Contracts, and Cooperative Agreements) and the standard patent rights clause set forth at 37 C.F.R. § 401.14.</p>

**Article 30 Procurement of Recovered Materials**

States, political subdivisions of states, and their contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962) and 2 C.F.R. § 200.323. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

**Article 31 Rehabilitation Act of 1973**

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

**Article 32 Reporting of Matters Related to Recipient Integrity and Performance**

If the total value of any currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of the federal award, then the recipient must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated by reference.

**Article 33 Reporting Subawards and Executive Compensation**

For federal awards that equal or exceed \$30,000, recipients are required to comply with the requirements set forth in the government-wide award term on Reporting Subawards and Executive Compensation set forth at 2 C.F.R. Part 170, Appendix A, the full text of which is incorporated by reference.

**Article 34 Required Use of American Iron, Steel, Manufactured Products, and Construction Materials**

Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless: (1) all iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; (2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and (3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project. Waivers When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. The agency should notify the recipient for information on the process for requesting a waiver from these requirements. (a) When the Federal agency has determined that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the agency determines that: (1) applying the domestic content procurement preference would be inconsistent with the public interest; (2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent. A request to waive the application of the domestic content procurement preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office. There may be instances where an award qualifies, in whole or in part, for an existing waiver described at “Buy America” Preference in FEMA Financial Assistance Programs for Infrastructure | FEMA.gov. Definitions The definitions applicable to this term are set forth at 2 C.F.R. § 184.3, the full text of which is incorporated by reference.

<b>Article 35</b>	<b>SAFECOM</b> Recipients receiving federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications. The SAFECOM Guidance is updated annually and can be found at Funding and Sustainment   CISA.
<b>Article 36</b>	<b>Terrorist Financing</b> Recipients must comply with E.O. 13224 and applicable statutory prohibitions on transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Recipients are legally responsible for ensuring compliance with the E.O. and laws.
<b>Article 37</b>	<b>Trafficking Victims Protection Act of 2000 (TVPA)</b> Recipients must comply with the requirements of the government-wide financial assistance award term which implements Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, § 106 (codified as amended at 22 U.S.C. § 7104). The award term is located at 2 C.F.R. § 175.15, the full text of which is incorporated by reference.
<b>Article 38</b>	<b>Universal Identifier and System of Award Management</b> Recipients are required to comply with the requirements set forth in the government-wide financial assistance award term regarding the System for Award Management and Universal Identifier Requirements located at 2 C.F.R. Part 25, Appendix A, the full text of which is incorporated reference.
<b>Article 39</b>	<b>USA PATRIOT Act of 2001</b> Recipients must comply with requirements of Section 817 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), which amends 18 U.S.C. §§ 175-175c.
<b>Article 40</b>	<b>Use of DHS Seal, Logo and Flags</b> Recipients must obtain written permission from DHS prior to using the DHS seals, logos, crests, or reproductions of flags, or likenesses of DHS agency officials. This includes use of DHS component (e.g., FEMA, CISA, etc.) seals, logos, crests, or reproductions of flags, or likenesses of component officials.
<b>Article 41</b>	<b>Whistleblower Protection Act</b> Recipients must comply with the statutory requirements for whistleblower protections at 10 U.S.C § 470141 U.S.C. § 4712.



**Article 42 Environmental Planning and Historic Preservation (EHP) Review**  
DHS/FEMA funded activities that may require an Environmental Planning and Historic Preservation (EHP) review are subject to the FEMA EHP review process. This review does not address all federal, state, and local requirements. Acceptance of federal funding requires the recipient to comply with all federal, state and local laws. DHS/FEMA is required to consider the potential impacts to natural and cultural resources of all projects funded by DHS/FEMA grant funds, through its EHP review process, as mandated by: the National Environmental Policy Act; National Historic Preservation Act of 1966, as amended; National Flood Insurance Program regulations; and any other applicable laws and executive orders. General guidance for FEMA's EHP process is available on the DHS/FEMA Website at: <https://www.fema.gov/grants/guidance-tools/environmental-historic>. Specific applicant guidance on how to submit information for EHP review depends on the individual grant program and applicants should contact their grant Program Officer to be put into contact with EHP staff responsible for assisting their specific grant program. The EHP review process must be completed before funds are released to carry out the proposed project; otherwise, DHS/FEMA may not be able to fund the project due to noncompliance with EHP laws, executive orders, regulations, and policies. If ground disturbing activities occur during construction, applicant will monitor ground disturbance, and if any potential archaeological resources are discovered the applicant will immediately cease work in that area and notify the pass-through entity, if applicable, and DHS/FEMA.

**Article 43 Applicability of DHS Standard Terms and Conditions to Tribes**  
The DHS Standard Terms and Conditions are a restatement of general requirements imposed upon recipients and flow down to sub-recipients as a matter of law, regulation, or executive order. If the requirement does not apply to Indian tribes or there is a federal law or regulation exempting its application to Indian tribes, then the acceptance by Tribes of, or acquiescence to, DHS Standard Terms and Conditions does not change or alter its inapplicability to an Indian tribe. The execution of grant documents is not intended to change, alter, amend, or impose additional liability or responsibility upon the Tribe where it does not already exist.

**Article 44 Acceptance of Post Award Changes**  
In the event FEMA determines that an error in the award package has been made, or if an administrative change must be made to the award package, recipients will be notified of the change in writing. Once the notification has been made, any subsequent requests for funds will indicate recipient acceptance of the changes to the award. Please call FEMA Grant Management Operations at (866) 927-5646 or via e-mail to: [ASK-GMD@fema.dhs.gov](mailto:ASK-GMD@fema.dhs.gov) if you have any questions.

**Article 45 Disposition of Equipment Acquired Under the Federal Award**  
For purposes of original or replacement equipment acquired under this award by a non-state recipient or non-state sub-recipients, when that equipment is no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, you must request instructions from FEMA to make proper disposition of the equipment pursuant to 2 C.F.R. section 200.313. State recipients and state sub-recipients must follow the disposition requirements in accordance with state laws and procedures.

**Article 46 Prior Approval for Modification of Approved Budget**

Before making any change to the FEMA approved budget for this award, you must request prior written approval from FEMA where required by 2 C.F.R. section 200.308. For purposes of non-construction projects, FEMA is utilizing its discretion to impose an additional restriction under 2 C.F.R. section 200.308(f) regarding the transfer of funds among direct cost categories, programs, functions, or activities. Therefore, for awards with an approved budget where the federal share is greater than the simplified acquisition threshold (currently \$250,000), you may not transfer funds among direct cost categories, programs, functions, or activities without prior written approval from FEMA where the cumulative amount of such transfers exceeds or is expected to exceed ten percent (10%) of the total budget FEMA last approved. For purposes of awards that support both construction and non-construction work, FEMA is utilizing its discretion under 2 C.F.R. section 200.308(h) (5) to require the recipient to obtain prior written approval from FEMA before making any fund or budget transfers between the two types of work. You must report any deviations from your FEMA approved budget in the first Federal Financial Report (SF-425) you submit following any budget deviation, regardless of whether the budget deviation requires prior written approval.

**Article 47 Indirect Cost Rate**

2 C.F.R. section 200.211(b)(15) requires the terms of the award to include the indirect cost rate for the federal award. If applicable, the indirect cost rate for this award is stated in the budget documents or other materials approved by FEMA and included in the award file.



### Obligating document

<b>1. Agreement No.</b> EMS-2024-EP-05000	<b>2. Amendment No.</b> N/A	<b>3. Recipient No.</b> 916001095	<b>4. Type of Action</b> AWARD	<b>5. Control No.</b> SX00368N2024T		
<b>6. Recipient Name and Address</b> MILITARY DEPARTMENT, WASHINGTON STATE CAMP MURRY BUILDING 1 CAMP MURRAY, WA 98430		<b>7. Issuing FEMA Office and Address</b> FEMA Region X 130 228th Street, S.W. Bothell, Washington 98021-9796 425-487-4600		<b>8. Payment Office and Address</b> FEMA, Financial Services Branch 500 C Street, S.W., Room 723 Washington DC, 20742		
<b>9. Name of Recipient Project Officer</b> Sierra Wardell	<b>9a. Phone No.</b> 253-5127121	<b>10. Name of FEMA Project Coordinator</b> Emergency Management Performance Grant Grant Program		<b>10a. Phone No.</b> 1-877-585-3242		
<b>11. Effective Date of This Action</b> 09/09/2024	<b>12. Method of Payment</b> OTHER - FEMA GO	<b>13. Assistance Arrangement</b> COST SHARING	<b>14. Performance Period</b> 10/01/2023 to 09/30/2026 <b>Budget Period</b> 10/01/2023 to 09/30/2026			
<b>15. Description of Action a. (Indicate funding data for awards or financial changes)</b>						
<b>Program Name Abbreviation</b>	<b>Assistance Listing No.</b>	<b>Accounting Data (ACCS Code)</b>	<b>Prior Total Award</b>	<b>Amount Awarded This Action + or (-)</b>	<b>Current Total Award</b>	<b>Cumulative Non-Federal Commitment</b>
EMPG	97.042	2024-FA-GA01 - R107-xxxx-4120-D	\$0.00	\$6,821,397.00	\$6,821,397.00	See Totals
Totals			\$0.00	\$6,821,397.00	\$6,821,397.00	\$6,821,397.00
<b>b. To describe changes other than funding data or financial changes, attach schedule and check here:</b> N/A						
<b>16. FOR NON-DISASTER PROGRAMS: RECIPIENT IS REQUIRED TO SIGN AND RETURN THREE (3) COPIES OF THIS DOCUMENT TO FEMA (See Block 7 for address)</b> This field is not applicable for digitally signed grant agreements						
<b>17. RECIPIENT SIGNATORY OFFICIAL (Name and Title)</b> Sierra Wardell				<b>DATE</b> 09/11/2024		
<b>18. FEMA SIGNATORY OFFICIAL (Name and Title)</b> Patrick Marcham, Grants Program Division Director Region 10				<b>DATE</b> 09/09/2024		

## WORK PLAN

## FY 2024 Emergency Management Performance Grant

The purpose of this attachment is to identify the activities planned by the Subrecipient under this Grant Agreement, funded by EMPG and required match funding, and subsequently approved as allowable under EMPG by the EMPG Program Manager.

**Emergency Management Organization:** City of Des Moines

The purpose of EMPG is to assist with the enhancement, sustainment and improvement of state, local, and tribal emergency management programs. Activities conducted using EMPG funding should relate directly to the five mission areas of the national preparedness goal of prevention, protection, response, recovery, and mitigation. Washington State does not require a specific number of activities to receive EMPG funding. However, there are required capabilities that must be sustained in order to remain eligible for EMPG funding, including but not limited to the ability to communicate and warn, educate the public, plan, train, exercise, and be NIMS compliant. The Work Plan delineates the Emergency Management Organization's emergency management program planning and priority focus for this grant cycle (to include EMPG grant and local funds).

<b>Priority Area #1</b>	4.10 Training	
<b>Primary Core Capability</b>	Operational Coordination	
<b>Secondary Core Capability</b>	Situational Assessment	
<b>Build or Sustain</b>	Building	
<b>WORK PLANNED</b>	<b>IDENTIFIED GAP/NEED</b>	<b>ANTICIPATED PROJECT IMPACT</b>
Conduct two Emergency Operations Center tabletop exercises. Include partners South King Fire and Rescue, Highline College, Water, Sewer, Highline Schools, Highline HAM, CERT.	The City of Des Moines has experienced high turnover due to retirements and attrition in the past 18 months post COVID. The EOC team has stayed stable over the past 12 months but is still in need of training to ensure they are ready to respond to a disaster. EOC staff has completed IS required classes including 2200. Most have completed 2300 this year. We will now focus on position specific training. We will test the training through tabletop exercise. We will include the use of Crisis Tacks to gain a better understanding of the program.	EOC tabletop exercises will give City staff a better understanding of how coordination between the EOC and Operations is conducted during emergency operations. These tabletops will also ensure staff understand our current gaps and will identify additional gaps that we have not yet identified. These tabletops will allow practice in an EOC environment during a simulated event. We will be able to test our CEMP, Communication Plan and EOC structure. It will give staff hands on experience with working in Crisis Tracks

<b>Priority Area #2</b>	4.12 Emergency Public Information and Education	
<b>Primary Core Capability</b>	Community Resilience	
<b>Build or Sustain</b>	Building	
<b>WORK PLANNED</b>	<b>IDENTIFIED GAP/NEED</b>	<b>ANTICIPATED PROJECT IMPACT</b>
- Conduct community outreach, Emergency Preparedness events, with local community organizations to include Senior Housing Development and HOAs. - Conduct CERT course for the community in partnership with neighboring City. Open CERT class for	As outlined in the City of Des Moines CEMP, the city is committed to providing Emergency Preparedness training and assistance to the community and its staff directly and through partnership with private and public partnerships.	Increase the number of individuals in the City of Des Moines that are CERT trained and are more resilient for potential disaster. Continue quarterly meetings to build relationship between CERT trained residents. This group will be resourceful and help build excitement for CERT and encourage more community

up to 45 participants annually and graduate 35.

members to participate and get trained. CERT will continue annually with a minimum of 45 participants annually.

<b>Priority Area #3</b>	4.10 Training	
<b>Primary Core Capability</b>	Community Resilience	
<b>Build or Sustain</b>	Building	
<b>WORK PLANNED</b>	<b>IDENTIFIED GAP/NEED</b>	<b>ANTICIPATED PROJECT IMPACT</b>
Hold Quarterly CERT meetings to maintain and build CERT skills with CERT graduates. Review class materials and build on foundation. Work with CERT on individual preparedness activities for family and neighborhood. Continue to offer refresher classes, build on current skills. Conduct two community outreach events that will increase CERT skills in donation management and drive through distribution management. Include CERT graduates in CERT training class as classroom assistant and drill survivors.	Need to build resident preparedness and resiliency through CERT engagement and recruitment.	Continuous engagement with CERT graduates will increase skills, build relationships and encourage participation in community outreach of which is essential to build the Whole Community Emergency Preparedness program. Build the current attendance by 10 members growing the team from 10 to 20 at our quarterly meetings.
Partner with two local community organizations and conduct a Preparedness seminar using Prepare in a Year and Get Ready King County publications. Include groups in Great Shake out drill and evacuation of the City in October. Work with local Senior Communities, Condo Associations and Churches. Offer Preparedness seminars. Complete 3 outreach event utilizing Prepare in a year and Get Ready King County. Encourage participants to take CERT Training and participation in Great Shakeout.	Community members need to build a plan to ensure they have one in place. Residents need to plan so that they are prepared to take care of themselves in times of emergency due to the limited number of first responder's available help.	A community that is well trained, coordinated and resilient is better prepared to survive any disaster using all hazards approach. Gain commitment from one community group to participate in CERT. Complete 3 Get Ready King County seminars with Prepare in a Year.

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**TIMELINE**


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**FY 2024 Emergency Management Performance Grant**


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*The purpose of this attachment is to identify applicable and agreed upon due dates for Grant Agreement milestones to include deliverables that must be submitted to the Department. Both the Department and the Subrecipient shall monitor adherence with the dates below.*

<b>DATE</b>	<b>TASK</b>
June 1, 2024	Grant Agreement Start Date
September 30, 2025	Grant Agreement End Date – <i>all work must be complete</i>
November 15, 2025	Submit final reimbursement request, final report, training requirement report, and/or other deliverables.

The Subrecipient must request **prior** written approval from Department Key Personnel to waive or extend a due date in the above Timeline.

For waived or extended reimbursement due dates, all allowable costs should be submitted on the next scheduled reimbursement due date contained in the above Timeline.

**BUDGET**

**FY 2024 Emergency Management Performance Grant**

The purpose of this attachment is to identify how the funding is budgeted per the identified activities in the Work Plan. If funding is identified as not being required, contact the Department Key Personnel as soon as possible so funding can be reallocated.

**24EMPG AWARD** \$ **15,614.00**

SOLUTION AREA	BUDGET CATEGORY	EMPG AMOUNT	MATCH AMOUNT
PLANNING	Personnel & Fringe Benefits	\$ 5,205	\$ -
	Travel/Per Diem	\$ -	\$ -
	Supplies	\$ -	\$ -
	Consultants/Contracts	\$ -	\$ -
	Other	\$ -	\$ -
	Subtotal	\$ 5,205	\$ -
ORGANIZATION	Personnel & Fringe Benefits	\$ 5,205	\$ 15,614
	Travel/Per Diem	\$ -	\$ -
	Supplies	\$ -	\$ -
	Consultants/Contracts	\$ -	\$ -
	Other	\$ -	\$ -
	Subtotal	\$ 5,205	\$ 15,614
EXERCISE	Personnel & Fringe Benefits	\$ 5,204	\$ -
	Travel/Per Diem	\$ -	\$ -
	Supplies	\$ -	\$ -
	Consultants/Contracts	\$ -	\$ -
	Other	\$ -	\$ -
	Subtotal	\$ 5,204	\$ -
TRAINING	Personnel & Fringe Benefits	\$ -	\$ -
	Travel/Per Diem	\$ -	\$ -
	Supplies	\$ -	\$ -
	Consultants/Contracts	\$ -	\$ -
	Other	\$ -	\$ -
	Subtotal	\$ -	\$ -
EQUIP	Equipment	\$ -	\$ -
	Subtotal	\$ -	\$ -
M&A	Personnel & Fringe Benefits	\$ -	\$ -
	Travel/Per Diem	\$ -	\$ -
	Supplies	\$ -	\$ -
	Consultants/Contracts	\$ -	\$ -
	Other	\$ -	\$ -
	Subtotal	\$ -	\$ -
	Indirect	\$ -	\$ -
<i>Indirect Cost Rate on file</i>		<i>0.00%</i>	<i>for Time Period of: N/A</i>
<b>TOTAL Grant Agreement AMOUNT:</b>		<b>\$ 15,614</b>	<b>\$ 15,614</b>

The Subrecipient will provide a match of **\$15,614** of non-federal origin, 50% of the total project cost (local budget plus EMPG award).

Cumulative transfers to budget categories in excess of ten percent (10%) of the Grant Agreement Amount will not be reimbursed without **prior** written approval from the Department.

Funding Source: U.S. Department of Homeland Security - PI# 743PT – EMPG

**BUILD AMERICA, BUY AMERICA ACT SELF-CERTIFICATION**

The undersigned certifies, to the best of their knowledge and belief, that:

The Build America, Buy America Act (BABAA) requires that no federal financial assistance for “infrastructure” projects is provided “unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.” Section 70914 of Public Law No. 117-58, §§ 70901-52.

The undersigned certifies that for the Insert Project Name and Location that the iron, steel, manufactured products, and construction materials used in this contract are in full compliance with the BABAA requirements including:

1. All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
2. All manufactured products purchased with FEMA financial assistance must be produced in the United States. For a manufactured product to be considered produced in the United States, the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55% of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.
3. All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

“The [Contractor or Subcontractor], \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the [Contractor or Subcontractor] understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.”

\_\_\_\_\_  
Signature of [Contractor’s or Subcontractor’s] Authorized Official

Enter Name and Title  
Name and Title of [Contractor’s or Subcontractor’s] Authorized Official

\_\_\_\_\_  
Date

**A G E N D A   I T E M**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: State Parks Grant Agreement For Fuel Dock Sewage Tank Pump-Out Equipment Purchase.

FOR AGENDA OF: October 10, 2024

DEPT. OF ORIGIN: Marina

DATE SUBMITTED: September 26, 2024

ATTACHMENTS:

- 1. Grant Agreement No. CVA 325-309

CLEARANCES:

- City Clerk \_\_\_\_\_
- Community Development \_\_\_\_\_
- Courts \_\_\_\_\_
- Director of Marina Redevelopment \_\_\_\_\_
- Emergency Management \_\_\_\_\_
- Finance *MH*
- Human Resources \_\_\_\_\_
- Legal */s/ MH*
- Marina *SW*
- Police \_\_\_\_\_
- Parks, Recreation & Senior Services \_\_\_\_\_
- Public Works \_\_\_\_\_

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *[Signature]*

**Purpose and Recommendation**

The purpose of this agenda item is to request Council approval of a grant agreement with the Washington State Parks and Recreation Commission that will provide funds from the Clean Vessel Act Program to purchase new sewage tank pump-out equipment at the Marina’s fuel dock.

**Suggested Motion**

**Motion 1:** “I move to approve Grant Agreement No. 325-309 to provide \$20,165.00 from the State’s Clean Vessel Act Program for the purchase of new replacement sewage tank pump-out equipment for the Marina’s fuel dock and to authorize the City Manager to sign the grant agreement substantially in the form as attached.”

### **Background**

In order to promote safe disposal of vessel sewage and to prevent pollution in Puget Sound, the Marina has provided, operated and maintained sewage pump out equipment in the Marina for at least four decades. The Marina has used the State's Clean Vessel Act Program (CVA) in the past to help fund the purchase of sewage pump-out equipment. Currently the Marina is operating two pump-out units funded by the program. One unit has been in operation for about 20 years and is in need of replacement.

### **Discussion**

Because the health of the waters of Puget Sound are so important, the Marina has never charged boaters for using the pump-out equipment. The Marina rules and state law strictly prohibit the discharge of sewage inside the Marina and in the waters of Puget Sound, respectively. Because there is no area of water on the Puget Sound where it is legal to discharge untreated sewage, local recreational boaters, particularly customers of the Marina, require some place where their sewage can be pumped out. Typically, the Marina's sewage pump-out units collect and discharge to the sewer district between 135,000 and 150,000 gallons of sewage per year that might otherwise have been illegally discharged into Puget Sound.

### **Alternatives**

- Alternative No. 1: The Council may approve the agreement and accept the funding from the CVA program.
- Alternative No. 2: The Council may decline to approve the agreement with the CVA program and give the staff further instructions.

### **Financial Impact**

The total cost for purchasing and installing the new pump-out equipment will be \$26,877. The CVA grant will reimburse the Marina 75% of that amount or \$20,165. The balance, \$6,712, will come from Marina operating funds. The Marina staff has always maintained and repaired the pump-out equipment in the Marina and they will install the new equipment. The cost for the time it takes the staff to install the new equipment was included in the grant application and is part of the award.

Including the time the staff spends assisting or instructing boaters on how to use the equipment, the estimated annual operating costs for operating and maintaining the pump-out equipment is about \$10,000, including the fees paid to the sewer district for discharging the waster to their system. The CVA Program also funds maintenance and operations costs thru their pump-out maintenance grants. Currently the Marina has been approved for a 5 year maintenance grant that will reimburse the Marina for up to \$7500 per year for operating and maintenance costs.

### **Recommendation**

Staff recommends that the Council approve the CVA Grant Agreement with the Washington State Parks and Recreation Commission.





**WASHINGTON STATE PARKS AND RECREATION COMMISSION  
SUBRECIPIENT GRANT AGREEMENT  
CLEAN VESSEL ACT PROGRAM (CVA)  
CFDA 15.616**



**Agreement No. CVA 325-309**

This Agreement is between the State of Washington, Washington State Parks and Recreation Commission (State Parks) acting by and through its Clean Vessel Act Program (“CVA” or “Recipient”) and **City of Des Moines** (“Subrecipient”), each a “Party” and, together, the “Parties”.

**SECTION 1: AUTHORITY**

Per 2 Code of Federal Regulations 200 (2CFR200), State Parks has determined this to be a “Subrecipient” relationship under 2CFR200.331. This subrecipient agreement is authorized by 2 CFR 200 and 50 CFR 85 (Clean Vessel Act Grant Program). CVA is authorized to provide grants for boating facility projects and has sufficient grant funds available within its current biennial budget and has authorized expenditure on the Subrecipient’s Project as defined below, and the Subrecipient agrees to comply with 2 CFR 200, CVA’s rules and other CVA adopted policies and procedures, and this Subrecipient Grant Agreement.

**SECTION 2: PURPOSE**

The purpose of this Agreement is to set forth the obligations of both Parties in the construction and/or renovation and/or installation and/or purchase and/or improvement, and/or fulfillment of Clean Vessel Act Marine Sewage Disposal Facilities (MSDF) for recreational vessel sewage removal and collection, hereinafter called the “Project.” Funding for ongoing operation and maintenance of this facility, if any, is provided and detailed under a separate agreement. Any references to funded operation and maintenance in this agreement are accidental and should be ignored.

**SECTION 3: COURTESY INFORMATION & REMINDER**

Very important information is located throughout this document. The onus is on the Subrecipient to read the entire document which may include Attachments, Exhibits, or other information incorporated by reference. Experience has shown that the following information seems to have the most interest for the Subrecipient. As such, CVA is providing this nonexclusive list but cautions that other important information does not appear in the Courtesy List.

- **Term:** See *Section 5.1 – Term*
- **Project Completion:** See *Section 5.2 – Project Completion*
- **Subrecipient’s Authorized Representative:** See *Section 6.2 – Subrecipient’s Authorized Representative.*
- **Project completion date:** See *Section 7.1.1 – Project Timeline*
- **Location of MSDF/Pumpout:** See *Section 7.1.5 - Construction/Purchase/Installation of a new Marine Sewage Disposal Facility (MSDF) or Pumpout Vessel; or repair/upgrade of an existing MSDF/Pumpout Vessel.*

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- **Number of Vessels:** See Section 7.1.7 – Operation and Maintenance of a Pumpout Vessel.
  - **Geographical Areas:** See Section 7.1.7 – Operation and Maintenance of a Pumpout Vessel.
  - **Permits:** See Section 7.1.3 - Permits
  - **Reimbursement Total:** See section 8.3.e [not titled].
  - **Grant Funds:** See Section 9.2 – Grant Funds.
  - **Accident Report:** See Section 12.8 – Accident Report
  - **Required Information (2CFR200.331(A)(1)):** See Exhibit B – Information Required by 2 CFR §200.331(A) (1).
  - **Subrecipient’s Completed CVA Grant Application:** See Attachment A.

## SECTION 4: DEFINITIONS

- 4.1 Attachment:** A document provided by the Subrecipient (application, budget plan, etc.) that is also made part of this agreement and incorporated by reference. See also Exhibit.
- 4.2 CVA:** The federally funded Clean Vessel Act Grant Program administered by Washington State Parks and Recreation Commission (State Parks). For purposes of this agreement CVA represents the state of Washington. If CVA ceases to exist or is no longer the state program designated to administer this federal program, then references to CVA will be understood to be the state of Washington.
- 4.3 Exhibit:** A document provided by the CVA Program that is also a part of this agreement and incorporated by reference. See also Attachment.
- 4.4 MSDF:** Marine Sewage Disposal Facility. Includes any facility designed, purchased, installed, constructed, renovated, operated, repaired, or maintained with Clean Vessel Act grant funds. This includes stationary pumpout units, portable pumpout carts, dump stations, floating restrooms, pumpout barges, and pumpout vessels.
- 4.5 O&M:** Operation and Maintenance. Defined in federal regulation 50 CFR 85.11 as, “Those activities necessary for upkeep of a facility. These are activities that allow the facility to function and include routine recurring custodial maintenance such as housekeeping and minor repairs as well as the supplies, materials, and tools necessary to carry out the work. Also included is non-routine cyclical maintenance to keep facilities fully functional” and “Those activities necessary for the functioning of a facility to produce desired results. These are activities that make the facility work.”
- 4.6 Pumpout Vessel:** A boat designed, purchased, installed, constructed, renovated, operated, repaired, or maintained with Clean Vessel Act grant funds. The sole purpose of such vessels is to provide free or low cost (no more than \$5.00) pumpouts to recreational boats.
- 4.7 Recreational Vessel:** Defined in federal regulation 50 CFR 85.11 as a vessel owned and operated primarily for pleasure; or a vessel leased, rented, or chartered to another for recreational use.
- 4.8 Subrecipient:** A non-federal entity that receives a subaward from a pass-through entity to

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carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. In this agreement, the subrecipient is the successful applicant with whom Washington CVA awards a Clean Vessel Act grant (See 2 CFR 200.93).

- 4.9 Subrecipient Grant Agreement:** Also known as a subaward. Defined in federal regulation as “an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract (See 2 CFR 200.92).

## **SECTION 5: EFFECTIVE DATE AND DURATION**

- 5.1 Term.** This Agreement is effective on the date of the last signature **and terminates on the date 10 years after the date of Project completion or the date of final payment issuance** and continues until released in writing by State Parks. State Parks will only release the obligation after State Parks is satisfied the equipment has reached the end of its useful life which is currently defined and set by CFR as a value less than \$5,000.00.

**Project Completion.** The Project shall be completed on or before **January 31, 2025**. Final billing for the Project shall be submitted to CVA on or before **March 15, 2025**. Unless approved in writing, CVA shall not be obligated to disburse any payments after this date.

- 5.2 Closeout.** (See 2 CFR § 200.343) CVA will closeout this award under this Agreement when it determines that all applicable administrative actions and all required work of this Agreement have been completed by the Subrecipient.

## **SECTION 6: AUTHORIZED REPRESENTATIVES**

- 6.1** State Parks CVA Program Authorized Representative is:

Rob Sendak, Boating Program Manager  
Washington State Parks - Boating Program  
P.O. Box 42650  
Olympia, WA 98504-2650  
rob.sendak@parks.wa.gov

- 6.2** Subrecipient's Authorized Representative is:

Scott Wilkins  
City of Des Moines  
21630 11th Ave S Ste A  
Des Moines, WA 98198  
swilkins@desmoineswa.gov

- 6.3** A Party may designate a new Authorized Representative by written notice to the other Party.

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## SECTION 7: RESPONSIBILITIES OF EACH PARTY

**7.1 Responsibilities of Subrecipient.** This project itself is the sole responsibility of Subrecipient. CVA undertakes no responsibilities to Subrecipient, or to any third party, other than as expressly set out in this document. Subrecipient shall be solely responsible for the design, permitting, development, construction, implementation, operation and maintenance of the project, as those phases are applicable to this project, and solely responsible for any claim or suit of any nature by any third party related in any way to the project.

**7.1.1 Project Timeline.** The Subrecipient is responsible for maintaining the project timeline for all dates and activities outlined as the Subrecipient's responsibility as identified in the Subrecipient's CVA Grant Application (Attachment "A") Subrecipient shall complete the approved construction activities no later than **January 31, 2025** as a term of the acceptance of this grant award. CVA may extend this construction period if, in its opinion, Subrecipient has demonstrated in writing, a satisfactory showing of extenuating circumstances. CVA has the absolute right to accept or reject any request for additional time without any appeal rights for Subrecipient.

CVA staff shall inspect the site within 30 days of notification of completion to verify that the project has been built in accordance with the approved plans and specifications. Work will be considered complete, only when the following conditions are met:

- The activities and facilities described in the Scope of Work and this grant document are installed, functional and ready for use.
- On-site signs are in place; and:
- Appropriate proof of completion has been provided to CVA or an inspection by CVA or CVA designee has been made.

If the work is not satisfactorily completed, Subrecipient will be in breach and CVA may, at its discretion, rescind the grant and require repayment of any grant funds already disbursed.

**7.1.2 Design Preparation.** The Subrecipient shall design or have designed by an appropriately licensed professional or firm, an MSDF/Pumpout vessel. Such design shall include applicable items on the Checklist for Plans and Specifications as provided in the Subrecipient's CVA Grant Application (Attachment "A"). Such design shall include all components required by health officials and/or regulatory authorities. Once completed, the design plans must be submitted to CVA for review and written approval.

**7.1.3 Permits.** The Subrecipient shall contact municipal officials to determine if any local or federal permits are required for the construction phase of this project. A listing of all required permits and their associated costs shall be forwarded to CVA for the construction and operation and maintenance phases of this project. Once a determination of the required permits has been made, the Subrecipient shall apply for all appropriate permits. All permits and archeological or environmental surveys must be completed and submitted to CVA, and the Subrecipient must receive approval, in writing from the CVA Grant

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Manager, before proceeding to the construction phase.

**No construction work shall commence until all required permits and approvals have been obtained, and the Subrecipient receives a start work letter from CVA.**

- 7.1.4 Construction Quotes/Bids.** At least three quotes or bids for the purchase of equipment and associated construction/ installation work shall be sought by the Subrecipient to obtain the best value for equipment and services. The Subrecipient shall provide a copy of the approved design plans to all vendors being solicited to perform the construction/installation activities. A brief description of the bidding and selection process, along with the identification of the selected vendor(s) must be submitted to CVA. If the selected vendor(s) is/are not the lowest bidder(s), a justification for use of the selected vendor(s) must be submitted in writing to CVA for review and written approval. Such approval is required prior to the finalization of the contract with the vendor(s).
- 7.1.5 Construction/Purchase/Installation of a new Marine Sewage Disposal Facility (MSDF) or Pumpout Vessel; or repair/upgrade of an existing MSDF/Pumpout Vessel.** To design, purchase, install, construct, renovate, operate, repair, and maintain a MSDF/Pumpout vessel located at **East Passage Puget Sound** shall design, purchase, install, construct, renovate, operate, repair, and maintain in good operating condition a MSDF/Pumpout vessel including, where applicable, providing trained staff and adequate instructions to operate and/or assist customers in operating the MSDF/Pumpout vessel; properly disposing of waste; and operating the MSDF/Pumpout vessel during normal business hours.
- 7.1.6 Operation and Maintenance of a Land Based Marine Sewage Disposal Facility** To operate and maintain a no cost marine sewage disposal facility to the public for five years from the date the agreement was executed. Subrecipient shall operate and maintain a MSDF which shall include: providing trained staff to operate the MSDF, maintaining the MSDF in good operating condition, equipment repairs, supplies, properly disposing of waste, and operating the MSDF during normal business hours.
- 7.1.7 Operation and Maintenance of a Pumpout Vessel.** To operate and maintain in good operating condition, **3** or fewer but not less than one, pumpout vessel(s) in the **East Passage Puget Sound** Each pumpout vessel may charge up to \$5.00 per pumpout and may only pumpout recreational boats. The subrecipient shall administer a Pumpout vessel program which shall include: providing trained staff to operate the Pumpout vessel, maintaining the Pumpout vessel in good operating condition, and properly disposing of waste collected.
- 7.1.8 Periodic Inspections.** Subrecipient hereby grants to the Grantor, or its authorized representative, a right, equal in time to the serviceable life of the granted materials, to enter upon Subrecipient's property as deemed necessary by the Grantor for inspection, compliance, and monitoring purposes. These periodic inspections are intended to ensure continued compliant use of the materials, products, and workmanship to the original approved plans and specifications. These inspections will not include design/engineering adequacy after the original certification, and they do not require advance notification to the Subrecipient of such inspection or access.

**7.1.9 Construction.** The Subrecipient shall award and monitor the contractor's performance under the construction contract or construction consultant contract in such a manner as to ensure compliance with Project plans and specifications. The Subrecipient must notify CVA immediately of any proposed change in Project design, cost modifications, proposed change orders or modification of scope. The Subrecipient shall be responsible for all costs associated with unauthorized changes or modifications unless otherwise specifically agreed to in writing by CVA.

**7.1.10 Project Staff.** Any changes in the principal project staff must be requested in writing and approved by CVA. In the event of any unapproved change in principal project staff, CVA may terminate this agreement.

**7.1.11 Commercial and Other Uses.** Commercial Use is prohibited. Subrecipient must restrict use of the Project to only recreational boats. For purposes of this *Section 7 – Responsibilities of Each Party*, Commercial Use means any activity on or affecting the Project that was not described in the Subrecipient's proposal, or not approved in writing by CVA, where the Subrecipient:

1. has financial profit as a goal.
2. charges any fees or receives any benefit to provide services, supplies or goods, or:
3. allows third parties to charge any fees or receive any benefit to provide services, supplies or goods.

**7.1.12 Publications & Advertising.** The Subrecipient shall include the following statement if publishing any report, news release or publication regarding this project: *"Partial funding was through the Washington State Parks and Recreation Commission Clean Vessel Act Program, and in cooperation with U.S. Fish and Wildlife Service Clean Vessel Act Grant Program."*

**7.1.13 Project Sign.** The Subrecipient shall post in a conspicuous location at the site a sign identifying State Parks CVA, any federal agencies and specific federal grant program's participation in the Project.

The Recipient shall include the following statement if publishing any report, news release or publication regarding this project: "Partial funding for this facility was provided by the Washington State Parks & Recreation Commission Clean Vessel Act Grant Program. This program is funded by the U.S. Fish & Wildlife Service through the Sport Fish Restoration and Boating Trust Fund, which is financed by your purchase of motorboat fuels and fishing equipment."

**7.1.13.1 For MSDF:** The Subrecipient shall install signs in a manner to be clearly visible to direct boaters to the MSDF. Information signs shall be installed at the MSDF/Pumpout vessel indicating use restrictions, fees, hours of operation, and a contact name and phone number to call in case of emergency or if the MSDF is inoperable. These signs may be provided at no cost by contacting the Clean Vessel Act Program Manager.

All such signs shall acknowledge that the MSDF was constructed, improved, or

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operated/maintained with funds from the Clean Vessel Act; suggested language: "This pumpout facility/vessel was built (or improved) with funds provided by the Washington State Parks & Recreation Commission Clean Vessel Act Grant Program in partnership with the U.S. Fish & Wildlife Service through the Sport Fish Restoration and Boating Trust Fund, which is financed by your purchase of motorboat fuel and fishing equipment."

Signs shall include logos acknowledging support of the Sport Fish Restoration & Boating Trust Fund and the international pumpout symbol. Logos are available from CVA in electronic format upon request of the Subrecipient.

**7.1.13.2 For Pumpout Vessels:** The Subrecipient shall install and/or maintain signs/lettering on the boat clearly visible to boaters advertising the availability of the service and telephone number/radio frequency identifying how to contact the Pumpout vessel. Appropriate information signs shall be prepared, installed and maintained. Signs should include restrictions, hours of operation, and a contact name and phone number to call. All such signs shall acknowledge that the vessel was constructed, improved, or operated/maintained with funds from the Clean Vessel Act; suggested language: "This pumpout vessel was built (or improved) with funds provided by the Washington State Parks & Recreation Commission Clean Vessel Act Grant Program in partnership with the U.S. Fish & Wildlife Service through the Sport Fish Restoration and Boating Trust Fund, which is financed by your purchase of motorboat fuel and fishing equipment."

Signs shall include logos acknowledging support of the Sport Fish Restoration & Boating Trust Fund and the international pumpout symbol. Logos are available from CVA in electronic format upon request of the Subrecipient.

**7.1.14 Public Access to Project.** During the term of this Agreement the Subrecipient shall allow open and unencumbered public access to the Project to all persons without regard to race, color, religious or political beliefs, sex, national origin, or place of primary residence.

**7.1.15 Maintenance.** The Subrecipient shall be responsible for the maintenance and operation of the Project and related facilities during the term of the Agreement. This does not restrict the Subrecipient's ability to subcontract for the performance of maintenance and operation services. Such subcontractors would be subject to *Section 17 - Indemnification by Subrecipient's Contractors*. Further, should the subrecipient need to subcontract any part of the work, 2 CFR 200 requires and instructs the subrecipient how to competitively compete for these services.

**7.1.16 Payments.** Subrecipient agrees to:

- a. Make payment promptly as due to all contractors, subcontractors, vendors or any other persons supplying labor or materials for the Project.
- b. All employers, including Subrecipient that employ subject workers shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for exemption. Subrecipient shall require and ensure that each of its subcontractors complies with these requirements (unless inapplicable as a matter of federal law) and:

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- c. Not permit any lien or claim to be filed or prosecuted against State Parks, due to any construction or maintenance activities at the Project.

**7.1.17 Alternative Dispute Resolution.** The Parties should attempt in good faith to resolve any dispute arising out of this agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

**7.1.18 Indemnification by Subrecipient's Contractors.** For purposes of this Section 7.1.18 – *Indemnification by Subrecipient's Contractors* the term “contractor” means actors downstream of the Subrecipient whether it be a contractor, a subcontractor, or downstream subrecipient or the Subrecipient. The Subrecipient shall take all reasonable steps to cause its contractor(s) to indemnify, defend, save and hold harmless the state of Washington and its officers, employees and agents (“Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys’ fees) arising from a tort caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Subrecipient’s contractor or any of the officers, agents, employees or subcontractors of the contractor (“Claims”). It is the specific intention of the Parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.

**7.2 Responsibility of Clean Vessel Act Program (CVA):**

**7.2.1** CVA shall pay Subrecipient as described in *Sections 8 – Conditions to Disbursement* and *Section 9 – Reimbursement and Payment Terms*.

**SECTION 8: CONDITIONS TO DISBURSEMENT**

**8.1 Eligible Construction or Equipment Replacement Expenses include only those items from the list below that are in your approved project budget:**

- 8.1.1** Approved Engineering and design fees (Not to exceed 20% of total project budget).
- 8.1.2** Project administration/coordination (Not to exceed 20% of total project budget).
- 8.1.3** Project-related permits and inspections fees as required by local, state, and Federal regulation.
- 8.1.4** MSDF equipment or Pumpout vessel.
- 8.1.5** Applicable taxes and freight charges.
- 8.1.6** Costs associated with installation of signs.
- 8.1.7** Shore works, pilings, and floats.
- 8.1.8** Utilities deemed necessary by CVA Program for the successful operation of MSDF.



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**8.1.9** Other items as deemed by CVA to be necessary to complete the project.

**8.2 Eligible Operation and Maintenance (O&M) Expenses.** References to O&M expenses in this agreement are for informational purposes only. Any references to funded O&M in this agreement are accidental and should be ignored. Funding for O&M, if any, is covered by a separate agreement. Reimbursement funds for Operation and Maintenance of this MSDF is covered under a separate grant agreement.

**8.2.1** Cost of parts, supplies, and materials directly related to care of the equipment.

**8.2.2** Costs of utilities to operate and maintain the equipment or costs of removal of sewage to treatment plant.

**8.2.3** Cost of sewage disposal from pumpout holding tank or disposal to public sewer.

**8.2.4** Supplies necessary for operations and maintenance activities of your pumpout.

**8.2.5** Replacement or back-up parts.

**8.2.6** Meters or telemetry equipment used for monitoring the system.

**8.2.7** Operating costs for pumpout boats (staff, fuel, fluids, repairs, maintenance) or operating costs for boats used to service floating restrooms (staff, fuel, fluids).

**8.2.8** Documented staff or contract labor associated with routine custodial and non-routine maintenance and repairs, the cost of that person operating or maintaining the system.

**8.2.9** Other items as deemed by CVA to be necessary to complete the project.

**8.3 Conditions Precedent to Any Reimbursement.** CVA shall not be obligated to disburse any of the grant funds to reimburse the Subrecipient for Project costs hereunder unless CVA has received from the Subrecipient:

- a. Prior to Project solicitation or construction, the final architectural and engineering plans, specifications, and cost estimate(s), statement of work, request for proposal or other documentation for the Project, documents must be in form and substance satisfactory to CVA.
- b. Prior to Project construction a copy of all required, federal, state and local permits or approvals for the Project and:
- c. A copy of the contractor's, vendor's, supplier's or consultant pricing, unless the Subrecipient is completing the Project; and:
- d. Reimbursement Requests must be submitted on the approved CVA Grant Reimbursement form along with all supporting documentation. Reimbursements shall be prorated between the Parties based on the percentage of their respective cash contributions as set forth in *Section 7 – Responsibilities of Each Party* and *Section 9 – Reimbursement and Payment Terms*.

**Supporting documents must:**

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- Be numbered in the upper right corner and correspond to the “Document #” column on your Reimbursement Request Form.
  - Be dated. The date of the invoice must be within the period of performance of this award.
  - Have Subrecipient’s business name clearly identified.
  - Clearly identify the cost and the amount paid & show zero-balance due.

**If a receipt, invoice, or statement includes expenses not related to the CVA project, those costs must be highlighted and noted as “ineligible costs”.**

- e. CVA will reimburse Subrecipient for eligible activities only after CVA has accepted the work as complete. Reimbursement from CVA shall not exceed **one hundred percent (100%)** of the total project cost from eligible grant expenses. Total reimbursement under this grant agreement shall not exceed the award amount of **Twenty-Six Thousand, Eight Hundred Eighty-Seven and No/100ths Dollars (\$26,887.00)**.
- f. The Subrecipient may not exceed the approved budget which was proposed by the Subrecipient as part of the Subrecipient’s Subrecipient Grant Application that was accepted by CVA. The Subrecipient’s budget is attached to this agreement (Attachment “A”). If the Subrecipient would like to change or add additional funds to the original budget, a budget amendment request must be sent in writing to CVA in advance of the expense being incurred. CVA shall determine the availability of funding to cover the additional services. Any increases in the project budget will be approved by formal amendment to this agreement.
- g. If a boat, a dock or other facility or equipment is used partially for other purposes, costs must be pro-rated for that portion of their use that is for Clean Vessel Act purposes.

**8.4 Conditions Precedent to Partial Progress Payment(s).** CVA shall not be obligated to make partial progress reimbursement payment(s) hereunder until supporting documentation of the percentage of Project completion has been received, reviewed and approved by CVA. In no event shall CVA disburse more than one hundred percent (100%) of the amount indicated in *Section 9.2 – Grant Funds* as progress payments.

**8.5 Conditions Precedent to Final Payment.** CVA shall not be obligated to make final payment hereunder until the following have been completed or supplied:

- a. Supporting documentation in form and content determined by CVA, has been received reviewed and approved by CVA and:
- b. Subrecipient provides a minimum of three photographs detailing the completed work. One photo must be of the installed sign crediting CVA with funding the Project and:
- c. Inspection and approval of the Project by CVA Program staff.

## **SECTION 9: REIMBURSEMENT AND PAYMENT TERMS**

**9.1 Federal Fund Approval.** CVA has received a grant from the United States Department of

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the Interior, Fish and Wildlife Services, (USFWS) as described pursuant to 2 CFR 200.331 on Exhibit B. In accordance with 2 CFR 200.331, CVA's determination is that the other party to this agreement is a subrecipient and is therefore a subrecipient of federal funds.

**9.2 Grant Funds.** Upon approval by its governing body or bodies, CVA shall provide federal grant funds in the amount of **\$20,165.00** in federal funds to the Subrecipient to fund the Project.

**9.3 Indirect Rate.** *NOT USED*

**9.4 Match.** *NOT USED*

**9.5 Allowable Costs.** All costs charged by the Subrecipient and subcontractors must be eligible, necessary, and reasonable for performing the tasks outlined in the approved project work plan. The costs, including match, must be incurred during the period of performance of the project. The costs also must be allowable and well documented, in conformance with specific federal requirements (50 CFR Part 85; and 2 CFR Part 200 as applicable and as adopted in regulation by 2 CFR 1402.100.

**9.6 Payments.** After the Subrecipient awards the contract for the Project, and activities commence, CVA shall, upon receipt of the Subrecipient's request for reimbursement and appropriate documentation all in form and substance satisfactory to CVA, disburse funds to the Subrecipient in accordance with *Section 8 - Conditions To Disbursement*.

Subrecipient may request reimbursements for qualified construction or replacement expenses only after the project has been completed and the MSDF/Pumpout vessel is fully operational. Approved Annual O&M Reimbursements may be requested once per year at the close of the federal fiscal year (Sept. 30th) unless special arrangements are made with the CVA Program Manager.

Reimbursement shall take place after Subrecipient submits a properly completed Reimbursement Request Form (provided by CVA), along with required supporting documentation. Requests shall only be allowed when requested on the proper forms provided by CVA, reference this agreement number and accompanied with appropriate supporting documentation.

Subrecipient shall be reimbursed for the actual project costs incurred, up to the total reimbursement amount defined above as long as grant funds remain available. Accounting procedures must provide for accurate and timely recording of receipt of funds by source, expenditures made from such funds, and of unexpended balances. Controls must be established which are adequate to ensure that expenditures are for allowable purposes and that documentation is readily available to verify that such charges are accurate. The burden of proof lies with the subrecipient to provide clear information as to the expense and form of payment.

**9.7 Cost Overruns.** Cost overruns are the responsibility of Subrecipient and must be borne by Subrecipient. Approval of any additional fund increases to address cost increases will be awarded solely at CVA' discretion. The grant agreement must be amended in writing and signed by both parties before any reimbursements for any approved increased project

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costs can occur.

**9.8 Overpayment.** In the event that the aggregate amount of CVA's interim progress payments to the Subrecipient exceeds the allowable reimbursable costs of the Subrecipient for the Project, the Subrecipient agrees to refund to CVA the amount paid in excess of such allowable expenses within thirty (30) days of final billing by the Subrecipient or the Project Completion Date, whichever is earlier.

**9.9 Program Income.** Income received by the Subrecipient directly generated by a grant supported activity or earned only as a result of the grant agreement during the grant period is defined as program income per 50 CFR Part 85; and 2 CFR 200 as applicable and as adopted in regulation by 2 CFR 1402.100 Program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs. Program income that the Subrecipient did not anticipate at the time of the award shall be used to reduce the Federal/State share and grantee contributions rather than to increase the funds committed to the project.

**9.10 Offset or Reduction.** The Subrecipient agrees that payment(s) made by CVA under this Agreement shall be subject to offset or reduction for any amounts previously paid hereunder that are found by CVA not to constitute allowable costs under this Agreement based on the results of an audit examination. If such disallowed amount exceeds the payment(s), the Subrecipient shall pay CVA the amount of such excess within 30 days after written notice of disallowed costs is provided by CVA.

**9.11 Disallowed Costs.**

**9.11.1 Entertainment Costs.** In accordance with 2 CFR 200, the cost of amusement, diversion, social activities, ceremonies, and costs relating thereto, such as meals, lodging, rentals, transportation, gratuities and alcoholic beverages are not allowable expenses.

**9.11.2 Prior Costs.** CVA will not reimburse Subrecipient for any costs incurred prior to the effective date of this grant except for pre-approved costs such as:

- State and federal permits which must be completed prior to beginning construction.
- Preliminary engineering costs to design and add a project to marina.

**9.12 Cost Savings.** Any cost savings realized on the Project shall be prorated between the Parties based on the percentage of their respective cash contributions as set forth in Section 9.1– *Federal Fund Approval* and Section 7 - *Responsibilities of Each Party*.

## **SECTION 10: REPRESENTATIONS AND WARRANTIES**

Subrecipient represents and warrants to CVA that:

**10.1** Subrecipient is a **City** duly organized and validly existing. Subrecipient has the power and authority to enter into and perform this Agreement.

**10.2** The making and performance by Subrecipient of this Agreement (a) have been duly authorized by Subrecipient, (b) do not and will not violate any provision of any applicable

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law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Subrecipient's charter or other organizational document 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 Subrecipient is party or by which Subrecipient may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Subrecipient of this Agreement, other than those that have already been obtained.

- 10.3** This Agreement has been duly executed and delivered by Subrecipient and constitutes a legal, valid and binding obligation of Subrecipient enforceable in accordance with its terms.
- 10.4** Subrecipient has the skill and knowledge possessed by well-informed members of the industry, trade or profession most closely involved in providing the services under this Agreement, and Subrecipient will apply that skill and knowledge with care and diligence to perform its obligations under this Agreement in a professional manner and in accordance with the highest standards prevalent in the related industry, trade or profession and:
- 10.5** Subrecipient shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform its obligations under this Agreement.

The representations and warranties set forth in this *Section 10- Representation and Warranties* are in addition to, and not in lieu of, any other representations or warranties provided by Subrecipient.

## **SECTION 11: GOVERNING LAW AND CONSENT TO JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of the state of Washington without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between CVA or any other agency or department of the state of Washington, or both, and Subrecipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Superior Court for Thurston County, state of Washington; provided, however, if a Claim MUST be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the Western District of Washington. In no event shall this *Section 11 – Governing Law and Consent to Jurisdiction* be construed as a waiver by the state of Washington of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court. SUBRECIPIENT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

## **SECTION 12: EQUIPMENT: OWNERSHIP, MAINTENANCE, USEFUL LIFE & DISPOSAL**

### **12.1 Ownership Of MSDF / Pumpout Vessel**

Except as otherwise provided herein, Subrecipient shall retain ownership of the marine sewage disposal facility during the term of the grant. Subrecipient may, during the term of

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the grant, transfer or convey its ownership interest in the facility only if said transfer or conveyance is accompanied by an assignment of Subrecipient's rights and obligations detailed in this grant document and only after prior written approval by the CVA. Subrecipient shall not at any time during the term of the grant convert any facility which was acquired or constructed pursuant to the grant to a use other than those for which the assistance was originally approved.

**Equipment purchased with Clean Vessel Act funds shall be used only for the purpose for which it was originally purchased and no other purpose, whether or not the Subrecipient continues to be supported by Clean Vessel Act grant funds.**

Observed/reported incidents of unauthorized use of CVA equipment shall be addressed by the following:

- 1) Any observed/reported incident of unauthorized use of CVA funded vessels will be followed-up by CVA communication with the Subrecipient. CVA may conduct site visits or contact area boaters for supplemental information as necessary. The pumping out of commercial and non-recreational vessels with CVA funded equipment is strictly prohibited.
- 2) In those instances where the CVA determines that an unauthorized use of a CVA funded vessel has occurred, the CVA will provide written notification to the operator of its determination with a warning that continued misuse or abuse of CVA-funded vessels and equipment may result in:
  - a) the loss of O&M and/or equipment replacement funds.
  - b) the removal of misused equipment from the facility; and/or:
  - c) an assessment against the operator for reimbursement of the federal contribution against the current market value of the vessel (e.g., a vessel with a current market value of \$20,000.00 would require the operator to reimburse the CVA Program the sum of \$15,000.00).

**12.2 Title.** Title to equipment purchased under this Agreement shall vest in the Subrecipient. If the Subrecipient determines that it cannot use the equipment for the stated grant purposes at any point prior to the end of the equipment's useful life, but after the end of this Contract period and any extensions thereof, the Subrecipient shall inform CVA in writing within 30 days of such determination. Such equipment shall be transferred by the Subrecipient to a third party approved by CVA for use for grant purposes in accordance with applicable provisions of state and federal law. Should the equipment not be transferred to a new operator in accordance with this provision, the equipment shall either be returned to CVA for use for grant purposes, or it shall be disposed of in accordance with 50 CFR Part 85; and 2 CFR Part 200.

**12.3 Useful Life.** Beyond the acquisition grant period of performance and throughout the duration of the equipment's useful life, the equipment must continue to be used in the program or project for which it was acquired, as Clean Vessel Act Program. When no

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longer needed for the original program or project, equipment may be used in other activities in the following order of priority:

Activities supported under a federal award from the federal awarding agency which funded the original program or project; then:

- 1) Activities supported under a federal award from the federal awarding agency which funded the original program or project; then:
- 2) Activities under federal awards from other federal awarding agencies; then:
- 3) Any activities consistent with the administration of the State fish and wildlife agency.

**12.4 Special Survivorship Note.** Ownership is not absolute. Regardless of agreement's expiration, anything tangible, intangible, or intellectual property that was purchased or created from federal funds or funded with federal funds maintains federal and state-CVA entanglements, requirements, or conditions (conditional ownership) unless/until released by the CVA or federal government in writing. While other conditions may apply, typically a release would occur upon the CVA or federal government being completely satisfied that the item in question has reached the end of its useful life which is usually a dollar value. Determination of value is solely at the discretion of the CVA or federal government. Should professional appraisal services be needed to determine value, these costs shall be borne by the Subrecipient. Selection of an appraisal services firm is subject to the written approval of the CVA or federal government.

**12.5 Use and Maintenance of MSDF/Pumpout Vessel.** The Subrecipient shall operate and maintain the MSDF/Pumpout vessel designed, purchased, constructed, installed, renovated, operated, repaired, or maintained with CVA grant funds to function as intended for the full period of their useful life and in a manner that provides adequate service, promotes use, and protects public health. Such conditions include:

**12.5.1** Subrecipient shall operate and maintain grant funded MSDF/Pumpout vessels in accordance with all applicable federal, state and local laws, orders, regulations and permits.

**12.5.2** Operation shall include having trained personnel available to facilitate operation of the pumpout; appropriate protective clothing (such as gloves) and hand-washing facilities to protect the operator; and a schedule for maintenance.

**12.5.3** Any property or facilities open to the public shall be open for the use by ALL recreational boaters without restriction and in compliance with all applicable federal and state nondiscrimination laws, regulations, and policies.

**12.5.4** Access shall be allowed during normal business or marina operating hours and the operating hours shall be posted in a conspicuous location on the premises.

**12.5.5** The MSDF/Pumpout vessel must be located such that it is reasonably available to transient vessels of sufficient size to be equipped with holding tanks.

**12.5.6** MSDF/Pumpout vessel must be used for the collection of vessel sewage only (no bilge or

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oily waste shall be collected).

- 12.5.7 The Subrecipient shall not allow land-based restrooms to be used for the emptying of portable toilets.
- 12.5.8 All MSDF/Pumpout vessels shall include equipment for rinsing boat holding tanks, and all rinse water shall be discharged, along with sewage, to the approved disposal system.
- 12.5.9 Pumpout vessels should be operated by trained personnel with a valid State of Washington Boater Education Card.
- 12.5.10 Pumpout vessels should be equipped with all federally required safety equipment and provide and ensure appropriate personal protective equipment (such as gloves, eye protection, and U.S. Coast Guard approved personal floatation devices) and hand-washing facilities to protect the operator.
- 12.5.11 All MSDF/Pumpout vessels shall have a routine schedule for maintenance.
- 12.5.12 As a condition of receiving the grant funds, Subrecipient shall actively maintain the facility/vessel for the **full design life** of the equipment provided from this grant.
- 12.5.13 Subrecipient shall be responsible for all operation, maintenance, and repair of the facilities.

**12.6 Equipment Replacement.** When acquiring replacement equipment, the Subrecipient may use existing equipment as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of CVA. If the Subrecipient is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

When original or replacement equipment acquired under this award is no longer needed or the Subrecipient is no longer able to support the pumpout program, disposition of the equipment shall be made as follows:

- The equipment may be transferred at no cost to another CVA-funded facility (e.g., marina, yacht club, or governmental agency) if such equipment will remain in use and be dedicated to the pumpout program. The conditions for such transfer shall be stipulated by the CVA and shall include the same requirements as those imposed in the original grant. Any cash or in-kind match paid when the equipment was originally purchased will be forfeited in total.
- If the equipment cannot be transferred to another CVA-funded facility, it must be sold at the discretion of the CVA, and the Subrecipient shall pay CVA the proceeds of the sale or the fair market value of the equipment, whichever is the greatest.

**12.7 Equipment Breakdown.** In the event an equipment breakdown occurs, Subrecipient shall notify CVA within two (2) working days of breakdown. The facility must be repaired and fully operational within ten (10) working days after the breakdown, where the breakdown can be remedied with normal expected repairs for five hundred dollars (\$500.00) or less. For repairs greater than five hundred dollars (\$500.00), the facility must be fully operational within twenty (20) days after the breakdown. A written report for all breakdowns must be



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submitted to CVA within two (2) weeks of the breakdown describing the problem(s), repair(s), and the cost(s). **Failure to notify CVA of an equipment breakdown and plan for repairs may result in the withholding of grant funds.**

**12.8 Accident Report.** Subrecipients or Subrecipient's staff involved in an accident must remain at the scene and assist any other vessel or person involved, if possible, without endangering their safety, their own vessel or the people aboard. The Subrecipients or Subrecipient's staff must also give his/her name, address and vessel identification number / vehicle identification number to the other operator(s) or owner of the damaged property.

SUBRECIPIENTS OR SUBRECIPIENT'S STAFF INVOLVED IN AN ACCIDENT WHICH RESULTS IN ANY OF THE CIRCUMSTANCES NOTED BELOW SHALL **IMMEDIATELY** NOTIFY THE NEAREST LAW ENFORCEMENT AGENCY WITH JURISDICTION IN THE AREA AND, **NOT LATER THAN 48 HOURS AFTER THE ACCIDENT**, AND REPORT THE MATTER TO THE STATE PARKS CVA PROGRAM BY EMAIL AND TELEPHONE CALL.

- THE DEATH OF ANY PERSON FROM WHATEVER CAUSE.
- THE DISAPPEARANCE OF ANY PERSON.
- THE INJURY OF ANY PERSON SUFFICIENT TO REQUIRE MEDICAL ATTENTION BEYOND SIMPLE FIRST AID.

Any accident in which the total damage to all property affected is in excess of \$500.00 must be reported by the operator to CVA not later than 5 days after the accident.

**12.9 Environmental Compliance.** As a subrecipient of federal Clean Vessel Act funds, the subrecipient must comply with the requirements of the National Environmental Policy Act (NEPA), Section 7 of Endangered Species Act (ESA), and Section 106 of the National Historic Preservation Act (NHPA). This award is provisionally approved for administration, design, engineering, and coordination activities only.

**The Subrecipient and its contractors must not begin any in-water or ground disturbing work related to this award until notified in writing by CVA with a "Start Work Letter" to proceed with construction.**

**12.10 Spill Reporting and Cleanup.** In the event of a spill or leak of materials from the boat sewage disposal facility, it shall be Subrecipient's responsibility to promptly begin and complete a thorough cleanup of the spill area. Notwithstanding any federal, state, or local reports that are required for any spill, Subrecipient shall notify CVA of any spills within 24 hours from the time the spill is discovered.

**12.11 Disposal of Sewage.** The Subrecipient shall obtain and maintain approval for the increased flow of sewage to a publicly owned treatment works (wastewater treatment plant) resulting from the discharge of vessel sewage; or obtain and maintain a valid contract, with a schedule, for the removal of sewage from a storage tank or pumpout vessel by a licensed septage hauler and for the transport and ultimate disposal of such sewage at a municipal sewage receiving/treatment facility. A storage tank installed for the purpose of receiving and storing MSDF/Pumpout vessel waste shall not be used to receive or store waste from any other source unless specifically approved for such use by the local or state Health

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Department. In the event of a written agreement, a copy of such agreement must be filed with CVA prior to receiving reimbursement payments for any operations and maintenance costs.

**12.12 Use Records.** Subrecipient shall monitor and maintain written records of the use of the MSDF/Pumpout vessel by installing a use counter mechanism, flow meter, or hour meter. These records are required for the period of October 1st through September 30th for the previous twelve (12) months. These records are required for the full duration of the useful life of the equipment, whether any request for reimbursement occurred or not. Following expiration of this agreement or any amendment thereto, the Subrecipient shall continue to submit the use records for the useful life of the MSDF/Pumpout Vessel. Such records shall include but are not limited to:

- Annual Gallonage Report
- Maintenance Log
- Pumpout Vessel Service Log (Required for Pumpout Vessels only)
- Sewage Disposal Log (Required for Pumpout Vessels only)

These records shall be submitted to CVA once per year between October 1 but no later than December 31, to:

Washington State Parks Boating Program  
ATTN: Clean Vessel Act Program  
P.O. Box 42650  
Olympia, WA 985041-2650  
Or by email to [boatpumpouts@parks.wa.gov](mailto:boatpumpouts@parks.wa.gov).

**Failure to submit complete and accurate records to CVA in a timely fashion may result in the withholding of grant funds.**

## **SECTION 13: OWNERSHIP OF WORK PRODUCT**

**13.1** As used in this Section 13 – Ownership of Work Product and elsewhere in this Agreement, the following terms have the meanings set forth below:

**13.1.1 Project Ownership.** CVA acknowledges and agrees that the Project is the exclusive property of the Subrecipient. CVA is neither responsible nor liable in any manner for the construction, operation or maintenance of the Project.

**13.1.2 Special Survivorship Note:** Ownership is not absolute. Regardless of agreement's expiration, anything tangible, intangible, or intellectual property that was purchased or created from federal funds or funded with federal funds maintains federal and state-CVA entanglements, requirements, or conditions (conditional ownership) unless/until released by the CVA or federal government in writing. While other conditions may apply, typically a release would occur upon the CVA or federal government being completely satisfied that the item in question has reached the end of its useful life which is usually a dollar value. Determination of value is solely at the discretion of the CVA or federal government. Should professional appraisal services be needed to determine value, these costs shall be borne by the Subrecipient. Selection of an appraisal services firm is subject to the

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written approval of the CVA or federal government.

#### **SECTION 14: NO DUPLICATE PAYMENT**

The Subrecipient shall not be compensated for, or receive any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the state of Washington, including, but not limited to the Washington State Parks & Recreation Commission, or the United States of America or any other party.

#### **SECTION 15: CONTRIBUTION ON THIRD PARTY CLAIMS**

- 15.1** If any third party makes any claim or brings any action, suit or proceeding alleging against a Party (the “Notified Party”) with respect to which the other Party (the “Other Party”) may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Each Party is entitled to participate in the defense of a Third-Party Claim, and to defend a Third-Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this *Section 15 – Contribution on Third Party Claims* and a meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party’s contribution obligation under this *Section 13 – Ownership of Work Product* with respect to the Third Party Claim.
- 15.2** With respect to a Third Party Claim for which CVA is jointly liable with Subrecipient (or would be if joined in the Third Party Claim ), CVA shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Subrecipient in such proportion as is appropriate to reflect the relative fault of CVA on the one hand and of Subrecipient on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of CVA on the one hand and of Subrecipient on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. CVA's contribution amount in any instance is capped to the same extent it would have been capped under Washington law if the State had sole liability in the proceeding.
- 15.3** With respect to a Third Party Claim for which Subrecipient is jointly liable with CVA (or would be if joined in the Third Party Claim), Subrecipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by CVA in such proportion as is appropriate to reflect the relative fault of Subrecipient on the one hand and of CVA on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Subrecipient on the one hand and of CVA on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such

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expenses, judgments, fines or settlement amounts. Subrecipient's contribution amount in any instance is capped to the same extent it would have been capped under Washington law if it had sole liability in the proceeding.

## **SECTION 16: SUBRECIPIENT DEFAULT**

Subrecipient will be in default under this Agreement upon the occurrence of any of the following events:

- 16.1** Subrecipient fails to perform, observe or discharge any of its covenants, agreements or obligations under this Agreement.
- 16.2** Any representation, warranty or statement made by Subrecipient in this Agreement or in any documents or reports relied upon by CVA to measure the delivery of services, the expenditure of funds or the performance by Subrecipient is untrue in any material respect when made.
- 16.3** Subrecipient (a) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (b) admits in writing its inability, or is generally unable, to pay its debts as they become due, (c) makes a general assignment for the benefit of its creditors, (d) is adjudicated a bankrupt or insolvent, (e) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (f) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (g) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (h) takes any action for the purpose of effecting any of the foregoing; or
- 16.4** A proceeding or case is commenced, without the application or consent of Subrecipient, in any court of competent jurisdiction, seeking (a) the liquidation, dissolution or winding-up, or the composition or readjustment of debts of Subrecipient, (b) the appointment of a trustee, receiver, custodian, liquidator, or the like of Subrecipient or of all or any substantial part of its assets, or (c) similar relief in respect to Subrecipient under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against Subrecipient is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

## **SECTION 17: INDEMNIFICATION**

Contractor shall hold harmless, save harmless, and indemnify the State of Washington, Commission, its officers, employees, successors and assigns against any and all damages and/or losses arising out of Contractor's use of, or presence or activity in, the facilities, including those arising out of the use or operation of equipment or facilities or as a result of the conduct of Contractor's programs, or from the conduct of Contractor's employees or agents, or damages or vandalism to facilities by third-parties, contracted or participating in Contractor's programs, events or activities.

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## SECTION 18: LIABILITY INSURANCE

- 18.1 Liability Insurance.** If required in the special terms and conditions contractor shall obtain and keep in force during the term of this Agreement, a combined single limit bodily injury and property damage insurance policy in the minimum amount of \$1,000,000.00 naming the Washington State Parks & Recreation Commission as an additional insured against any liability arising out of Contractor's or its agents, employees, or assigns. Contractor shall provide to State Parks a certificate evidencing such insurance coverage and shall provide 30 days written notice prior to any changes in the amount of cancellation of said policy.
- Contractor shall buy and maintain property insurance covering all real property and fixtures, equipment, and tenant improvements and betterments. Such insurance shall be written on an all-risks basis and, at a minimum, cover the perils insured under ISO special causes of loss Form CP 10 30, and cover the full replacement cost of the property insured. Such insurance may have commercially reasonable deductibles.
  - Any coinsurance requirement in the policy shall be waived.
  - State shall be included as an insured and a loss payee under the property insurance policy.
- 18.2 Automobile Insurance.** Subrecipient shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000.00 per accident. Such insurance shall cover liability arising out of "Any Auto." Business auto coverage shall be written on ISO form CA 00 01, or substitute liability form providing equivalent coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage and cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01. Contractor waives all rights against State for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.
- 18.3 Industrial Insurance Coverage.** Subrecipient shall provide or purchase industrial insurance coverage for themselves their employees as required by Labor and Industries prior to performing work under this Agreement. State Parks will not be responsible for payment of industrial premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under the industrial insurance laws during the performance of duties and services under this agreement. Contractor, its employees and agents performing under this contract, are not employees of State Parks.
- 18.4 Certificate Of Insurance / Naming Washington State As Additional Insured.** A current Certificate of Insurance must be submitted. The certificate must name the Washington State Parks and Recreation Commission as an additional insured, and the Certificate Holder and contain a provision that the insurance will not be canceled for any reason except after thirty (30) days written notice. Facilities must be insured by carriers licensed in or eligible to do business in Washington, and must maintain applicable Commercial General Liability, Automobile Liability, and Worker's Compensation coverage. Government entities will need to include a letter from their Chief Financial Officer stating if they are self-insured or provide a certificate of insurance as stated below."

- 18.5** Public Entity insurance requirements may be satisfied with proof of membership and liability coverage through its membership in a Risk Pool authorized under RCW 48.62.031 for Claims submitted under Chapter 4.96 RCW (“Actions against political subdivisions, municipal and quasi-municipal corporations”) against the Entity, its employees, officers, volunteers and agents and/or actions in connection with or incidental to the performance of this Agreement which the Entity and/or its employees, officers, volunteers and agents are found to be liable for will be paid by the Pool and/or Entity.

## **SECTION 19: REMEDIES**

- 19.1** In the event Subrecipient is in default under *Section 16 – Subrecipient Default* CVA may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (a) termination of this Agreement under *Section 22 - Termination*, (b) reducing or withholding payment for work or Work Product that Subrecipient has failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (c) requiring Subrecipient to perform, at Subrecipient’s expense, additional work necessary to satisfy its performance obligations or meet performance standards under this Agreement, (d) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, or (e) exercise of its right of recovery of overpayments under *Section 20 – Recovery of Overpayments* (which is in addition to the remedies provided in *Section 9.8 - Overpayment*), of this Agreement or setoff, or both. These remedies are cumulative to the extent the remedies are not inconsistent, and CVA may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.
- 19.2** In the event CVA terminates this Agreement under *Section 22.1 – Termination for Convenience*, *Section 22.2 Termination for Inefficiency*, *Section 22.3 – Termination Because of Non-Appropriation or Project Ineligibility*, or *Section 22.4 – Termination for Default*, Subrecipient's sole monetary remedy will be (a) for work compensable at a stated rate, a claim for unpaid invoices for work completed and accepted by CVA, for work completed and accepted by CVA within any limits set forth in this Agreement but not yet invoiced, for authorized expenses incurred, less any claims CVA has against Subrecipient, and (b) for deliverable-based work, a claim for the sum designated for completing the deliverable multiplied by the percentage of work completed on the deliverable and accepted by CVA, for authorized expenses incurred, less previous amounts paid for the deliverable and any claims that CVA has against Subrecipient. In no event will CVA be liable to Subrecipient for any expenses related to termination of this Agreement or for anticipated profits. If previous amounts paid to Subrecipient exceed the amount due to Subrecipient under this *Section 19.2*, Subrecipient shall promptly pay any excess to CVA.

## **SECTION 20: RECOVERY OF OVERPAYMENTS**

In addition to the remedies provided in *Section 9.8 - Overpayment*, if payments to Subrecipient under this Agreement, or any other agreement between CVA and Subrecipient, exceed the amount to which Subrecipient is entitled, CVA may, after notifying Subrecipient in writing, withhold from payments due Subrecipient under this Agreement, such amounts, over such periods of times, as are necessary to recover the amount of the overpayment.

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## SECTION 21: LIABILITY

THE SUBRECIPIENT SHALL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER THE LIABILITY CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE. NEITHER PARTY WILL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION, EXPIRATION, OR SUSPENSION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS.

## SECTION 22: TERMINATION

- 22.1 Termination for Convenience.** The Subrecipient may terminate this Agreement at any time upon thirty (30) days prior written notice to CVA; provided, however, that the Subrecipient shall, within thirty (30) days of such termination, reimburse CVA for all funds contributed by CVA to the Project; provided further that until the Subrecipient has fully reimbursed CVA for such funds, the Subrecipient shall comply with the terms hereof. Delinquent payments shall bear interest at the rate of 12 percent (12%) per annum, if such rate shall exceed the maximum rate allowed by law, then as such maximum rate, and shall be payable on demand. After ninety (90) days CVA may turn any delinquent debt over for collection.
- 22.2 Termination Because of Inefficiency.** Use of federal funds demands good stewardship. CVA on an ongoing basis be monitoring the cost per gallon collected, the number of gallons collected, the number of operating hours, and the areas of coverage. If in CVA's opinion, these metrics demonstrate poor stewardship the Agreement will be terminated. If feasible, CVA may work with the Subrecipient and give the Subrecipient an opportunity to improve the metrics to what CVA believes is a healthy metric.
- 22.3 Termination Because of Non-Appropriation or Project Ineligibility.** CVA, as provided in *Section 33 - Force Majeure*, may modify or terminate this Agreement and at any time upon 30 days prior written notice to the Subrecipient, may modify or terminate this Agreement if:
- a. CVA fails to receive funding or allotments, appropriations, limitations, or other expenditure authority at levels sufficient to pay for the allowable costs of the Project to be funded hereunder or should any state law, regulation or guideline be modified, changed or interpreted in such a way that the Project, or any portion of the Project, is no longer eligible for facility grant funds.
  - b. In the event insufficient funds are appropriated for the payments under this Agreement and the Subrecipient has no other lawfully available funds, then the Subrecipient may terminate this Agreement at the end of its current fiscal year, with no further liability to CVA. The Subrecipient shall deliver written notice to CVA of such termination no later than 30 days from the determination by the Subrecipient of the event of non-appropriation. CVA shall pay for all authorized Project costs expended up to the date of written notice of termination.

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**22.4 Termination for Default.** CVA, at any time upon 30 days prior written notice of default to the Subrecipient, may modify or terminate this Agreement if:

- a. The design, permitting, or construction of the Project is not pursued with due diligence, or:
- b. The Subrecipient's fee simple title to or other interest in the construction sites or Project is not sufficient, legal and valid, or:
- c. The construction of the Project is not permissible under federal, state, or local law, or:
- d. The Subrecipient, does not abide by the nondiscrimination and affirmative action provisions of this Agreement, or:
- e. The Subrecipient, without the prior written approval of CVA, uses the funds provided by CVA hereunder to build any project other than the Project described in the final architectural and engineering drawings approved by CVA, or:
- f. The construction is not completed in a good and workmanlike manner or fails to comply with any required permits, or:
- g. During the term of this Agreement, the Subrecipient fails to perform any obligation or requirement of this Agreement , including, but not limited to, exceeding the length of stay at a short term tie-up dock, allowing non-recreational boating use such as crabbing, fishing, swimming, diving or other activities to impact a recreational boaters ability to use the Project, or conveys the Project or the Project property or any part thereof or converts the use of the Project or the Project property to a use that precludes free and unencumbered recreational public boating access.
- h. The Subrecipient defaults under any other agreement between the Parties.

**22.5 Rights and Remedies.**

- a. The Subrecipient shall, within 30 days of its receipt of a notice of default, reimburse CVA for all funds contributed by CVA to the Project. Further, CVA shall have any and all rights and remedies available at law or in equity.
- b. In the event that Subrecipient has materially failed to comply with this Agreement and such non-compliance has resulted in the Federal Funding Agency terminating CVA's grant or cause or requires CVA to return funds to the Federal Funding Agency, Subrecipient will return to CVA an amount equal to the funds which CVA is not reimbursed for or is required to return to Federal Funding Agency.

**SECTION 23: NONAPPROPRIATION**

CVA's obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon CVA receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow CVA, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement.



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## **SECTION 24: AMENDMENTS**

The terms of this Agreement may not be altered, modified, supplemented or otherwise amended, except by written agreement of the Parties. This agreement may be amended only by mutual agreement of the parties in writing. Formal written amendment of the contract is required for changing the terms and conditions specifically stated in the original agreement and any prior amendments, including but not limited to:

- Budget revisions
- Scope of work
- Change in due dates
- Extensions of the period of performance
- Any other revisions determined material by CVA

## **SECTION 25: NOTICE**

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement must be given in writing by email, personal delivery, or postage prepaid mail, to a Party's Authorized Representative at the physical address or to such other addresses as either Party may indicate pursuant to this *Section 24 - Amendments*. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered.

## **SECTION 26: SURVIVAL**

All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than the rights and obligations arising under *Section 11 – Governing Law and Consent to Jurisdiction*, *Section 13 – Ownership of Work Product*, *Section 20 – Recovery of Overpayments*, *Section 20 – Limitation of Liability*, and *Section 26 - Survival* hereof and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, that termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.

## **SECTION 27: SEVERABILITY**

The Parties agree that 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 will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

## **SECTION 28: COUNTERPARTS**

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.

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## **SECTION 29: COMPLIANCE WITH LAW**

- 29.1 Compliance with Law Generally.** Subrecipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to Subrecipient and the Agreement.
- 29.2 Penalty of Perjury.** By its execution of this Agreement, Subrecipient certifies under penalty of perjury under the laws of the state of Washington the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or causes to be made that pertains to this Agreement.
- 29.3 Tax Compliance.** Subrecipient shall, throughout the duration of this Agreement and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this *Section 29.3 – Tax Compliance*, “tax laws” includes: (i) All tax laws of this state; (ii) Any tax provisions imposed by a political subdivision of this state that applied to Subrecipient, to Subrecipient’s property, operations, receipts, or income, or to Subrecipient’s performance of or compensation for any work performed by Subrecipient; (iii) Any tax provisions imposed by a political subdivision of this state that applied to Subrecipient, or to goods, services, or property, whether tangible or intangible, provided by Subrecipient; and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

Any failure to comply with the provisions of this *Section 29 – Compliance With Law* constitutes a material breach of this Agreement. Any failure to comply shall entitle CVA to terminate this Agreement, to pursue and recover any and all damages that arise from the breach and the termination of this Agreement, and to pursue any or all of the remedies available under this Agreement, at law, or in equity, including but not limited to:

- 29.3.1** Termination of this Agreement, in whole or in part, this is in addition to any remedies available under *Section 22 - Termination*.
- 29.3.2** Offsetting against any amount owed to Subrecipient, and withholding of amounts otherwise due and owing to Subrecipient, in an amount equal to State’s setoff right, without penalty; and:
- 29.3.3** Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. CVA may recover any and all damages suffered as the result of Subrecipient’s breach of this Agreement, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Services and applications.

The state of Washington may take any and all actions permitted by law relative to the collection of taxes due to the state of Washington or a political subdivision, including (i) garnishing the Subrecipient’s compensation under this Agreement or (ii) exercising a right of setoff against Subrecipient’s compensation under this Agreement for any amounts that may be due and unpaid to the state of Washington.

These remedies are cumulative to the extent the remedies are not inconsistent, and CVA may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

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**SECTION 30: INDEPENDENT CONTRACTORS**

The Parties agree and acknowledge that their relationship is that of independent contracting parties and that Subrecipient is not an officer, employee, or agent of the state of Washington.

**SECTION 31: PERSONS NOT TO BENEFIT**

No member of or delegate to Congress, resident commissioner, officer, agent or employee of the United States of America, member of the Washington Legislative Assembly, elected official of the state of Washington, or official, agent, or employee of the state of Washington, or elected member, officer, agent, or employee of any political subdivision, municipality or municipal corporation of the state of Washington shall be admitted to any share or part of this Agreement or derive any financial benefit that may arise therefrom.

**SECTION 32: INTENDED BENEFICIARIES**

CVA and Subrecipient are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.

**SECTION 33: FORCE MAJEURE**

Neither Party is responsible for any failure to perform or any delay in performance of any obligations under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that Party's reasonable control. Each Party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. CVA may terminate this Agreement upon written notice to Subrecipient after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

**SECTION 34: ASSIGNMENT AND SUCCESSORS IN INTEREST**

Subrecipient may not assign or transfer its interest in this Agreement without the prior written consent of CVA and any attempt by Subrecipient to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. CVA's consent to Subrecipient's assignment or transfer of its interest in this Agreement will not relieve Subrecipient of any of its duties or obligations under this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns. Any sub grant entered into under this Agreement shall contain terms and conditions substantially similar to this Agreement, including Federal provisions contained in Exhibit A.

If the contract is not to a unit of Washington State government, the contract shall require the Subrecipient to indemnify, defend, save and hold harmless the state of Washington and its officers, employees, and agents ("indemnitee") from and against any and all claims, actions, liabilities, damages, losses or expenses arising from a tort, caused or alleged to be caused, in

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whole or in part, by the negligent or willful acts or omissions of Subrecipient's contractor or any of the officers, agents, employees or subcontractors of the contractor ("claims"). It is the specific intentions of the parties that the Indemnitee shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.

### **SECTION 35: SUBCONTRACTS & SUB-AWARDS**

Subrecipient shall not, without CVA's prior written consent, enter into any subcontracts or follow-on sub-recipient sub-awards (work carried out by parties other than the Subrecipient) for any of the work required of Subrecipient under this Agreement. Subrecipient's consent to any contract, subcontract, sub-award will not relieve Subrecipient of any of its duties or obligations under this Agreement.

### **SECTION 36: TIME IS OF THE ESSENCE**

Time is of the essence in Subrecipient's performance of its obligations under this Agreement.

### **SECTION 37: MERGER AND WAIVER**

This Agreement and all Exhibits and Attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver or consent under this Agreement binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given.

Failure by CVA to insist upon the strict performance of any provision of this agreement shall not affect CVA's right to require strict performance of the same provision in the future or any other provision. Failure by CVA to exercise any right based upon a breach, or acceptance by CVA of performance during such breach, shall not constitute a waiver of any of its rights or remedies with respect to such breach.

EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

### **SECTION 38: RECORDS MAINTENANCE AND ACCESS**

Subrecipient shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Subrecipient shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Subrecipient, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document Subrecipient's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of Subrecipient, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Subrecipient acknowledges and agrees that the Washington State Parks and Recreation Commission and the federal government and their duly authorized representatives will have access to all Records to perform examinations and

audits and make excerpts and transcripts. Subrecipient shall retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

### **SECTION 39: HEADINGS**

The headings and captions to Sections or subsections of this Agreement have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this Agreement.

### **SECTION 40: INCORPORATION BY REFERENCES AND ORDER OF PRECEDENCE**

The table below reflects the documents that are incorporated by reference (whether attached or not) and the order of precedence should there be a conflict between the parts of the document or other documents incorporated by reference. The lower the number, the higher the precedence. Where two or more documents address a point or concept but are not in conflict, they should be read as supplemental, additive, and/or cumulative.

<b>Precedence</b>	<b>Document</b>
1 (highest)	United States of America Laws or Rules AND Washington State Laws and Rules
2	Amendments to any of the documents listed below shall control over the earlier version of that same document or earlier amendment to that same document.
3	Exhibit A - Federal Compliance Terms
4	EXHIBIT B - Information Required By 2 CFR §200.331(A) (1)
5	EXHIBIT C – 2 CFR 200, Appendix II - TERMS
6	ATTACHMENT A - Subrecipient's CVA Grant Application

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**SECTION 41: SIGNATURES**

This Agreement, which includes incorporated documents, is executed by the persons signing below who warrant under penalty of perjury under the laws of the state of Washington that they have read and understood the document and find it to be legal, valid, and a binding obligation, enforceable according to its terms, and have the authority to execute the contract.

<b>City of Des Moines</b> 21630 11th Ave S Ste A Des Moines, WA 98198	<b>Washington State Parks and Recreation Commission</b> P.O. Box 42650 Olympia, WA 98504-2650
<b>Sign:</b>	<b>Sign:</b>
<b>Title:</b>	<b>Title:</b> Contracts & Grants Program Manager
<b>Email:</b> swilkins@desmoineswa.gov	<b>Email:</b> contracts@parks.wa.gov
<b>Date:</b>	<b>Date:</b>
<b>Place:</b>	<b>Place:</b> Tumwater, WA

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## EXHIBIT A - FEDERAL COMPLIANCE TERMS

### I. Grant Subrecipient Compliance Requirements:

A. Subrecipient is responsible to ensure compliance with the federal implementing regulations for (Clean Vessel Act 50 CFR Part 85 or Boating Infrastructure Grant Program 50 CFR Part 86).

B. Subrecipient to comply with Assurances – Construction Programs (Standard Form 424D)

C. Pursuant to 2 CFR Part 170, CVA will enter grant information into the Federal Funding Accountability and Transparency Act (FFATA).

### II. Federal Terms and Conditions:

Subrecipient is responsible to comply with the following Federal Terms and Conditions, as applicable:

A. Uniform Administrative Requirements, 2 CFR Part 200, Subparts A through D or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B.

B. including but not limited to the following:

1. Property Standards. 2 CFR 200.313, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, which generally describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal funds.

2. Contract Provisions. The contract provisions listed in 2 CFR Part 200, Appendix II, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, are hereby incorporated into this Exhibit. These are, to the extent applicable, obligations of Subrecipient, and Subrecipient shall also include these contract provisions in its contracts with non-Federal entities.

3. Audits. Subrecipient shall comply, and require all subcontractors to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law. If Subrecipient expends \$750,000.00 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014, Subrecipient shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR Subtitle B with guidance at 2 CFR Part 200. Copies of all audits must be submitted to CVA within 30 days of completion.

B. Cost Principles 2 CFR Part 200, Subpart E

C. Central Service Cost Allocation Plans Appendix V to Part 200

D. Indirect Cost Proposals Appendix VII to Part 200

E. Audit Requirements 2 CFR Part 200, Subpart F

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F. Federal Non-discrimination Statutes. Subrecipient is responsible to comply with all federal statutes relating to non-discrimination, including but not limited to: Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; Title IX of the Education Amendments of 1972 (20 USC §§ 1681-1683; 1685-1686) which prohibits discrimination on the basis of gender; Section 504 of the Rehabilitation Act of 1973 (29 USC § 794) which prohibits discrimination on the basis of handicaps; Age Discrimination Act of 1975 (42 USC §§ 6101-6107) which prohibits discrimination on the basis of age; Drug Abuse Office and Treatment Act of 1972 (PL 92-255) which prohibits discrimination on the basis of drug abuse; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616) regarding non-discrimination on basis of alcohol abuse or alcoholism; Sections 523 and 527 of the Public Health Services Act of 1912 as amended (42 USC §§ 290 dd-3 and 290 ee-3) regarding confidentiality of alcohol and drug abuse patient records; Title VIII of the Civil Rights Act of 1968 (42 USC §§ 3601 et seq.) regarding nondiscrimination in the sale, rental or financing of housing; any other nondiscrimination provisions of the specific statutes under which this agreement is being made; and the requirements of any other nondiscrimination statute(s) which apply to the federal financial assistance award received by CVA.

G. Eligible Workers. Subrecipient shall ensure that all employees complete the I-9 Form to certify that they are eligible for lawful employment under the Immigration and Nationality Act (8 USC 1324a). Subrecipient shall comply with regulations regarding certification and retention of the completed forms.

H. To the extent applicable to this award, Subrecipient is responsible to comply with

1. National Environmental Policy Act; E.O. 11514 (which requires the Subrecipient to comply with environmental standards which may be prescribed pursuant to institution of environmental quality control measures under the National Environmental Policy Act of 1969 (42 USC Chapter 55, [Pub. L. 91-190]) and Executive Order 11514.
2. E.O. 11990: Protection of Wetlands (which requires the Subrecipient to comply with environmental standards for the protection of wetlands)
3. E.O. 11988: Floodplain Management; E.O. 11988 (which requires the Subrecipient to comply with environmental standards for the evaluation of flood hazards in floodplains)
4. Coastal Zone Management Act (which requires Subrecipient to ensure that the work performed will not violate State management programs developed under the Coastal Zone Management Act of 1972) (16 USC Chapter 33, Sections 1451 et seq.).'
5. Wild and Scenic Rivers Act (which requires the Subrecipient to protect components or potential components of the national wild and scenic rivers system). (16 USC Chapter 28, Sections 1271 et seq.)



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6. Historic Preservation Act, E.O. 11593 (which requires Subrecipient to assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 USC 470), E.O. 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 USC Sec. 469a-1 et seq.).

7. Endangered Species Act (which requires the Subrecipient to comply with environmental standards for the protection of endangered species) 16 USC Chapter 35, Sections 1531ff [Pub. L. 93-205].

8. Marine Mammal Protection Act (which Requires permits and reports for research projects that will involve the taking or importation of protected marine mammals or marine mammal products) (16 U.S.C. Chapter 31, Subchapter I, Sections 1361ff).

I. Other Requirements (USFWS specific)

1. Universal Identifier and Central Contractor Registration 2 CFR Part 25

2. Reporting Sub-awards and Executive Compensation 2 CFR Part 170

3. Award Term for Trafficking in Persons (applicable to private entity subrecipients) 2 CFR Part 175

4. Government-wide Debarment and Suspension (Non-procurement) 2 CFR Part 1400

5. Requirements for Drug-Free Workplace (Financial Assistance) 2 CFR Part 1401

6. 43 CFR 18 New Restrictions on Lobbying: Submission of an application also represents the applicant's certification of the statements in 43 CFR Part 18, Appendix A, Certification Regarding Lobbying.

7. 41 U.S.C. 4712 Enhancement of Recipient and Subrecipient Employee Whistleblower Protection:

a. This award, related sub-awards, and related contracts over the simplified acquisition threshold and all employees working on this award, related sub-awards and related contracts over the simplified acquisition threshold are subject to the whistleblower rights and remedies established at 41 USC 4712b. Subrecipient, Subrecipient's contractor, or Subrecipient's sub-recipient(s) (however many levels), and their contractors award contracts over the simplified acquisition threshold related to this award, shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.

c. The Subrecipient shall insert this clause, including this paragraph (c), in all sub awards and in contracts over the simplified acquisition threshold related to this award.

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8. Prohibition on Members of Congress Making Contracts with Federal Government: No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this award, or to any benefit that may arise therefrom; this provision shall not be construed to extend to an award made to a corporation for the public's general benefit 41 USC § 6306.

9. Federal Leadership on Reducing Text Messaging while Driving: Subrecipients are encouraged to adopt and enforce policies that ban text messaging while driving, including conducting initiatives of the type described in Section 3(a) of the Order Executive Order 13513.

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**EXHIBIT B**  
**INFORMATION REQUIRED BY 2 CFR §200.331(A) (1)**

Federal Award Identification:

- (i) Subrecipient name (which must match registered name in UEI: **City of Des Moines**)
- (ii) Subrecipient' UEI number: **NY7AZ9H2VK25**
- (iii) Federal Award Identification Number (FAIN): (**varies**)
- (iv) Federal Award Date: (**varies**)
- (v) Sub-award Period of Performance Start and End Date: **4/15/24 to 1/31/35**
- (vi) Total Amount of Federal Funds Obligated by this Agreement: **\$20,165.00**
- (vii) Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this Agreement\*\*: **\$20,165.00**
- (viii) Total Amount of Federal Award committed to the Subrecipient by the pass-through entity: **\$20,165.00**
- (ix) Federal award project description: **The City of Des Moines will replace one (1) stationary pumpout at the Des Moines Marina.**
- (x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity:
  - (a) Name of Federal awarding agency: U.S. Fish & Wildlife Service
  - (b) Name of pass-through entity: Washington State Parks and Recreation Commission
  - (c) Contact information for awarding official of the pass-through entity: boatpumpouts@parks.wa.gov
- (x) CFDA Number and Name: Clean Vessel Act 15.616
- (xi) Is Award R&D? No
- (xii) Indirect cost rate for the Federal award: NA %

*\*For the purposes of this Attachment, the term "pass-through entity" refers to CVA.*

*\*\*The Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity is the Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity during the current Federal fiscal year.*

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## EXHIBIT C

### **2 CFR 200, Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards (current as of 20200717)**

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

**(A)** Contracts for more than the simplified acquisition threshold currently set at \$150,000.00, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

**(B)** All contracts in excess of \$10,000.00 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

**(C)** Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

**(D)** Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000.00 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she

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is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

**(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000.00 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**(F) Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

**(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended -** Contracts and subgrants of amounts in excess of \$150,000.00 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**(H) Debarment and Suspension (Executive Orders 12549 and 12689) -** A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

**(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) -** Contractors that apply or bid for an award exceeding \$100,000.00 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds

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to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

**(J)** See § 200.322 Procurement of recovered materials.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014.



PROJECT: 23-1903 DEV, REPLACEMENT FOR THE FUEL DOCK PUMP OUT UNIT

Sponsor: Des Moines City of Program: Washington Clean Vessel Act Status: Application Complete

Parties to the Agreement

PRIMARY SPONSOR

City of Des Moines
Address 21630 11th Ave S Ste A
City Des Moines State WA Zip 98198
Org Type City/Town
Vendor # SWV0000307-00

UBI
Date Org created

Org Notes

Des Moines is a municipal corporation formed in 1959 and classified as a "code city" per Title 35A of the RCW. Des Moines is located in King County and has a land area of 6.50 square miles. Des Moines has a population of 32, 888 as of the 2020 census, an increase of 11% from the 2010 census

link to Organization profile

Org data updated (by Bart Lynch 02/12/2024)

QUESTIONS - PRIMARY SPONSOR

#1: What is your organization's Federal Employer Identification Number (FEIN)?

91-6016496

#2: What is your organization's Unique Entity ID (UEID)?

NY7AZ9H2VK25

#3: Has your organization previously received CVA grant funding?

Yes

#3a: List the most recent grant number.

19-1532

#4: Has your organization ever managed another federal subrecipient (pass-through) grant before?

Yes

SECONDARY SPONSORS

No records to display

MANAGING AGENCY

State Parks & Recreation Commission

## Project Application Report - 23-1903

### Project Contacts

Contact Name Primary Org	Project Role	Work Phone	Work Email
<a href="#">Catherine Buchalski Smith</a> State Parks	Project Manager	(360) 902-8659	<a href="mailto:Catherine.BuchalskiSmith@PARKS.WA.GOV">Catherine.BuchalskiSmith@PARKS.WA.GOV</a>
<a href="#">Scott Wilkins</a> Des Moines City of	Project Contact	(206) 824-0566	<a href="mailto:swilkins@desmoineswa.gov">swilkins@desmoineswa.gov</a>
<a href="#">Joe Dusenbury</a> Des Moines City of	Lead Entity Contact	(206) 795-4832	<a href="mailto:jdusenbury@desmoineswa.gov">jdusenbury@desmoineswa.gov</a>

### Worksites & Properties

#### # Worksite Name

#1 Des Moines Marina Guest Moorage Area/Fuel Dock

Development	Property Name
✓	City of Des Moines Marina

### Worksite Map & Description

#### Worksite #1: Des Moines Marina Guest Moorage Area/Fuel Dock

##### WORKSITE ADDRESS

**Street Address** 22307 Dock Ave South  
**City, State, Zip** Des Moines WA 98198

### Worksite Details

#### Worksite #1: Des Moines Marina Guest Moorage Area/Fuel Dock

##### SITE ACCESS DIRECTIONS

From I-5 N or S take exit 149A to WA 516 - Kent-Des Moines Road West. Continue on WA 516 W for 2.9 miles to Marine View Drive. At traffic light take a slight right turn onto Marine View Dr, North. At 2nd traffic light turn left, (west), onto S 223rd Street and proceed 3 blocks to Cliff Ave. Turn right and continue north on Cliff Ave to Marina's north entrance. Proceed south thru the parking lot to the Marina Office at 22307 Dock Ave. South.

##### Questions

#1: Do you have an aquatic lands lease with the Washington Department of Natural Resources?  
Yes

#1a: Provide your DNR lease number.

C2000A09080

#2: Which CVA region is your facility located?  
Coastal



### Project Application Report - 23-1903

#3: What is the common name of **waterbody** where your facility is located?

East Passage of the Puget Sound

#4: Is your facility open year-round?

Yes

#5: Does your facility allow public access to docking and marina services?

Yes

#5a: How Many?

45 Guest Moorage Slips

#6: Is there a pumpout at your boating facility now?

Yes

#6a: How Many?

Three (3)

#7: Is there a portable toilet dump station now at your boating facility?

No

#8: Is there a mobile pumpout service operating at your boating facility?

Yes

#9: Are restrooms available on-site?

Yes

#10: Is your boating facility a designated **Clean Marina**?

Yes

#11: Have you received a SEPA Letter of Exemption or Determination from local jurisdiction? Please include the Name, Title, Email, and Phone Number of the contact person at local jurisdiction office who is responsible for SEPA determinations.

No. A SEPA Exemption is not needed for an in-kind replacement project.

## Project Application Report - 23-1903

### Project Location

#### RELATED PROJECTS

##### Projects in PRISM

PRISM Number	Project Name	Program Name	Current Status	Relationship Type	Notes
19-1532 D	Des Moines Marina Guest Moorage Electrical Upgrade	BIG - Tier1	Active	Earlier Phase	The Marina updated the electrical distribution system in the Guest Moorage area to accomodate current and future boaters needs. A new pump out is a continuation of the Marina's efforts to upgrade the guest moorage facility.
23-1816 M	CVA Pump-Out Maintenance Grant	Washington Clean Vessel Act	Application Complete	Current Phase	The Marina has applied for a maintenance grant to help fund the maintenance and operation of the three pump-out units operated by the Marina.

#### Related Project Notes

### Property Details

Property: City of Des Moines Marina (Worksite #1: Des Moines Marina Guest Moorage Area/Fuel Dock)

✓ Development

#### LANDOWNER

Name City of Des Moines  
 Address 21630 11th Ave S Ste A  
 City Des Moines  
 State WA Zip 98198  
 Type State

#### CONTROL & TENURE

Instrument Type Sponsor owned property (deed)  
 Timing Existing  
 Term Length Perpetuity  
 # Yrs  
 Expiration Date  
 Note

### Project Proposal

#### Project Description

This grant would help fund the purchase and installation of a new Sanisailor Masterline holding tank pump-out unit (manufactured by EMP Industries). The new unit would replace the existing pump-out on the Marina's fuel dock. The existing unit has been in service for about 20 years and is now beyond it's expected operating lifetime.

#### Project Questions

#1: Describe the overall approach to who, what, where, when and how of the actions your project will require. Be as specific. It is helpful to provide a list of key milestones (e.g., hiring contractors, receiving permits, etc.). A bulleted list is acceptable for this section. Be sure to address: Your target date to start the project, What week(s) or month(s) purchases and construction or installation will occur, Your target date to complete the project.

If the City is awarded a grant to help replace the pump-out unit on the fuel dock, the following actions will take place beginning immediately after the documents are signed.

- The Marina will order the new Pump-out unit. Delivery is expected to take 4 to 6 weeks.
- The Marina Staff will apply for an electrical permit.
- When the unit is delivered the Marina staff will install it. Installation is expected to take 1 to 2 days. The new installation

## Project Application Report - 23-1903

Installation is expected to take 1 to 2 days. The new installation will use the existing collection and discharge piping.

### Optimum Time Line:

the entire project should take about 3 months. Ideally, the notice of award and document execution would take place early in the year so the new unit could be ordered by the middle of March. Installation would take place in April, ensuring that the unit will be ready for operation by the middle of May.

## Evaluation Criteria

#0: FINANCIAL HARDSHIP Describe how your facility or organization would experience hardship paying the federal matching requirement for your proposed project.

The Marina has the ability to provide the matching funds. The funds would come from Marina operating revenues.

#1: PUBLIC NEED Explain how your project addresses a public need for marine sewage disposal facilities (MSDF).

The Des Moines Marina is the only Marina on the east side of the Sound between Seattle and Tacoma. The closest marine pump-out facility is 12 to 15 miles in either direction. This project will fund the purchase of a new unit to replace the existing pump-out located on the fuel dock. This pump-out is used mostly by transient boaters. A new pump out is a continuation of the Marina's efforts to upgrade the guest moorage facility. The Marina recently updated the electrical distribution system in the Guest Moorage area to serve current and future boaters needs. Maintaining the ability to provide free, convenient pump-outs is a continuation of the Marina's efforts to provide excellent service to recreational boaters in the guest moorage facility.

#2: WATER QUALITY BENEFIT Describe how your project will improve water quality.

The Marina's pump-out facilities are connected directly to Midway Sewer Districts' system. The Marina staff keeps a log of the number and volume of discharges from the pump-outs and report the data to the District. the Marina is billed for collection and treatment based on the volume reported. Over the last 3 years the Des Moines Marina has reported discharging over three hundred thousand gallons of sewage to the District and similar volumes are expected in the future.

#3: PUBLIC BENEFIT Describe how your project will result in measurable benefits for the recreational boating community?

This project will have two measurable benefits:

- Keeping a free and convenient pump-out service at the Marina's fuel dock where it is accessible for all recreational boaters on the South Puget sound.
- The equipment is set up to accurately measure the sewage discharged to the sewer district. This feature provides accurate and verifiable information that can be used by people and organizations in recreational boating that advocate for clean water. Concerns about water quality have been a constant feature of surveys of recreational boaters for over two decades.

#4: COST BENEFIT Describe how your project will be implemented to provide the greatest cost benefit ratio.

The Marina staff will provide all the labor and misc. parts needed to install the new pump-out unit. The location of the new unit on the fuel dock is the most convenient place for both transient boaters and permanent tenants which will optimize the use of the pump-out.

The fuel dock has three fueling stations and the staff has installed the plumbing and hoses necessary to make the pump-out accessible from all three stations so boaters can re-fuel and use the pump-out from one location.

These actions will reduce costs and maximize use.

## Project Application Report - 23-1903

#5: PARTNERSHIPS AND PROJECT SUPPORT Describe monetary and non-monetary support secured to help implement your project.

Monetary Support: The Marina's matching funds for purchasing and installing the new pump-out will come from operating revenues.

Non-monetary support: Marina staff partners with organizations like the State Parks Clean Vessel Program, U.S. Fish & Wildlife and Washington Sea Grant and the Dept. of Ecology to provide boaters and the general public resources and information about the benefits of using pump-out stations.

#6: SITE SUITABILITY AND PROJECT DESIGN Describe how your project demonstrates good design and feasibility.

The new pump-out unit will be located on the Marina's Fuel Dock making for easy access for boaters to both fuel up and pump-out at the same time. The typical boat using the fuel dock and pump out is 30 to 50 feet long but the facility can accommodate boats up to 90 to 100 feet long.

## Project Application Report - 23-1903

### Development Metrics

**Worksite: Des Moines Marina Guest Moorage Area/Fuel Dock (#1)**

Boating Facility Type			Marina
Slip Size	Slips Under 26 Feet		Number 228
	Slips Over 26 Feet		529
	Total		757
Slip Occupany Rate	Slips Under 26 Feet		Percent 84
	Slips Over 26 Feet		92
Slip Type	Liveaboard		Number 10
	Transient		45
	Total		55

#### PERSONNEL AND SALARIES

##### Personnel and Salaries

Total cost for personnel and salaries	\$3,440
Description of personnel and salaries	Marina staff will install, test and commission the new pump-out unit. Main't lead -16 hrs @ \$120 = \$1,920 Main't 1 - 16 hrs @ \$95 = \$1,520 Total = \$3,440

#### BOATING PUMPOUT EQUIPMENT

##### Stationary Pumpout

Total cost for purchase of stationary pumpout	\$22,597
Number of Units Purchased	1

#### BOATING PUMPOUT SUPPLIES

##### Supplies

Total cost for purchases of supplies	\$750
Description of Items Purchased	Misc. parts & fittings needed for daily operations i.e. adapter fittings for holding tanks, spare hoses and replacement parts for the unit.

#### OTHER

##### Permits

Total cost for permits	\$100
Number of permits	1

### Overall Project Metrics

No metrics are required at this time.

### Development Cost Estimates

**Worksite #1: Des Moines Marina Guest Moorage Area/Fuel Dock**

Category	Work Type	Estimated Cost	Note
Boating Pumpout Equipment	Stationary Pumpout	\$22,597	
Boating Pumpout Supplies	Supplies	\$750	
Other	Permits	\$100	
Personnel and Salaries	Personnel and Salaries	\$3,440	

## Project Application Report - 23-1903

Category	Work Type	Estimated Cost	Note
	Subtotal:	\$26,887	
	Total Estimate For Worksite:	\$26,887	

### Summary

Total Estimated Costs:	\$26,887
Total Estimated Development Costs:	\$26,887

### Cost Summary

	Estimated Cost	Project %	Admin/AA&E %
<u>Development Costs</u>			
Development	\$26,887		
SUBTOTAL	\$26,887	100.00 %	
Total Cost Estimate	\$26,887	100.00 %	

### Funding Request and Match

#### FUNDING PROGRAM

Washington Clean Vessel Act	\$20,165	74.999070 %
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#### SPONSOR MATCH

OTHER MONETARY FUNDING

APPROPRIATION - LOCAL

Amount

\$6,722.00

Funding Organization

City of Des Moines

Match Total: \$6,722.00

Total Funding Request (Funding + Match): \$26,887.00

### Cultural Resources

#### Cultural Resource Areas

##### Worksite #1: Des Moines Marina Guest Moorage Area/Fuel Dock

###### Area: Des Moines Marina Fuel Dock

#1: Describe any planned ground disturbing work. This includes geo-technical investigation, monitoring wells, fencing, etc.

There will be no ground disturbing work associated with this project.

#2: Provide a description of the project actions at this worksite (acquisition, development and/or restoration activities that will occur as a part of this project)

The existing pump out on the fuel dock will be removed and the new unit installed in the same location.

#3: Describe all ground disturbing activities (length, width and depth of disturbance and equipment utilized) that will take place in the Area of Potential Effect (APE). Include the location of any construction staging or access roads associated with your project that will involve ground disturbance.

There will be no ground disturbing work associated with this project.

## Project Application Report - 23-1903

#4: Describe any planned ground disturbing pre-construction/restoration work. This includes geo-technical investigation, fencing, demolition, decommissioning roads, etc.

None of the activities listed above (#4) will be done as part of this project.

#5: Describe the existing project area conditions. The description should include existing conditions, current and historic land uses and previous excavation/fill (if depths and extent is known, please describe).

The project area is a concrete float moored to three concrete guide pile. The is the location of the Marina's fuel dock and it was installed in 1988. the float remains in good to very good condition.

#6: Will a federal permit be required to complete the scope of work on the project areas located within this worksite?

No

#7: Do you have knowledge of any previous cultural resource review within the project boundaries during the past 10 years?

No

#8: Is the worksite located within an existing park, wildlife refuge, natural area preserve, or other recreation or habitat site?

No

#9: Are there any structures over 45 years of age within this worksite? This includes structures such as buildings, tidegates, dikes, residential structures, bridges, rail grades, park infrastructure, etc.

No

#10: Describe any ground disturbing activities that you plan to undertake within the next 5 years (separate from this project).

There are no projects planned at this time that would include ground disturbing activities.

#11: Describe existing worksite site conditions. The answer to this question will be used in cultural resource consultation so please provide detailed information.

the existing worksite is an established Marina. the only unpaved areas near the site where the new pump-out will be installed are landscaped areas installed and maintained by the Marina staff.

### Project Permits

Permits and Reviews	Issuing Organization	Applied Date	Received Date	Expiration Date	Permit #
Building Permit	City/County				

**Note:** The City of Des Moines will require an electrical permit. The permit will be issued in-house by the city and City staff will inspect and approve the installation of the new pump-out.

## Project Application Report - 23-1903

### Attachments

#### Required Attachments

8 out of 8 done

- Budget Narrative ✓
- Construction Details ✓
- Letters of Commitment ✓
- Map: Vicinity Map ✓
- Photo ✓
- Sewage Disposal Capacity ✓
- Site Plan ✓
- Vendor Quotes ✓

#### PHOTOS (JPG, GIF)

Photos (JPG, GIF)



#### PROJECT DOCUMENTS AND PHOTOS

Project Documents and Photos

File Type	Attach Date	Attachment Type	Title	Person	File Name, Number Associations	Shared
	02/13/2024	Application Review Report	Grant Manager Comments, 23-1903D(compl 02/13/24 13:34)	CatherineB	Grant Manager Comments Report - 23-1903 (compl 02-13-2024_13-34-32).pdf, 596960	✓
	12/29/2023	Sewage Disposal Capacity	Pump Out Report 2023.pdf	JoeD	Pump Out Report 2023.pdf, 590363	✓
	12/29/2023	Sewage Disposal Capacity	Pump Out 2022.pdf	JoeD	Pump Out 2022.pdf, 590362	✓
	12/29/2023	Sewage Disposal Capacity	Pump Out Report 2021.pdf	JoeD	Pump Out Report 2021.pdf, 590361	✓
	12/29/2023	Project Application Report	Project Application Report, 23-1903D (sub 12/29/23 09:02:47)	JoeD	Project Application Report - 23-1903 (submitted 12-29-2023_09-02-47).pdf, 590360	✓
	12/29/2023	Letters of Commitment	New Pump-out - letters of Commitment.pdf	JoeD	New Pump-out - letters of Commitment.pdf, 590359	✓
	12/28/2023	Construction Details	New Sewer Pump-out Construction Details.pdf	JoeD	New Sewer Pump-out Construction Details.pdf, 590240	✓
	12/28/2023	Map: Vicinity Map	New Pump-out Area Map.pdf	JoeD	New Pump-out Area Map.pdf, 590223	✓
	12/28/2023	Budget Narrative	New Pump-Out Project-Budget Narrative.pdf	JoeD	New Pump-Out Project-Budget Narrative.pdf, 590218	✓
	12/28/2023	Site Plan	New Pump-Out Project Site Plan.pdf	JoeD	New Pump-Out Project Site Plan.pdf, 590207	✓
	12/27/2023	Sewage Disposal Capacity	Sewer Capacity Attachment.pdf	JoeD	Sewer Capacity Attachment.pdf, 590085	✓
	12/26/2023	Photo	Area Photo Showing Location of Pump-Out on NE corner of Fuel	JoeD	Area Photo Showing Location of Pump-Out on NE corner of Fuel Dock.jpg, 589927	✓
	12/26/2023	Photo	Hand Washing Station for Pump-Out Users.JPG	JoeD	Hand Washing Station for Pump-Out Users.jpg, 589926	✓
	12/26/2023	Photo	Pump-Out Hose Extension For South Side of Fuel Dock.JPG	JoeD	Pump-Out Hose Extension For South Side of Fuel Dock.jpg, 589925	✓
	12/26/2023	Photo	Existing Pump-Out.JPG	JoeD	Existing Pump-Out.jpg, 589924	✓
	12/26/2023	Vendor Quotes	New Pump-Out - Vendor Quote.pdf	JoeD	New Pump-Out - Vendor Quote.pdf, 589922	✓



## Project Application Report - 23-1903

### Application Status

Application Due Date: 01/10/2024

Status Name	Status Date	Submitted By	Submission Notes
Application Complete	02/13/2024	Catherine Buchalski Smith	
Application Submitted	12/29/2023	Joe Dusenbury	Catherine, thanks for your help. Please advise if I missed something. Regards joe
Preapplication	12/22/2023		

I certify that to the best of my knowledge, the information in this application is true and correct. Further, all application requirements due on the application due date have been fully completed to the best of my ability. I understand that if this application is found to be incomplete, it will be rejected by State Parks. I understand that I may be required to submit additional documents before evaluation or approval of this project and I agree to provide them. (Joe Dusenbury, 12/29/2023)

Date of last change: 02/13/2024

**A G E N D A   I T E M**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: City Council “Mission, Vision, Values” Retreat Discussion

FOR AGENDA OF: October 10, 2024

DEPT. OF ORIGIN: Administration

ATTACHMENTS:

- 1. Proposed Retreat Agenda
- 2. Strategic Planning Facilitation Memo

DATE SUBMITTED: October 2, 2024

CLEARANCES:

- City Clerk JK
- Communications \_\_\_\_\_
- Community Development \_\_\_\_\_
- Courts \_\_\_\_\_
- Emergency Management \_\_\_\_\_
- Finance \_\_\_\_\_
- Human Resources \_\_\_\_\_
- Legal /s/MH
- Marina \_\_\_\_\_
- Police \_\_\_\_\_
- Parks, Recreation & Senior Services \_\_\_\_\_
- Public Works \_\_\_\_\_

APPROVED BY CITY MANAGER

FOR SUBMITTAL: [Signature]

**Purpose:**

The purpose of this agenda item is for the City Council to discuss the upcoming “Mission, Vision, Values” retreat, scheduled for November 14, 2024. General consensus is sought on Attachment 1, Proposed Retreat Agenda.

**Suggested Motion**

**MOTION: None.**

**Background**

The City has retained Andrew Ballard of Marketing Solutions, Inc to facilitate a City Council retreat on November 14, 2024 to discuss the Council’s “Mission, Vision, Values.” Andrew Ballard is a seasoned and respected growth strategist who specializes in marketing research and strategic planning; he has facilitated over 500 sessions and has helped hundreds of organizations (public, private and nonprofit) develop and execute plans.

**Discussion**

As part of the process, the facilitator, Andrew Ballard, has developed the attached retreat agenda. He has requested the Proposed Retreat Agenda be presented to the City Council for their review and input well prior to the retreat.

**Financial Impact**

The total cost for the facilitator, including prep time, the retreat, and developing a post-retreat client report is \$2,000.

## City of Des Moines Council Retreat

### November 14, 2024 Meeting Agenda

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<i>Activities</i>	<i>Timeline</i>
<p><b>1. Welcome</b></p> <ul style="list-style-type: none"> <li>1.1. Opening remarks – Mayor</li> <li>1.2. Review agenda – Andrew</li> <li>1.3. Preliminaries – Andrew</li> </ul>	<p><b>5:00 PM</b></p>
<p><b>2. City Mission</b></p> <ul style="list-style-type: none"> <li>2.1. Answer: who, what, whom</li> <li>3.1. Select key information</li> <li>3.2. Write/rewrite statement</li> </ul>	<p><b>5:15 PM</b></p>
<p><b>3. City Vision</b></p> <ul style="list-style-type: none"> <li>3.1. Headlines exercise</li> <li>3.2. Consolidate list</li> </ul>	<p><b>6:30 PM</b></p>
<p><i>Evening Break</i></p>	<p><i>7:00 PM</i></p>
<p><b>3. City Vision (Continued)</b></p> <ul style="list-style-type: none"> <li>3.1. Prioritize</li> <li>3.2. Frame</li> </ul>	<p><b>7:15 PM</b></p>
<p><b>4. City Values</b></p> <ul style="list-style-type: none"> <li>4.1. Brainstorm attributes</li> <li>4.2. Consolidate list</li> <li>4.3. Prioritize</li> <li>4.4. Frame</li> </ul>	<p><b>7:45 PM</b></p>
<p><b>5. Wrap Up</b></p> <ul style="list-style-type: none"> <li>5.1. Next steps</li> <li>5.2. Evaluation</li> <li>5.3. Closing remarks</li> </ul>	<p><b>8:45 PM</b></p>
<p><i>Adjourn</i></p>	<p><i>9:00 PM</i></p>

## STRATEGIC PLANNING FACILITATION

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Effective strategic development—that is actionable—requires planning participants to be well informed about internal operations and external market conditions, before they meet at the planning table. Everyone involved should have reliable, real-time data to draw from.

### Facilitator

Andrew Ballard is a seasoned and respected growth strategist who specializes in marketing research and strategic planning; he has facilitated over 500 sessions. Andrew has helped hundreds of organizations (public, private and nonprofit) develop and execute strategic plans.

### Philosophy

Ballard's strategic planning philosophy is three-fold: strategic development and implementation should be: 1) data-driven, 2) customer-centric, and 3) outcomes-based.

Understanding and using the “voice of the customer” (both internal and external stakeholders) is mission critical. Knowing (not guessing) what engenders loyalty and extends the lifetime market value of core market segments is the key to planning and operational success.

### Approach

Andrew's approach is to keep the process as simple as possible to achieve the desired result. To that end, the planning team should be on the same page, in terms of both process and outcome objectives, as well as vernacular. Ballard facilitates this process in advance of group planning.

Andrew's planning process is initiated through three stages:

- > **Pre-planning**—organize the team, agree on the agenda, and gather the data (which may include an organization assessment). Because of this pre-planning emphasis, planning sessions and retreats are engaging, enlightening and effective.
- > **Planning**—during the planning session—using consensus building techniques—develop measurable objectives and aligned strategic priorities. The tools incorporated by the facilitator are well structured and time efficient.
- > **Implementation**—develop and document an action plan aligned to a pre-approved budget. The strategic planning process is completed by making the strategy operational through budgets, action plans and effective performance management.

Andrew uses a scalable and sequential approach he developed—to simplify the process and bring the planning team together—called M.O.S.T.™ (Mission, Outcomes, Strategies and Tactics). His sequential process has proven effective for organizations of all sectors and sizes.

**“I believe that if Andrew was sent to Mars tomorrow, without speaking a word of Martian, he would help them reorganize better and prepare a new plan for their future...in a weekend.”**

*~ Sarri Gilman, Former Executive Director, Leadership Snohomish County*