

**AGENDA**

**DES MOINES CITY COUNCIL  
REGULAR MEETING  
City Council Chambers  
21630 11th Avenue S, Des Moines, Washington  
Thursday, January 25, 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**

- ECONOMIC DEVELOPMENT CHAIR REPORT

**CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS**

**CONSENT AGENDA**

Item 1. APPROVAL OF VOUCHERS

**Motion** is to approve the payment vouchers through January 11, 2024 and payroll transfers through January 5, 2024 in the attached list and further described as follows:

EFT Vendor Payments	#9479-9560	\$1,517,829.93
Voided EFT	#9410-9410	<b>\$ (143,527.83)</b>
Wires	#2442-2462	\$ 534,311.89
Accounts Payable Checks	#165555-165576	\$ 37,374.56
Payroll Checks	#19773-19777	\$ 1,300.36
Direct Deposit	#8042-8208	\$ 464,602.42

Total Checks and Wires for A/P & Payroll: \$2,411,891.33

[Approval of Vouchers](#)

Item 2. BLACK HISTORY MONTH PROCLAMATION

**Motion** is to approve the Proclamation recognizing February as Black

History Month.

[Black History Month Proclamation](#)

- Item 3. KOREAN AMERICAN DAY PROCLAMATION  
**Motion** to approve the Proclamation recognizing January 13, 2024 as Korean American Day.  
[Korean American Day Proclamation](#)
- Item 4. EMERGENCY MANAGEMENT PERFORMANCE GRANT  
**Motion** is to accept the 2023 Emergency Management Performance Grant in the amount of \$17,507.00 and to authorize the City Manager to sign the grant agreement substantially in the form as presented.  
[Emergency Management Performance Grant](#)
- Item 5. SEA-TAC STAKEHOLDER ADVISORY ROUND TABLE (StART) POSITION - (NOVAK)  
**Motion** is to confirm the Mayoral appointment of Steve Novak to a term on the StART Committee effective immediately and expiring on December 31, 2025.  
[Sea-Tac Stakeholder Advisory Round Table \(StART\) Position - Steve Novak](#)
- Item 6. SEA-TAC STAKEHOLDER ADVISORY ROUND TABLE (StART) POSITION (DUSENBURY)  
**Motion** is to confirm the Mayoral appointment of Joe Dusenbury to a term on the StART Committee effective immediately and expiring on December 31, 2025.  
[Sea-Tac Stakeholder Advisory Round Table \(StART\) Position - Dusenbury](#)
- Item 7. SIMPLE POSSESSION ADVOCACY AND REPRESENTATION (SPAR) PROGRAM FUNDING AGREEMENT  
**Motion** is to accept the Office of Public Defense: SPAR Grand Award for the City of Des Moines and authorize the City Manager to sign the Grant Agreement substantially in the form as submitted.  
[Simple Possession Advocacy and Representation \(SPAR\) Program Funding Agreement](#)
- Item 8. DRAFT ORDINANCE 24-001 REPEALING THE CREATION OF A "PAYROLL FUND"  
**Motion** is to approve Draft Ordinance 24-001, repealing section 27 of Ordinance No. 1144 and DMMC 3.48.090, Payroll Fund.  
[Draft Ordinance 24-001 Repealing the Creation of a "Payroll Fund"](#)

## NEW BUSINESS

- Item 1. DRAFT ORDINANCE 24-002 SPEED ENFORCEMENT CAMERA PENALTIES  
Staff Presentation by Interim City Manager Tim George

[Draft Ordinance 24-002 – Speed Enforcement Camera Penalties](#)

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**

February 01, 2024 City Council Study Session

**ADJOURNMENT**

**CITY OF DES MOINES**  
**Voucher Certification Approval**  
**January 25, 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 **January 25, 2024** the Des Moines City Council, by unanimous vote, does approve for payment those vouchers through January 11, 2024 and payroll transfers through January 5, 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		9479	9560	1,517,829.93
Voided EFT		9410	9410	(143,527.83)
Wires		2442	2462	534,311.89
Accounts Payable Checks		165555	165576	37,374.56
<b>Total Vouchers paid</b>				<b>1,945,988.55</b>
<b>Payroll Vouchers</b>				
Payroll Checks		19773	19777	1,300.36
Direct Deposit	1/5/2024	8042	8208	464,602.42
<b>Total Paychecks &amp; Direct Deposits</b>				<b>465,902.78</b>
<b>Total checks and wires for A/P &amp; Payroll</b>				<b>2,411,891.33</b>

**A G E N D A   I T E M**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: Black History Month Proclamation

FOR AGENDA OF: January 25, 2024


ATTACHMENTS:

- 1. Proclamation

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: January 05, 2024

CLEARANCES:

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

APPROVED BY CITY MANAGER

FOR SUBMITTAL: 

**Purpose and Recommendation**

The purpose of this item is for the Council to approve a proclamation recognizing February as Black History Month,

**Suggested Motion**

**Motion:** "I move to approve the Proclamation recognizing February as Black History Month."

### **Background**

The roots of Black History Month began with African American scholar Carter Woodson. Throughout his academic studies in the early 20<sup>th</sup> century, Woodson witnessed how Black people were underrepresented in books and scholarship that shaped the study of American history. To respond to this, Woodson and Jesse E. Moorland founded what would become known as the Association for the Study of African Life and History. Woodson famously asserted that “If a race has no history, it has no worthwhile tradition, it becomes a negligible factor in the thought of the world, and it stands in danger of being exterminated.”

In 1926, Woodson and his organization launched “Negro History Week” to highlight the need to teach Black History. They chose the second week of February since it encompassed the birthdays of both Frederick Douglass and Abraham Lincoln.

Throughout the Civil Rights Movement of the 1960’s, the celebration of the week was adopted by many Freedom Schools in the South, and then that week was adopted and expanded into “Black History Month” on college campuses. President Gerald Ford proclaimed Black History Month a national observance in 1976.



# City of Des Moines

ADMINISTRATION  
21630 11TH AVENUE SOUTH, SUITE A  
DES MOINES, WASHINGTON 98198-6398  
(206) 878-4595 T.D.D.: (206) 824-8024 FAX: (206) 870-6540

Attachment #1



## Proclamation

### PREAMBLE

“History, despite its wrenching pain, cannot be unlived; but if faced with courage, need not be lived again.” [Maya Angelou, author]. One’s history is a fundamental aspect of one’s cultural experience. To deny one’s history, or to have others deny one’s history creates a falsehood as to the nature of one’s experience. “Defining myself, as opposed to being defined by others, is one of the most difficult challenges I face.” [Carol Moseley-Braun, first black female U.S. Senator].

The celebration of Black History Month is a recognition across this country of the experience and events occurring in the lives of African Americans and those whose roots run deep through the African Diaspora. ”For I am my mother’s daughter, and the drums of Africa still beat in my heart.” [Mary McLeod Bethune, educator]. Acknowledgement of Black History points out that no one culture, no one race, possesses claims to be the dominant history of our nation. It is a shared history, seen through many different eyes.

**WHEREAS**, Black History Month is celebrated in recognition of achievements and contributions made by African Americans and all people of African descent in the United States; and

**WHEREAS**, Black History Month affords special opportunity to become more knowledgeable about black heritage, and to honor the many black leaders who have contributed to the progress of our nation; and

**WHEREAS**, such knowledge can strengthen the insight of all our citizens regarding the issues of human rights, the great strides that have been made in the crusade to eliminate barriers of equality, and the continuing struggle against racial discrimination, injustice and poverty; and

**WHEREAS**, the City of Des Moines embraces its diversity and acknowledges the invaluable contributions of its African American residents and visitors as we celebrate Black History Month; and

**NOW THEREFORE, THE DES MOINES COUNCIL HEREBY PROCLAIMS** and recognizes the month of February as **BLACK HISTORY MONTH** and urges our citizens to join together in making this period of rededication to the principles of justice and equality for all people.

**SIGNED** this day 25<sup>th</sup> of January, 2024

\_\_\_\_\_  
Traci Buxton, Mayor

**AGENDA ITEM**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: Korean American Day Proclamation

FOR AGENDA OF: January 25, 2024

ATTACHMENTS:  
1. Proclamation

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: January 08, 2024

CLEARANCES:

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

APPROVED BY CITY MANAGER

FOR SUBMITTAL: [Signature]

**Purpose and Recommendation**

The purpose of this item is for the Council to approve a proclamation recognizing January 13, 2024 as Korean American Day.

**Suggested Motion**

**Motion:** "I move to approve the Proclamation recognizing January 13, 2024 as Korean American Day."



**Background**

January 13<sup>th</sup> was designated as Korean American Day by the Washington State Legislature and Governor Christine Gregoire in April, 2007. On January 13, 1903 the first Korean immigrants arrived in the United States. These first immigrants and their descendants faced and overcame difficult conditions and created a vibrant and successful community that has fought for our nation's freedom and democratic way of life and has been characterized by a strong and diligent work ethic, a value for education, and an entrepreneurial spirit

In a spirit of unity to celebrate the first pioneers that paved the way for the vibrant Korean-American community that thrives today and to recognize the invaluable contributions that Korean Americans make that enrich our City, it has been proposed that the City of Des Moines recognize January 13<sup>th</sup> 2024 as Korean American Day.

# City of Des Moines



CITY COUNCIL  
21630 11<sup>th</sup> AVENUE S, SUITE A  
DES MOINES, WASHINGTON 98198-6398  
(206) 878-4595 T.D.D: (206) 824-6024 FAX: (206) 870-6540



## Proclamation

**WHEREAS**, Korean American Day is celebrated worldwide on January 13th to commemorate the first Korean immigrants to the United States in 1903; and

**WHEREAS**, on January 13, 1903 the first Korean immigrants arrived in the United States. These first immigrants and their descendants faced and overcame difficult conditions and created a vibrant and successful community that has fought for our nation's freedom and democratic way of life and has been characterized by a strong and diligent work ethic, a value for education, and an entrepreneurial spirit; and

**WHEREAS**, it is fitting that we celebrate and honor Korean immigration to the United States, the State of Washington and the City of Des Moines and recognize the Korean American community's invaluable contributions to our rich cultural diversity, economic strength and proud heritage; and

**WHEREAS**, achievements and contributions of Korean Americans can be seen throughout the Nation and Washington state in business, academia, arts, science, engineering, medicine, literature, journalism, government, the military and numerous other areas; and

**WHEREAS**, we come together as a community in a spirit of unity to celebrate the first pioneers that paved the way for the vibrant Korean-American community that thrives today and the invaluable contributions that enrich our City;

**NOW THEREFORE, THE DES MOINES CITY COUNCIL HEREBY PROCLAIMS**  
January 13<sup>th</sup> to be

### ***KOREAN AMERICAN DAY***

**SIGNED** this 25<sup>th</sup> day of January, 2024

\_\_\_\_\_  
Traci Buxton, Mayor

**A G E N D A   I T E M**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: Emergency Management Performance Grant

FOR AGENDA OF: January 25, 2024

DEPT. OF ORIGIN: Emergency Management

ATTACHMENTS:

- 1. Agreement: Emergency Management Performance Grant

DATE SUBMITTED: January 17, 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 2023 Emergency Management Performance Grant.

**Suggested Motion**

**Motion:** "I move to accept the 2023 Emergency Management Performance Grant in the amount of \$17,507.00 and to authorize the 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 \$17,507.00 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 21630 11th Avenue S, Suite A Des Moines, WA 98198-6340</b>		2. Grant Agreement Amount: <b>\$17,507</b>		3. Grant Agreement Number: <b>E24-283</b>			
4. Subrecipient Contact, phone/email: <b>Shannon Kirchberg, 206-870-6562 skirchberg@desmoineswa.gov</b>		5. Grant Agreement Start Date: <b>June 1, 2023</b>		6. Grant Agreement End Date: <b>September 30, 2024</b>			
7. Department Contact, phone/email: <b>Deborah Henderson, 253-512-7470 deborah.henderson@mil.wa.gov</b>		8. Unique Entity Identifier (UEI): <b>NY7AZ9H2VK25</b>		9. UBI # (state revenue): <b>601-161-113</b>			
10. Funding Authority: <b>Washington State Military Department (the "DEPARTMENT") and the U.S. Department of Homeland Security (DHS)</b>							
11. Federal Award ID # (FAIN): <b>EMS-2023-EP-00002</b>		12. Federal Award Date: <b>9/21/2023</b>		13. Assistance Listings # & Title: <b>97.042 (23EMPG)</b>			
14. Total Federal Amount: <b>\$7,585,716</b>		15. Program Index # & OBJ/SUB-OBJ: <b>733PT 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, OMWBE # _____			
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) 2023 Emergency Management Performance Grant (23EMPG) 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 23EMPG DHS Award Letter for Grant No. EMS-2023-EP-00002 ("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); 23EMPG Award Letter EMS-2023-EP-00002 (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 Regan Anne Hesse, Chief Financial Officer Washington State Military Department		_____ Date		_____ Signature Michael Matthias, City Manager City of Des Moines			
BOILERPLATE APPROVED AS TO FORM: Dierk Meierbachtol Assistant Attorney General			APPROVED AS TO FORM (if applicable): _____ Signature _____ Date				
August 1, 2023							

**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>
Name		Name	<b>Sierra Wardell</b>
Title		Title	<b>Financial Operations Section Manager</b>
Email		Email	<b>sierra.wardell@mil.wa.gov</b>
Phone		Phone	<b>253-512-7121</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 23EMPG Program, including, but not limited to, all criteria, restrictions, and requirements of *The Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Emergency Management Performance Grant (EMPG) Program document, the Fiscal Year 2023 Preparedness Grants Manual, FEMA Manual (FM) 207-22-0001 Version 4, 2023 (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 23EMPG 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 23EMPG 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 23EMPG Program, including, but not limited to, all criteria, restrictions, and requirements of *The Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) Fiscal Year 2023 Emergency Management Performance Grant (EMPG) Program* document, 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 23EMPG 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.

**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 for approval steps.
- 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.
- 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). For waived or extended reimbursement due dates, all allowable costs should be submitted on the next scheduled reimbursement due date contained in the Timeline. 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. 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).
- i. No costs for purchases of equipment/supplies will be reimbursed until the related equipment/supplies have been received by the Subrecipient, its contractor, or any non-federal entity to which the Subrecipient makes a subaward and is invoiced by the vendor.
- 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 EMD staff.

#### **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. Beginning with 23EMPG, FEMA is requiring 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 23EMPG NQS Phase I of implementation, Subrecipients must:

- i. Document the plan for implementation of NQS to include a timeline and an analysis of which positions are subject to the requirement. FEMA has created an optional template which can be found at [https://www.fema.gov/sites/default/files/documents/fema\\_nqs-sample-impletation-plan.pptx](https://www.fema.gov/sites/default/files/documents/fema_nqs-sample-impletation-plan.pptx). All plans should be kept with Agreement documents.
- ii. Describe the status of implementation as a part of the annual NIMS survey conducted by EMD staff at the end of the calendar year.
- iii. 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).

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 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.

e. 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.

f. 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.

g. 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.
- h. 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; 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)**

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. 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. 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. The Subrecipient shall participate in the State's Stakeholder Preparedness Review (SPR), Threat and Hazard Identification and Risk Assessment (THIRA), core capabilities assessments, and data calls. Non-participation may result in withholding of funding under future grant years.
- 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-DHS 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** (2) 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 23EMPG funding, the Subrecipient shall comply with all applicable DHS terms and conditions of the 23EMPG 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. **“Investment”** means the grant application submitted by the Subrecipient describing the project(s) for which federal funding is sought and provided under this Agreement. Such grant application is hereby incorporated into this Agreement by reference.
- d. **“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.
- e. **“Stakeholders Preparedness Report (SPR)”** The SPR is an annual three-step self-assessment of a community’s capability levels based on the capability targets identified in the THIRA.
- f. **“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.
- g. **“Threat and Hazard Identification and Risk Assessment (THIRA)”** The THIRA is a three-step risk assessment. The THIRA helps communities understand their risks and determine the level of capability they need in order to address those risks. The outputs from this process lay the foundation for determining a community’s capability gaps during the SPR process.

**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.**

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.

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 veterans 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 veterans 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: (MBE's): 10% and Woman's Business Enterprises (WBE's): 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. Venue of any suit between the parties arising out of this Agreement shall be the Superior Court of Thurston County, Washington. The Subrecipient, by execution of this Agreement, acknowledges the jurisdiction of the courts of the state of Washington.

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.

**23EMPG Award Letter  
EMS-2023-EP-00002**

**Award Letter**

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

Bret Daugherty  
Washington Military Department  
Building 20  
Camp Murray, WA 98430 - 5122

Re: Grant No.EMS-2023-EP-00002

Dear Bret Daugherty:

Congratulations, on behalf of the Department of Homeland Security, your application for financial assistance submitted under the Fiscal Year (FY) 2023 Emergency Management Performance Grants has been approved in the amount of \$7,585,716.00. As a condition of this award, you are required to contribute a cost match in the amount of \$7,585,716.00 of non-Federal funds, or 50 percent of the total approved project costs of \$15,171,432.00.

Before you request and receive any of the Federal funds awarded to you, you must establish acceptance of the award. By accepting this award, you acknowledge that the terms of the following documents are incorporated into the terms of your award:

- Agreement Articles (attached to this Award Letter)
- Obligating Document (attached to this Award Letter)
- FY 2023 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.

In order to establish acceptance of the award and its terms, please follow these instructions:

Step 1: Please log in to the ND Grants system at <https://portal.fema.gov>.

Step 2: After logging in, you will see the Home page with a Pending Tasks menu. Click on the Pending Tasks menu, select the Application sub-menu, and then click the link for "Award Offer Review" tasks. This link will navigate you to Award Packages that are pending review.

Step 3: Click the Review Award Package icon (wrench) to review the Award Package and accept or decline the award. Please save or print the Award Package for your records.

System for Award Management (SAM): Grant recipients are to keep all of their information up to date in SAM, in particular, your organization's name, address, Unique Entity Identifier (UEI) number, EIN and banking information. Please ensure that the UEI number used in SAM is the same one used to apply for all FEMA awards. Future payments will be contingent on the information provided in the SAM; therefore, it is imperative that the information is correct. The System for Award Management is located at <http://www.sam.gov>.

If you have any questions or have updated your information in SAM, please let your Grants Management Specialist (GMS) know as soon as possible. This will help us to make the necessary updates and avoid any interruptions in the payment process.

PATRICK GERARD MARCHAM

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

**AGREEMENT ARTICLES**  
**Emergency Management Performance Grants**

**GRANTEE:** Washington Military Department  
**PROGRAM:** Emergency Management Performance Grants  
**AGREEMENT NUMBER:** EMS-2023-EP-00002-S01

**TABLE OF CONTENTS**

Article I	DHS Standard Terms and Conditions Generally
Article II	Assurances, Administrative Requirements, Cost Principles, Representations and Certifications
Article III	General Acknowledgements and Assurances
Article IV	Acknowledgement of Federal Funding from DHS
Article V	Activities Conducted Abroad
Article VI	Age Discrimination Act of 1975
Article VII	Americans with Disabilities Act of 1990
Article VIII	Best Practices for Collection and Use of Personally Identifiable Information
Article IX	Civil Rights Act of 1964 - Title VI
Article X	Civil Rights Act of 1968
Article XI	Copyright
Article XII	Debarment and Suspension
Article XIII	Drug-Free Workplace Regulations
Article XIV	Duplication of Benefits
Article XV	Education Amendments of 1972 (Equal Opportunity in Education Act) - Title IX

Article XVI	E.O. 14074 - Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety
Article XVII	Energy Policy and Conservation Act
Article XVIII	False Claims Act and Program Fraud Civil Remedies
Article XIX	Federal Debt Status
Article XX	Federal Leadership on Reducing Text Messaging while Driving
Article XXI	Fly America Act of 1974
Article XXII	Hotel and Motel Fire Safety Act of 1990
Article XXIII	John S. McCain National Defense Authorization Act of Fiscal Year 2019
Article XXIV	Limited English Proficiency (Civil Rights Act of 1964 - Title VI)
Article XXV	Lobbying Prohibitions
Article XXVI	National Environmental Policy Act
Article XXVII	Nondiscrimination in Matters Pertaining to Faith-Based Organizations
Article XXVIII	Non-Supplanting Requirement
Article XXIX	Notice of Funding Opportunity Requirements
Article XXX	Patents and Intellectual Property Rights
Article XXXI	Procurement of Recovered Materials
Article XXXII	Rehabilitation Act of 1973
Article XXXIII	Reporting of Matters Related to Recipient Integrity and Performance
Article XXXIV	Reporting Subawards and Executive Compensation
Article XXXV	Required Use of American Iron, Steel, Manufactured Products, and Construction Materials
Article XXXVI	SAFECOM

Article XXXVII	Terrorist Financing
Article XXXVIII	Trafficking Victims Protection Act of 2000 (TVPA)
Article XXXIX	Universal Identifier and System of Award Management
Article XL	USA PATRIOT Act of 2001
Article XLI	Use of DHS Seal, Logo and Flags
Article XLII	Whistleblower Protection Act
Article XLIII	Environmental Planning and Historic Preservation (EHP) Review
Article XLIV	Applicability of DHS Standard Terms and Conditions to Tribes
Article XLV	Acceptance of Post Award Changes
Article XLVI	Disposition of Equipment Acquired Under the Federal Award
Article XLVII	Prior Approval for Modification of Approved Budget
Article XLVIII	Indirect Cost Rate

**Article I - DHS Standard Terms and Conditions Generally**

The Fiscal Year (FY) 2023 DHS Standard Terms and Conditions apply to all new federal financial assistance awards funded in FY 2023. These terms and conditions flow down to subrecipients unless an award term or condition specifically indicates otherwise. The United States has the right to seek judicial enforcement of these obligations. All legislation and digital resources are referenced with no digital links. The FY 2023 DHS Standard Terms and Conditions will be housed on [dhs.gov](https://dhs.gov) at [www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions](https://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions).

**Article II - Assurances, Administrative Requirements, Cost Principles, Representations and Certifications**

I. DHS financial assistance 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 awarding agency.

II. DHS financial assistance recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at Title 2, Code of Federal Regulations (C.F.R.) Part 200 and adopted by DHS at 2 C.F.R. Part 3002.

III. By accepting this agreement, recipients, and their executives, as defined in 2 C.F.R. section 170.315, certify that their policies are in accordance with OMB's guidance located at 2 C.F.R. Part 200, all applicable federal laws, and relevant Executive guidance.

**Article III - General Acknowledgements and Assurances**



All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff.

- I. Recipients must cooperate with any DHS compliance reviews or compliance investigations conducted by DHS.
- 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 or 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, as prescribed by law, or detailed in program guidance.
- V. Recipients (as defined in 2 C.F.R. Part 200 and including recipients acting as pass-through entities) of federal financial assistance from DHS or one of its awarding component agencies must complete the DHS Civil Rights Evaluation Tool within thirty (30) days of receipt of the Notice of Award for the first award under which this term applies. Recipients of multiple awards of DHS financial assistance should only submit one completed tool for their organization, not per award. After the initial submission, recipients are required to complete the tool once every two (2) years if they have an active award, not every time an award is made. Recipients should 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 the 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 if the recipient identifies steps and a timeline for completing the tool. Recipients should 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 IV - Acknowledgement of Federal Funding from DHS**

Recipients must acknowledge their use of federal 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 funds.

#### **Article V - Activities Conducted Abroad**

Recipients must ensure that project activities performed outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

#### **Article VI - Age Discrimination Act of 1975**

Recipients must comply with the requirements of the Age Discrimination Act of 1975, Public Law 94-135 (1975) (codified as amended at Title 42, U.S. Code, section 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.

#### **Article VII - Americans with Disabilities Act of 1990**

Recipients must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, Pub. L. 101-336 (1990) (codified as amended at 42 U.S.C. sections 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.

#### **Article VIII - Best Practices for Collection and Use of Personally Identifiable Information**

Recipients who collect personally identifiable information (PII) 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.

#### **Article IX - Civil Rights Act of 1964 - Title VI**

Recipients must comply with the requirements of Title VI of the Civil Rights Act of 1964 (codified as amended at 42 U.S.C. section 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 and 44 C.F.R. Part 7.

#### **Article X - Civil Rights Act of 1968**

Recipients must comply with Title VIII of the Civil Rights Act of 1968, Pub. L. 90-284, as amended through Pub. L. 113-4, 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 (see 42 U.S.C. section 3601 et seq.), 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 XI - Copyright**

Recipients must affix the applicable copyright notices of 17 U.S.C. sections 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

#### **Article XII - Debarment and Suspension**

Recipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) 12549 and 12689, which are at 2 C.F.R. Part 180 as adopted by DHS at 2 C.F.R. Part 3002. These regulations restrict federal financial assistance awards, 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 XIII - 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 Sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (41 U.S.C. sections 8101-8106).

#### **Article XIV - Duplication of Benefits**

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies; to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions; or for other reasons. However, these prohibitions would not preclude recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions may not be charged to other federal financial assistance awards to overcome fund deficiencies; to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions; or for other reasons.

#### **Article XV - Education Amendments of 1972 (Equal Opportunity in Education Act) - Title IX**

Recipients must comply with the requirements of Title IX of the Education Amendments of 1972, Pub. L. 92-318 (1972) (codified as amended at 20 U.S.C. section 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 and 44 C.F.R. Part 19.

#### **Article XVI - E.O. 14074 - Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety**

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.

#### **Article XVII - Energy Policy and Conservation Act**

Recipients must comply with the requirements of the Energy Policy and Conservation Act, Pub. L. 94- 163 (1975) (codified as amended at 42 U.S.C. section 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.

**Article XVIII - False Claims Act and Program Fraud Civil Remedies**

Recipients must comply with the requirements of the False Claims Act, 31 U.S.C. sections 3729- 3733, which prohibit the submission of false or fraudulent claims for payment to the Federal Government. (See 31 U.S.C. sections 3801-3812, which details the administrative remedies for false claims and statements made.)

**Article XIX - Federal Debt Status**

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.)

**Article XX - Federal Leadership on Reducing Text Messaging while Driving**

Recipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513, including conducting initiatives described in Section 3(a) of the Order when on official government business or when performing any work for or on behalf of the Federal Government.

**Article XXI - Fly America Act of 1974**

Recipients must comply with Preference for U.S. Flag Air Carriers (air carriers holding certificates under 49 U.S.C.) 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. section 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 XXII - Hotel and Motel Fire Safety Act of 1990**

Recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal 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. section 2225a.

**Article XXIII - 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. sections 200.216, 200.327, 200.471, and Appendix II to 2 C.F.R. Part 200. Beginning August 13, 2020, 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 XXIV - 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. section 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 XXV - Lobbying Prohibitions**

Recipients must comply with 31 U.S.C. section 1352, which provides that none of the funds provided under a federal financial assistance 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.

**Article XXVI - National Environmental Policy Act**

Recipients must comply with the requirements of the National Environmental Policy Act of 1969, (NEPA) Pub. L. 91-190 (1970) (codified as amended at 42 U.S.C. section 4321 et seq.) 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.

**Article XXVII - Nondiscrimination in Matters Pertaining to Faith-Based Organizations**

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.

**Article XXVIII - Non-Supplanting Requirement**

Recipients receiving federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

**Article XXIX - Notice of Funding Opportunity Requirements**

All the instructions, guidance, limitations, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this program are incorporated here by reference in the award terms and conditions. All recipients must comply with any such requirements set forth in the program NOFO.

**Article XXX - Patents and Intellectual Property Rights**

Recipients are subject to the Bayh-Dole Act, 35 U.S.C. section 200 et seq, unless otherwise provided by law. Recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from federal financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. section 401.14.

**Article XXXI - 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. 89-272 (1965), (codified as amended by the Resource Conservation and Recovery Act, 42 U.S.C. section 6962.) 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 XXXII - Rehabilitation Act of 1973**

Recipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (1973) (codified as amended at 29 U.S.C. section 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 XXXIII - Reporting of Matters Related to Recipient Integrity and Performance**

General Reporting Requirements:

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 this federal award, then the recipients 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 here by reference in the award terms and conditions.

**Article XXXIV - Reporting Subawards and Executive Compensation**

Reporting of first tier subawards:

Recipients are required to comply with the requirements set forth in the government-wide award term on Reporting Subawards and Executive Compensation located at 2 C.F.R. Part 170, Appendix A, the full text of which is incorporated here by reference in the award terms and conditions.

#### **Article XXXV - Required Use of American Iron, Steel, Manufactured Products, and Construction Materials**

Recipients must comply with the "Build America, Buy America" provisions of the Infrastructure Investment and Jobs Act and E.O. 14005. 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. Information on the process for requesting a waiver from these requirements is on the website below.

(a) When the Federal agency has made a determination 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.

The awarding Component may provide specific instructions to Recipients of awards from infrastructure programs that are subject to the "Build America, Buy America" provisions. Recipients should refer to the Notice of Funding Opportunity for further information on the Buy America preference and waiver process.

#### **Article XXXVI - SAFECOM**

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.

#### **Article XXXVII - Terrorist Financing**

Recipients must comply with E.O. 13224 and U.S. laws that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Recipients are legally responsible to ensure compliance with the Order and laws.

#### **Article XXXVIII - Trafficking Victims Protection Act of 2000 (TVPA)**

Trafficking in Persons:

Recipients must comply with the requirements of the government-wide financial assistance award term which implements Section 106 (g) of the Trafficking Victims Protection Act of 2000 (TVPA), codified as amended at 22 U.S.C. section 7104. The award term is located at 2 C.F.R. section 175.15, the full text of which is incorporated here by reference.

#### **Article XXXIX - Universal Identifier and System of Award Management**

Requirements for System for Award Management and Unique Entity Identifier 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 here by reference.

#### **Article XL - USA PATRIOT Act of 2001**

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. sections 175? 175c.

#### **Article XLI - Use of DHS Seal, Logo and Flags**

Recipients must obtain permission from their DHS FAO prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

#### **Article XLII - Whistleblower Protection Act**

Recipients must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C section 2409, 41 U.S.C. section 4712, and 10 U.S.C. section 2324, 41 U.S.C. sections 4304 and 4310.

#### **Article XLIII - 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. 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 XLIV - 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 XLV - Acceptance of Post Award Changes**

In the event FEMA determines that changes are necessary to the award document after an award has been made, including changes to period of performance or terms and conditions, recipients will be notified of the changes in writing. Once notification has been made, any subsequent request for funds will indicate recipient acceptance of the changes to the award. Please call the FEMA/GMD Call Center at (866) 927-5646 or via e-mail to: ASK-GMD@fema.dhs.gov if you have any questions.

**Article XLVI - 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 XLVII - 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 XLVIII - 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.

**BUDGET COST CATEGORIES**

Personnel	\$4,112,301.00
Fringe Benefits	\$1,450,556.00
Travel	\$8,689.00
Equipment	\$0.00
Supplies	\$4,338.00
Contractual	\$0.00
Construction	\$0.00
Indirect Charges	\$355,699.00

Other

\$9,239,849.00



Obligating Document for Award/Amendment						
1a. AGREEMENT NO. EMS-2023-EP-00002-S01	2. AMENDMENT NO. ***	3. RECIPIENT NO. 916001095G	4. TYPE OF ACTION AWARD	5. CONTROL NO. SX00324N2023T		
6. RECIPIENT NAME AND ADDRESS Washington Military Department Building 20 Camp Murray, WA, 98430 - 5122	7. ISSUING FEMA OFFICE AND ADDRESS FEMA-GPD 400 C Street, SW, 3rd floor Washington, DC 20472-3645 POC: 866-927-5646		8. PAYMENT OFFICE AND ADDRESS FEMA Finance Center 430 Market Street Winchester, VA 22603			
9. NAME OF RECIPIENT PROJECT OFFICER Sierra Wardell	PHONE NO. 2535127121	10. NAME OF FEMA PROJECT COORDINATOR Central Scheduling and Information Desk Phone: 800-368-6498 Email: Askcsid@dhs.gov				
11. EFFECTIVE DATE OF THIS ACTION 09/21/2023	12. METHOD OF PAYMENT PARS	13. ASSISTANCE ARRANGEMENT Cost Reimbursement		14. PERFORMANCE PERIOD <b>From:</b> 10/01/2022 <b>To:</b> 09/30/2025 <b>Budget Period</b> 10/01/2022 09/30/2025		
15. DESCRIPTION OF ACTION a. (Indicate funding data for awards or financial changes)						
PROGRAM NAME ACRONYM	CFDA NO.	ACCOUNTING DATA (ACCS CODE) XXXX-XXX-XXXXXX-XXXX-XXXX-XXXX-X	PRIOR TOTAL AWARD	AMOUNT AWARDED THIS ACTION + OR (-)	CURRENT TOTAL AWARD	CUMULATIVE NON-FEDERAL COMMITMENT
Emergency Management Performance Grants	97.042	2023-FA-GA01-R107- -4120-D	\$0.00	\$7,585,716.00	\$7,585,716.00	See Totals
			\$0.00	\$7,585,716.00	\$7,585,716.00	\$7,585,716.00
b. To describe changes other than funding data or financial changes, attach schedule and check here. N/A						
16 a. FOR NON-DISASTER PROGRAMS: RECIPIENT IS REQUIRED TO SIGN AND RETURN THREE (3) COPIES OF THIS DOCUMENT TO FEMA (See Block 7 for address) Emergency Management Performance Grants recipients are not required to sign and return copies of this document. However, recipients should print and keep a copy of this document for their records.						
16b. FOR DISASTER PROGRAMS: RECIPIENT IS NOT REQUIRED TO SIGN This assistance is subject to terms and conditions attached to this award notice or by incorporated reference in program legislation cited above.						
17. RECIPIENT SIGNATORY OFFICIAL (Name and Title) Sierra Wardell, Preparedness Grants Section Section Supervisor					DATE Tue Sep 26 18:40:47 UTC 2023	
18. FEMA SIGNATORY OFFICIAL (Name and Title) PATRICK GERARD MARCHAM,					DATE Thu Sep 21 19:07:57 UTC 2023	

## WORK PLAN

## FY 2023 Emergency Management Performance Grant

**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).

Priority Area #1	4.10 Training	
Primary Core Capability	Operational Coordination	
Secondary Core Capability	Situational Assessment	
Build or Sustain	Building	
WORK PLANNED	IDENTIFIED GAP/NEED	ANTICIPATED PROJECT IMPACT
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 3 years during COVID. The entire EOC team is new and requires 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.	EOC tabletop exercises will give City staff to gain a complete understanding of how coordination between the EOC and Operations is conducted during emergency operations. These table tops 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.

Priority Area #2	4.12 Emergency Public Information and Education	
Primary Core Capability	Community Resilience	
Build or Sustain	Building	
WORK PLANNED	IDENTIFIED GAP/NEED	ANTICIPATED PROJECT IMPACT
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 up to 45 participants annually and graduate 35.	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 members to participate and get trained. CERT will continue annually with a

minimum or 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 events 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 responders available to help.	A community that is well trained, coordinated and resilient is better prepared to survive any disaster using the 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.

**TIMELINE****FY 2023 Emergency Management Performance Grant**

<b>DATE</b>	<b>TASK</b>
June 1, 2023	Grant Agreement Start Date
September 30, 2024	Grant Agreement End Date
November 15, 2024	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 2023 Emergency Management Performance Grant**

**23EMPG AWARD \$ 17,507.00**

SOLUTION AREA	BUDGET CATEGORY	EMPG AMOUNT	MATCH AMOUNT
PLANNING	Personnel & Fringe Benefits	\$ 5,836	\$ -
	Travel/Per Diem	\$ -	\$ -
	Supplies	\$ -	\$ -
	Consultants/Contracts	\$ -	\$ -
	Other	\$ -	\$ -
	Subtotal	\$ 5,836	\$ -
ORGANIZATION	Personnel & Fringe Benefits	\$ 5,836	\$ 17,507
	Travel/Per Diem	\$ -	\$ -
	Supplies	\$ -	\$ -
	Consultants/Contracts	\$ -	\$ -
	Other	\$ -	\$ -
	Subtotal	\$ 5,836	\$ 17,507
EXERCISE	Personnel & Fringe Benefits	\$ 5,836	\$ -
	Travel/Per Diem	\$ -	\$ -
	Supplies	\$ -	\$ -
	Consultants/Contracts	\$ -	\$ -
	Other	\$ -	\$ -
	Subtotal	\$ 5,836	\$ -
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>\$ 17,507</b>	<b>\$ 17,507</b>

The Subrecipient will provide a match of **\$17,507** 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# 733PT – 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

## SIGNATURE AUTHORIZATION FORM

WASHINGTON STATE MILITARY DEPARTMENT  
Camp Murray, Washington 98430-5122

*Please read instructions on reverse side before completing this form.*

NAME OF ORGANIZATION	DATE SUBMITTED
PROJECT DESCRIPTION	CONTRACT NUMBER

<b>1. AUTHORIZING AUTHORITY</b>		
SIGNATURE	PRINT OR TYPE NAME	TITLE/TERM OF OFFICE

<b>2. AUTHORIZED TO SIGN CONTRACTS/CONTRACT AMENDMENTS</b>		
SIGNATURE	PRINT OR TYPE NAME	TITLE

<b>3. AUTHORIZED TO SIGN REQUESTS FOR REIMBURSEMENT</b>		
SIGNATURE	PRINT OR TYPE NAME	TITLE

\\WAC-1VOL1\HOME\KAREN\...WP\SIGNAUTH Revised 3/03

## INSTRUCTIONS FOR SIGNATURE AUTHORIZATION FORM

This form identifies the persons who have the authority to sign contracts, amendments, and requests for reimbursement. It is required for the management of your contract with the Military Department (MD). Please complete all sections. One copy with original signatures is to be sent to MD with the signed contract, and the other should be kept with your copy of the contract.

When a request for reimbursement is received, the signature is checked to verify that it matches the signature on file. **The payment can be delayed if the request is presented without the proper signature.** It is important that the signatures in MD's files are current. Changes in staffing or responsibilities will require a new signature authorization form.

1. **Authorizing Authority.** Generally, the person(s) signing in this box heads the governing body of the organization, such as the board chair or mayor. In some cases, the chief executive officer may have been delegated this authority.
2. **Authorized to Sign Contracts/Contract Amendments.** The person(s) with this authority should sign in this space. Usually, it is the county commissioner, mayor, executive director, city clerk, etc.
3. **Authorized to Sign Requests for Reimbursement.** Often the executive director, city clerk, treasurer, or administrative assistant have this authority. It is advisable to have more than one person authorized to sign reimbursement requests. **This will help prevent delays in processing a request if one person is temporarily unavailable.**

If you have any questions regarding this form or to request new forms, please call your MD Program Manager.



**Debarment, Suspension, Ineligibility or Voluntary Exclusion Certification Form**

NAME		Doing business as (DBA)	
ADDRESS	Applicable Procurement or Solicitation #, if any:	WA Uniform Business Identifier (UBI)	Federal Employer Tax Identification #:
This certification is submitted as part of a request to contract.			

**Instructions For Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions**

**READ CAREFULLY BEFORE SIGNING THE CERTIFICATION. Federal regulations require contractors and bidders to sign and abide by the terms of this certification, without modification, in order to participate in certain transactions directly or indirectly involving federal funds.**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the department, institution or office to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable CFR, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under applicable CFR, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business activity.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under applicable CFR, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions**

**The prospective lower tier participant certifies, by submission of this proposal or contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this form.**

Bidder or Contractor Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

## **FEDERAL DEBARMENT, SUSPENSION INELIGIBILITY and VOLUNTARY EXCLUSION**

### **(FREQUENTLY ASKED QUESTIONS)**

#### **What is “Debarment, Suspension, Ineligibility, and Voluntary Exclusion”?**

These terms refer to the status of a person or company that cannot contract with or receive grants from a federal agency.

In order to be debarred, suspended, ineligible, or voluntarily excluded, you must have:

- had a contract or grant with a federal agency, and
- gone through some process where the federal agency notified or attempted to notify you that you could not contract with the federal agency.
- Generally, this process occurs where you, the contractor, are not qualified or are not adequately performing under a contract, or have violated a regulation or law pertaining to the contract.

#### **Why am I required to sign this certification?**

You are requesting a contract or grant with the Washington Military Department. Federal law (Executive Order 12549) requires Washington Military Department ensure that persons or companies that contract with Washington Military Department are not prohibited from having federal contracts.

#### **What is Executive Order 12549?**

Executive Order 12549 refers to Federal Executive Order Number 12549. The executive order was signed by the President and directed federal agencies to ensure that federal agencies, and any state or other agency receiving federal funds were not contracting or awarding grants to persons, organizations, or companies who have been excluded from participating in federal contracts or grants. Federal agencies have codified this requirement in their individual agency Code of Federal Regulations (CFRs).

#### **What is the purpose of this certification?**

The purpose of the certification is for you to tell Washington Military Department in writing that you have not been prohibited by federal agencies from entering into a federal contract.

#### **What does the word “proposal” mean when referred to in this certification?**

Proposal means a solicited or unsolicited bid, application, request, invitation to consider or similar communication from you to Washington Military Department.

#### **What or who is a “lower tier participant”?**

Lower tier participants means a person or organization that submits a proposal, enters into contracts with, or receives a grant from Washington Military Department, OR any subcontractor of a contract with Washington Military Department. If you hire subcontractors, you should require them to sign a certification and keep it with your subcontract.

#### **What is a covered transaction when referred to in this certification?**

Covered Transaction means a contract, oral or written agreement, grant, or any other arrangement where you contract with or receive money from Washington Military Department. Covered Transaction does not include mandatory entitlements and individual benefits.

### **Sample Debarment, Suspension, Ineligibility, Voluntary Exclusion Contract Provision**

**Debarment Certification.** The Contractor certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Contract by any Federal department or agency. If requested by Washington Military Department, the Contractor shall complete a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form. Any such form completed by the Contractor for this Contract shall be incorporated into this Contract by reference.

**A G E N D A   I T E M**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: Sea-Tac Stakeholder Advisory Round  
Table (StART) Position (Novak)

FOR AGENDA OF: January 25, 2024

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: January 17, 2024

ATTACHMENTS:

- 1. Application

CLEARANCES:

- City Clerk \_\_\_\_\_
- 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: 

**Purpose and Recommendation**

The purpose of this agenda item is to recommend City Council approval of Mr. Steve Novak, a City resident with a background in aerospace and an interest in serving our community to the StART Committee. The following motion will appear on the consent calendar:

**Suggested Motion**

**Motion:**

“I move to confirm the Mayoral appointment of Steve Novak to a term on the StART Committee effective immediately and expiring on December 31, 2025.”

### **Background**

According to the Port of Seattle, the SEA Stakeholder Advisory Round Table provides a forum that fosters a spirit of goodwill, respect, and openness while encouraging candid discussion between the Port and residential and business community members from the Highline Forum-member cities of SeaTac, Burien, Des Moines, Normandy Park, Tukwila and Federal Way. The stated purpose of the StART is to review airport related issues with an emphasis on noise, health, ultrafine particles and other aspects of airport operations. The stated goal of the StART is to provide advisory guidance to minimize impacts on airport cities and provide a forum for discussion.

### **Discussion**

Each city listed above designates three members to serve on StART. The members are joined by airline representatives, an air cargo representative, and Port staff. The FAA also provides agency expertise. Currently, the City has two citizen representatives and a City staff member who represent the City. The two citizen representative positions have expired and are currently vacant.

The City received an application from Steve Novak to participate in StART on behalf of Des Moines. Given his interest in serving the community as well as his background in aerospace, it is recommended that Mr. Novak be approved for the Committee.

### **Alternatives**

Decline to confirm Mr. Novak (not recommended). The City would lack a representative on the Committee if Mr. Novak is not approved.

### **Financial Impact**

No financial impact.

### **Recommendation**

Des Moines Administration recommends the Mayoral appointment of Steve Novak to the StART Committee.



**CITY OF DES MOINES**  
**APPLICATION FOR APPOINTIVE OFFICE**  
21630 11th Avenue South  
Des Moines, WA 98198

Attachment #1

Recvd. \_\_\_\_\_

NAME: Steve Novak  
ADDRESS: 22975 Marine View Dr South, Unit C203  
CITY/ZIP: 98198

PHONE: Home 360 319 3703 Work \_\_\_\_\_

LENGTH OF RESIDENCE AT THE ABOVE ADDRESS 9 yrs

REGISTERED VOTER? Yes

E-MAIL ADDRESS: stvno1@aol.com

- Please Check
- Civil Service Commission
  - Library Board
  - Human Services
  - Senior Services
  - Arts Commission Marina
  - Beach Park Landmarks
  - Commission Lodging
  - Tax Committee **StART**  
**Committee**

EMPLOYMENT SUMMARY LAST FIVE YEARS: \_\_\_\_\_  
Blue Origin Space Company, Kent, Wa  
\_\_\_\_\_  
\_\_\_\_\_

Are you related to anyone presently employed by the City or a member of a City Board? No  
If yes, explain: \_\_\_\_\_

Do you currently have an owning interest in either real property (other than your primary residence or a business) in the Des Moines planning area? Yes if so, please describe: \_\_\_\_\_  
Condo, Rental Unit in Whalers Village, same HOA that I also live in.  
\_\_\_\_\_  
\_\_\_\_\_

IN ORDER FOR THE APPOINTING AUTHORITY TO FULLY EVALUATE YOUR QUALIFICATIONS FOR THIS POSITION, PLEASE ANSWER THE FOLLOWING QUESTIONS USING A SEPARATE PAPER IF NECESSARY.

1. Why do you wish to serve in this capacity and what can you contribute? \_\_\_\_\_

I have always wanted to be more involved in the city of Des Moines, so this is a chance for me to contribute my analytical mind to something that directly affects me and my neighbors  
\_\_\_\_\_  
\_\_\_\_\_

2. What problems, programs or improvements are you most interest in? \_\_\_\_\_

Airport Noise and other affects to the Des Moines Community. There should be community members involved with anything to do with the affects of Seatac Airport  
\_\_\_\_\_  
\_\_\_\_\_

3. Please list any Des Moines elective/appointive offices you have run/applied for previously: None

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**AGENDA ITEM**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: Sea-Tac Stakeholder Advisory Round  
Table (StART) Position (Dusenbury)

FOR AGENDA OF: January 25, 2024

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: January 17, 2024

ATTACHMENTS:

- 1. Application

CLEARANCES:

- City Clerk \_\_\_\_\_
- 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: 

**Purpose and Recommendation**

The purpose of this agenda item is to recommend City Council approval of Joe Dusenbury, a City resident with a background in public service, consulting, and an interest in serving our community to the StART Committee. The following motion will appear on the consent calendar:

**Suggested Motion**

**Motion:**

“I move to confirm the Mayoral appointment of Joe Dusenbury to a term on the StART Committee effective immediately and expiring on December 31, 2025.”

### **Background**

According to the Port of Seattle, the SEA Stakeholder Advisory Round Table provides a forum that fosters a spirit of goodwill, respect, and openness while encouraging candid discussion between the Port and residential and business community members from the Highline Forum-member cities of SeaTac, Burien, Des Moines, Normandy Park, Tukwila and Federal Way. The stated purpose of the StART is to review airport related issues with an emphasis on noise, health, ultrafine particles and other aspects of airport operations. The stated goal of the StART is to provide advisory guidance to minimize impacts on airport cities and provide a forum for discussion.

### **Discussion**

Each city listed above designates three members to serve on StART. The members are joined by airline representatives, an air cargo representative, and Port staff. The FAA also provides agency expertise. Currently, the City has two citizen representatives and a City staff member who represent the City. The two citizen representative positions have expired and are currently vacant.

The City received an application from Joe Dusenbury to participate in StART on behalf of Des Moines. Given his interest in serving the community as well as his background in public service and professional consulting, it is recommended that Mr. Dusenbury be approved for the Committee.

### **Alternatives**

Decline to confirm Mr. Dusenbury (not recommended). The City would lack a representative on the Committee if Mr. Dusenbury is not approved.

### **Financial Impact**

No financial impact.

### **Recommendation**

Des Moines Administration recommends the Mayoral appointment of Joe Dusenbury to the StART Committee.



**CITY OF DES MOINES  
APPLICATION FOR APPOINTIVE OFFICE**  
21630 11th Avenue South  
Des Moines, WA 98198

Recvd. \_\_\_\_\_

Please Check

NAME: JOE DUSENBURY  
ADDRESS: PO BOX 98646 / 431 S 208TH ST  
CITY/ZIP: DES MOINES  
PHONE: Home 206-795-4292 Work -  
LENGTH OF RESIDENCE AT THE ABOVE ADDRESS 20+ YRS  
REGISTERED VOTER? YES  
E-MAIL ADDRESS: mypeggsue@me.com

- Civil Service Commission
- Library Board
- Human Services
- Senior Services
- Arts Commission
- Marina Beach Park
- Landmarks Commission
- Lodging Tax Committee
- StART Committee

EMPLOYMENT SUMMARY LAST FIVE YEARS: RETIRED 1/1/2019 - BEFORE RETIREMENT I WORKED FOR THE CITY OF DES MOINES FOR 24+ YEARS. CURRENTLY I HAVE A SMALL CONTRACT WITH THE CITY TO PROVIDE CONSULTING SERVICES AT THE MARINA.

Are you related to anyone presently employed by the City or a member of a City Board? NO  
If yes, explain: \_\_\_\_\_

Do you currently have an owning interest in either real property (other than your primary residence or a business) in the Des Moines planning area? YES if so, please describe: WE OWN OUR HOUSE AT 431 S 208TH ST AND WE OWN A HOUSE AT 446 S 208TH ST WHERE OUR DAUGHTER AND HER FAMILY LIVES.

IN ORDER FOR THE APPOINTING AUTHORITY TO FULLY EVALUATE YOUR QUALIFICATIONS FOR THIS POSITION, PLEASE ANSWER THE FOLLOWING QUESTIONS USING A SEPARATE PAPER IF NECESSARY.

1. Why do you wish to serve in this capacity and what can you contribute? (SEE ATTACHED)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. What problems, programs or improvements are you most interest in? (SEE ATTACHED)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Please list any Des Moines elective/appointive offices you have run/applied for previously: I AM CURRENTLY A COMMISSIONER ON THE DES MOINES POOL PARKS & RECREATION DISTRICT. I AM IN THE MIDDLE OF MY SECOND FULL TERM.



RESPONSES TO QUESTIONS

1. We have lived here in Des Moines, in our current location for over 20 years and we plan on staying here. I want to stay involved with the process of maintaining, revising or creating new public policy at the City/County level.

We live near the flight paths for the airport and when we built our home there were significant costs for mitigating the impacts of the airport. That said, I believe we have to be realistic about the future. The long range plans for SeaTac indicate that passenger traffic will increase from the current levels to over 50 million arrivals/departures per year. As the number of flights increases the citizens of Des Moines and the other communities surrounding the airport need some forum to press our concerns about impacts and strive for realistic mitigation strategies.

I have many years of experience interacting with the public and elected officials to create policies that work and accomplish the intended goals. I also have experience in setting up meaningful and transparent venues to get public opinion and to present proposed policies.

2. I am interested in the studies related to the micro-fine particles in the exhaust from the airplanes. I believe that it is important to have complete, transparent studies done so that our residents can make decisions about their health and their futures in Des Moines.

I am also interested in traffic impacts. As arrivals and departures climb towards 50 million per year, I believe that terminal and runway space will be a problem but the biggest problem is going to be getting all those people to and from the airport and finding a place to park their cars. I think we need to move away from automobile focused solutions and find other ways for people to access the airport.

**AGENDA ITEM**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: Simple Possession Advocacy and Representation (SPAR) Program Funding Agreement

FOR AGENDA OF: January 25, 2024

DEPT. OF ORIGIN: Legal

Date Submitted: 01.17.2024

ATTACHMENTS:

- 1. SPAR Contract Agreement

CLEARANCES:

- City Clerk *JK*
- Community Development \_\_\_\_\_
- Courts *M. Patrick*
- Emergency Management \_\_\_\_\_
- 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 for the City Council to consider approval of the SPAR Contract between the City of Des Moines and Washington State Office of Public Defense to provide reimbursement for the City’s costs for defense counsel consultation and representation for criminal charges.

**Suggested Motion**

**Motion:** “I move to accept the Office of Public Defense: SPAR Grant Award for the City of Des Moines and authorize the City Manager to sign the Grant Agreement substantially in the form as submitted.”

### **Background**

In 2021 the Washington State Supreme Court's *State v. Blake* decision found that Washington's statute criminalizing the simple possession of controlled substances was unconstitutional and invalidated the law and all prior convictions under that statute. In the two years that followed, the Legislature engaged in a great deal of debate on how to deal with the consequences of that decision, not least of which was the appropriate penalty for simple possession going forward.

In an attempt to fix the *Blake* decision, the Legislature passed a compromise drug possession bill in May 2023, Second Engrossed Second Substitute Senate Bill (2E2SSB) 5536, signed into law by the governor the same day. The bill makes the knowing simple possession of controlled substances a gross misdemeanor with a penalty of no more than 364 days in jail. Under the statute invalidated by *Blake*, simple possession had been a felony offense. What is relevant to the City of Des Moines is that these offenses that had been previously prosecuted by the County Prosecutor in Superior Court will now be prosecuted by the City in the Des Moines Municipal Court. This new class of cases will necessarily also mean more costs to the City in public defense.

Recognizing this shift in responsibility from the State to the Cities, 2E2SSB 5536 also appropriated funds to the Washington State Office Of Public Defense (State OPD) to provide reimbursement of eligible expenses for consultation and representation for individuals facing pending charges of qualifying offenses, such as simple possession or public use offenses under RCW 69.50.4011(1)(b) or (c), RCW 69.50.4013, RCW 69.50.4014, or RCW 69.41.030(1), or under local ordinances involving allegations of possession or public use of a controlled substance, counterfeit substance, or legend drugs. These funds will be administered by the newly created Simple Possession Advocacy and Representation (SPAR) Program.

Among other criteria, the Legislature limited these funds to cities with a population of 200,000 or less, of which we qualified, and submitted an application for funding consideration. The City of Des Moines application was successful and we were awarded \$30,000 for related expenses. While this is a six month agreement, to align with the OPD'S fiscal year schedule, OPD fully intends to extend this agreement beyond if mutually agreed upon. Additionally, execution of the contract, it is acceptable for the city to seek reimbursement for related costs dating back to August 15, 2023.

### **Discussion**

The City of Des Moines anticipates increased cases filed based the passage of this bill, and subsequent increased public defense costs. The City of Des Moines currently expends funds for our existing public defense contracts, this grant supports those existing and future related costs.

### **Alternatives**

The City Council could elect not to accept the SPAR Grant award. As a result, the City would be declining funds that would otherwise benefit current and potentially expanding public defender costs as caseloads are likely to increase as a result on Bill 5536.

### **Financial Impact**

Approving this agreement will allow the City to be reimbursed for up to \$30,000 for public defender services related to charges for possession of controlled substances. The costs would otherwise be paid from the general fund.

### **Recommendation**

Staff recommends adoption of the motion.

**Agreement No. GRT24054**

**A. FACE SHEET**

**WASHINGTON STATE OFFICE OF PUBLIC DEFENSE  
Simple Possession Advocacy and Representation (SPAR) Program Funding Agreement**

<p><b>1. Recipient</b> City of Des Moines 21630 11th Ave S, Ste A Des Moines, WA 98198</p>	<p><b>2. Recipient Representative</b> <del>Tim George</del><u>Rochelle Caton</u> <del>Acting City Manager</del><u>Execuive Administrative Assistant</u> City of Des Moines 21630 11th Ave S, Ste A Des Moines, WA 98198</p>
<p><b>3. Office of Public Defense (OPD)</b> 711 Capitol Way South, Suite 106 PO Box 40957 Olympia, WA 98504-0957</p>	<p><b>4. OPD Representative</b> Grace O'Connor Supervising Attorney Office of Public Defense 711 Capitol Way South, Suite 106 PO Box 40957 Olympia, WA 98504-0957</p>
<p><b>5. Agreement Amount</b> \$30,000.00</p>	<p><b>6. Agreement Period</b> January 1, 2024 through June 30, 2024</p>
<p><b>7. Purpose</b> The purpose of this Agreement is to provide reimbursement to counties for the cost of providing defense counsel Consultation and Representation for defendants facing charges or charged with simple possession or public use offenses under RCW 69.50.4011(1)(b) or (c), RCW 69.50.4013, RCW 69.50.4014, or RCW 69.41.030(1), or under local ordinances involving allegations of possession or public use of a controlled substance, counterfeit substance, or legend drugs, consistent with Second Engrossed Second Substitute Senate Bill 5536, Chapter 1, sec. 35, sec. 39, <i>Laws of 2023</i>.</p>	
<p><b>8. Acknowledgement, Incorporation by Reference, and Execution</b> The Office of Public Defense (OPD) and Recipient, as defined above, acknowledge and accept the terms of this Agreement and attachments and execute this Agreement as of the date the last signatory signed. The rights and obligations of both parties to this Agreement are governed by this Agreement and the following other documents incorporated by reference: Special Terms and Conditions, <u>and</u> General Terms and Conditions, <del>and Attachment A</del>.</p>	
<p><b>FOR RECIPIENT</b></p> <p>_____</p> <p>Name, Title</p> <p>_____</p> <p>Date</p>	<p><b>FOR OPD</b></p> <p>_____</p> <p>Grace O'Connor, Supervising Attorney</p> <p>_____</p> <p>Date</p>

## **B. SPECIAL TERMS AND CONDITIONS**

### **1. AGREEMENT MANAGEMENT**

- a) The Representative for each of the parties will be responsible for and will be the contact person for all communications regarding the performance of this Agreement.
- b) The Representative for OPD and their contact information are identified on the Face Sheet of this Agreement.
- c) The Representative for Recipient and their contact information are identified on the Face Sheet of this Agreement.

### **2. REIMBURSEMENT**

- a) Subject to Exhibit B, Section 4, OPD shall reimburse for authorized expenses as identified in Exhibit B, Section 7, Authorized Reimbursable Expenses.

### **3. ALLOCATED MAXIMUM REIMBURSEMENT AMOUNT**

- a) The maximum amount Recipient may be reimbursed for authorized expenses shall not exceed \$30,000.00.
- b) Subject to the availability of funds, and upon mutual agreement, Recipient and OPD may amend this Agreement in writing to increase the allocated maximum reimbursement amount.

### **4. TERMS OF REIMBURSEMENT**

- a) OPD will reimburse Recipient upon acceptance of expenses and receipt of properly completed invoices. Recipient shall submit invoices to the Representative for OPD monthly, and subject to the invoicing schedule included in Section 4.h. of this agreement.
- b) An invoice form will be provided to Recipient by OPD. Recipient shall provide sufficient documentation accompanying the invoice to prove, to OPD's satisfaction, the costs incurred by Recipient and to allow OPD to determine that the costs were for Authorized Reimbursable Expenses. Sufficient documentation will include a description of the work performed, including case numbers, during the time period. Sufficient documentation demonstrating costs incurred by Recipient may include, but is not limited to, salary pay stubs or invoices for contracted services. OPD reserves the right to amend the invoice form at any time.
- c) Payment will be considered timely if made by OPD within 30 calendar days after receipt of properly completed invoices. OPD shall send payment to the address designated by Recipient and associated with Recipient's Statewide Vendor Number SWV0000307-00.
- d) OPD may, in its sole discretion, terminate this Agreement or withhold payments claimed by Recipient for services rendered if Recipient fails to satisfactorily comply with any term or condition of this Agreement.
- e) OPD shall not make any payments in advance or in anticipation of services or supplies to be provided under this Agreement.
- f) Recipient agrees to report whether it will be unable to spend any allocated maximum reimbursement amount during the Agreement Period, or if Recipient anticipates a need to

increase the allocated maximum reimbursement amount. Any request to increase the allocated maximum amount will be subject to Section 3(b) of this Exhibit. OPD reserves the right to reallocate funds to other jurisdictions that Recipient reports as unable to be spent.

- g) Reimbursable expenses must be incurred between August 15, 2023 and June 30, 2024. Recipient shall bear the cost of and ensure continued Consultation and Representation for all individuals who are being represented by Recipient's attorneys on Qualifying Cases when the agreement period ends.
- h) OPD's fiscal year runs from July 1 to June 30 of each year, and OPD is unable to pay expenses from a previous fiscal year with the following fiscal year's budget. Accordingly, Recipient must submit invoices for costs incurred between August 15, 2023 and June 30, 2024, by August 1, 2024.

5. **DUPLICATION OF BILLED COSTS**

Recipient shall not bill OPD for services performed under this Agreement, and OPD shall not pay Recipient, if Recipient is entitled to payment or has been or will be paid by any other source, including grants, for that service.

6. **DISALLOWED COSTS**

Recipient is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its contractors or subcontractors.

7. **AUTHORIZED REIMBURSABLE EXPENSES**

- a. Recipient is authorized to seek reimbursement for the following costs, subject to the provisions in Exhibit B, Section 2 and Section 4:
  - 1. Compensation for attorney Representation on Qualifying Cases;
  - 2. Compensation for attorney Consultation on Qualifying Cases;
  - 3. Support staff time devoted to assisting and supporting attorney Representation and Consultation on Qualifying Cases;
  - 4. Investigation costs associated with Qualifying Cases;
  - 5. Expert services where the scope of the expert's expertise is related to a Qualifying Charge.
  - 6. Compensation for attorney Representation on an appeal undertaken according to the Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ) pertaining to an issue arising from a Qualifying Charge.

8. **OVERSIGHT**

- a) Over the duration of the agreement term, OPD may conduct site visits for purposes of ensuring the use of funds for their specified purposes. At OPD's request, Recipient will assist in scheduling such site visits and inviting appropriate attendees such as, but not limited to: public defense attorneys, judicial officers, and county representatives.

9. **DEFINITIONS**

- a. "Alternatives to Prosecution" means an opportunity to depart from the traditional criminal case process of charge to plea of guilty, or conviction or acquittal at trial. Examples include, but are not limited to, stipulated continuances, deferrals, Therapeutic courts, Specialty courts, or Pre-file or Pre-trial diversion programs.

- b. "Consultation" means advising indigent individuals on Pre-File or Pre-Trial Diversion options where the individual is facing a Qualifying Charge. Consultation also means advising indigent individuals, who face or faced Qualifying Charges, during the pendency of pre-trial Diversion.
- c. "Diversion" means an opportunity for an individual facing Qualifying Charges to depart from the criminal legal system, with the understanding that the individual will not be arrested, or that a charge the individual may be facing will either be dismissed or reduced.
- d. "Pre-File Diversion" means an opportunity for an individual facing Qualifying Charges to depart from the criminal legal system, initiated by either law enforcement or the prosecutor, that takes place before charges are filed against the individual. A Pre-File Diversion may be, but need not be, organized under RCW 69.50.4011(3)(c), 69.50.4013(2)(c), 69.50.4014(2), or 69.41.030(2)(e).
- e. "Pre-Trial Diversion" means an opportunity for a defendant charged with Qualifying Charges to depart from the criminal legal system after charges are filed against a defendant but before a plea is entered, or before proceeding to trial. A Pre-Trial Diversion may be, but need not be, organized under RCW 69.50.4017.
- f. "Qualifying Charge" means pending charges of or charges of violations of RCW 69.50.4011(1)(b) or (c); 69.50.4013; 69.50.4014; 69.41.030(2), (b), or (c); or pending charges of or charges of offenses under local ordinances involving allegations of possession or public use of a controlled substance; counterfeit substance; or legend drug.
- g. "Qualifying Case" means a proceeding filed against an indigent defendant in a court of limited jurisdiction in which at least one of the charges filed, either originally or as amended, is a Qualifying Charge, even if later dismissed.
- h. "Representation" means appointment to represent indigent defendants in courts of limited jurisdiction on Qualifying Cases, including in therapeutic or specialty courts. Representation also means appointment on motions to terminate defendants from Pre-File Diversion programs, Specialty or Therapeutic courts, or other programs that offer Alternatives to Prosecution.
- i. "Specialty or Therapeutic Court" means a court utilizing a program or programs structured to achieve both a reduction in recidivism and an increase in the likelihood of rehabilitation, or to reduce address substance use disorder or mental health conditions in defendants through continuous and judicially supervised treatment and the appropriate use of services, sanctions, and incentives.

10. **ORDER OF PRECEDENCE**

In the event of an inconsistency in this Agreement, the inconsistency will be resolved by giving precedence in the following order:

- a. Applicable federal and state of Washington statutes, regulations, and court rules
- b. Exhibit B, Special Terms and Conditions
- c. Exhibit C, General Terms and Conditions



### C. GENERAL TERMS AND CONDITIONS

1. **ALL WRITINGS CONTAINED HEREIN**  
This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.
2. **AMENDMENTS**  
This Agreement may be amended by mutual agreement of the parties. Such amendment shall not be binding unless it is in writing and signed by personnel authorized to bind each of the parties.
3. **AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 29 CFR Part 35.**  
Recipient 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 telecommunications.
4. **ASSIGNMENT**  
Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by Recipient without prior written consent of OPD.
5. **ATTORNEY'S FEES**  
Unless expressly permitted under another provision of the Agreement, in the event of litigation or other action brought to enforce Agreement terms, each party agrees to bear its own attorney fees and costs.
6. **CONFORMANCE**  
If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.
7. **ETHICS/CONFLICTS OF INTEREST**  
In performing under this Agreement, Recipient shall assure compliance with the Ethics in Public Service, Chapter 42.52 RCW and any other applicable court rule or state or federal law related to ethics or conflicts of interest.
8. **GOVERNING LAW AND VENUE**  
This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.
9. **INDEMNIFICATION**  
To the fullest extent permitted by law, Recipient shall indemnify, defend, and hold harmless the state of Washington, OPD, all other agencies of the state and all officers, agents and employees of the state, from and against all claims or damages for injuries to persons or property or death arising out of or incident to the performance or failure to perform the Agreement.
10. **LAWS**  
Recipient shall comply with all applicable laws, ordinances, codes, regulations, court rules, policies of local and state and federal governments, as now or hereafter amended.
11. **NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**  
During the performance of this Agreement, Recipient shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of Recipient's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Agreement may be rescinded, canceled or terminated in whole or in part.
12. **RECAPTURE**  
In the event that Recipient fails to perform this Agreement in accordance with state laws, federal laws, and/or the provisions of the Agreement, OPD reserves the right to recapture funds in an amount to compensate OPD for the noncompliance in addition to any other remedies available at law or in equity.
13. **RECORDS MAINTENANCE**

Recipient shall maintain all books, records, documents, data and other evidence relating to this Agreement. Recipient shall retain such records for a period of six (6) years following the end of the Agreement period. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been finally resolved.

14. **RIGHT OF INSPECTION**

At no additional cost all records relating to Recipient's performance under this Agreement shall be subject at all reasonable times to inspection, review, and audit by OPD, the Office of the State Auditor, and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Agreement. Recipient shall provide access to its facilities for this purpose.

15. **SEVERABILITY**

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement that can be given effect without the invalid provision, if such remainder conforms to the requirements of law and the fundamental purpose of this Agreement and to this end the provisions of this Agreement are declared to be severable.

16. **WAIVER**

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing.

**A G E N D A   I T E M**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: Draft Ordinance 24-001 Repealing the  
Creation of a “Payroll Fund”

FOR AGENDA OF: January 25, 2024

ATTACHMENTS:

- 1. Draft Ordinance 24-001

DEPT. OF ORIGIN: Finance

DATE SUBMITTED: January 17, 2024

CLEARANCES:

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

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *[Signature]*

**Purpose and Recommendation**

The proposed draft ordinance repeals section 27 of Ordinance No. 1144 and DMMC 3.48.090, *Payroll Fund*

**Suggested Motions**

**Motion 1:** “I move to approve Draft Ordinance 24-001, repealing section 27 of Ordinance No. 1144 and DMMC 3.48.090, *Payroll Fund*

**Background**

Title 3 DMMC authorized and provides the legal definition of “funds” used for budgeting and reporting City financial activity. Title 3 DMMC currently has separate chapters for certain categories of funds. One chapter (DMMC 3.48.090) refers to a “Payroll Fund” which was created in 1995.

With the implementation of a new accounting software system and accompanying revisions to the City’s general ledger, this fund is no longer used.

**Alternatives**

City Council could not adopt the ordinance to repeal the payroll fund. By not passing this ordinance, the DMMC would refer to a fund that became obsolete in 2022.

**Recommendation**

Staff recommends that the City Council adopt Draft Ordinance 24-001.

**CITY ATTORNEY'S FIRST DRAFT 01/17/2024**

**DRAFT ORDINANCE NO. 24-001**

**AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON** relating to municipal finance and repealing section 27 of Ordinance no. 1144 and DMMC 3.48.090, *Payroll Fund*.

**WHEREAS**, the City Council of the City of Des Moines establishes policies and procedures to ensure that public funds are properly safeguarded and accounted for, and

**WHEREAS**, in furtherance of this goal, it may become necessary for the Council to establish separate funds for specific purposes from time to time, and

**WHEREAS**, the Council may also find it necessary to eliminate a fund when a change of circumstances eliminates the need for the fund, and

**WHEREAS**, in 1995, the Council enacted Ordinance no. 1144, creating several funds, including a Payroll Fund, and

**WHEREAS**, the accounting system recently adopted by the finance department does not require a separate Payroll Fund to meet best practices, and

**WHEREAS**, elimination of the now redundant Payroll Fund will promote efficiency and prevent possible confusion or mistake, and

**WHEREAS**, the City Council finds that the repeal of DMMC 3.48.090 and section 27 of Ordinance No. 1144 is appropriate and necessary for the preservation of the public health, safety, and general welfare; now therefore,

**THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:**

**Sec. 1. Repealer.** DMMC 3.48.090 and section 27 of Ordinance No. 1144 are repealed.

**Sec. 2. Severability - Construction.**

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional

Ordinance No. \_\_\_\_  
Page 2 of 2

or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

(2) If the provisions of this Ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this Ordinance is deemed to control.

**Sec. 3. Effective date.** This Ordinance shall take effect and be in full force five (5) days after its final passage by the Des Moines City Council in accordance to law.

**PASSED BY** the City Council of the City of Des Moines this \_\_\_\_ day of \_\_\_\_\_, 2024 and signed in authentication thereof this \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
M A Y O R

APPROVED AS TO FORM:

\_\_\_\_\_  
Acting City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk

Published:

**A G E N D A I T E M**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: Draft Ordinance 24-002 – Speed Enforcement Camera Penalties

FOR AGENDA OF: January 25, 2024

DEPT. OF ORIGIN: Legal

ATTACHMENTS:

- 1. Draft Ordinance no. 24-002

DATE SUBMITTED: January 17, 2024

CLEARANCES:

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

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *[Signature]*

**Purpose and Recommendation**

The purpose of this agenda item is for the City Council to consider Draft Ordinance 24-002 which would amend chapter 10.36 DMMC to clarify the penalty assessed for speed camera infractions to align with the penalty assessed for similar speeding infractions issued by law enforcement officers.

**Suggested Motion**

**Motion 1:** "I move to enact Draft Ordinance 24-002, amending DMMC 10.36.070, setting penalties for speed zone camera infractions."

-

### **Background**

In the 2005 session, the State Legislature passed Engrossed Substitute Senate Bill 5060, which authorized local jurisdictions to use automated traffic safety cameras to enforce certain traffic violations that were felt to be particular threats to public safety. This authorizing legislation, codified at RCW 46.63.070, contains safeguards to protect privacy interests, address due process concerns, and to prevent automated traffic safety cameras from being deployed arbitrarily or primarily as a revenue generator. The violations that could be detected by automatic traffic safety cameras at that time were limited to school zone speed violations, red light violations at the intersection of two arterials, and railroad crossing violations.

In 2011, the Des Moines City Council enacted Ordinance no. 1512, authorizing the use of automated traffic safety cameras to detect speeding violations in school zones. After conducting comprehensive speed studies, the area on 16th Avenue South in front of Woodmont Elementary was chosen for the City's pilot program since the surrounding posted speed limit is 35 mph and traffic volumes through that school zone were higher than any other school zones in the City. The speed studies had shown an average of 100 to 130 speeding violations during peak pick-up and drop-off times during the day prior to installation of the cameras. Post installation, evaluation showed an 82% reduction in the number of speeding motorist going 6+ MPH through the Woodmont Elementary 20 MPH School Zone. Following the success of these first cameras, additional cameras were installed at Midway Elementary and Pacific Middle School.

Building on the success of automated traffic safety camera programs in decreasing traffic violations, the State Legislature enacted Engrossed Substitute Senate Bill 5974 in the 2022 session, which added to the permissible locations where the cameras can be used. With the success of Des Moines' school zone camera program and a similar program to detect red light violations, the City Council enacted Ordinance no. 1769, which authorized the use of automated traffic safety cameras to detect speeding violations in public park speed zones.

In the course of implementing a park zone speed camera program at Redondo, the Municipal Court worked with the State Administrative Office of the Court (AOC) to properly code the soon to be issued tickets to process through the statewide court computer system. During this process, AOC asked for clarification on what penalties would be assessed with the infractions.

For conventional speeding tickets issued directly to the driver by an officer at the scene, the base penalty is set by a court rule promulgated by the Washington State Supreme Court, based on two factors – whether the zone is less than 41 mph or above, and how much the speed limit is exceeded by in 5 mph increments.

### **Discussion**

Per RCW 46.08.020, “The provisions of this title relating to vehicles shall be applicable and uniform throughout this state and in all incorporated cities and towns and all political subdivisions therein and no local authority shall enact or enforce any law, ordinance, rule or regulation in conflict with the provisions of this title except and unless expressly authorized by law to do so and any laws, ordinances, rules or regulations in conflict with the provisions of this title are hereby declared to be invalid and of no effect. Local authorities may, however, adopt additional vehicle and traffic regulations which are not in conflict with the provisions of this title.”



Further, RCW 46.08.030 states “The provisions of this title relating to the operation of vehicles shall be applicable and uniform upon all persons operating vehicles upon the public highways of this state, except as otherwise specifically provided.”

In implementing its camera programs, the City has consistently interpreted the uniformity principle as applying to camera tickets and requiring that the total maximum penalty that would apply to a speeding infraction detected and issued by a police officer would be the same as for a similar speeding infraction detected and issued by use of a camera. In other words, if a driver drives 12 mph over the 25 mph speed limit, they should expect to pay the same amount, whether they are pulled over by an officer or receive a camera ticket in the mail. The only limitation on this principle is that camera tickets cannot exceed \$250.

This principle is explicitly set forth for red light camera tickets in DMMC 10.40.070, and school zone speed tickets have been issued operating under this same principle. The draft ordinance would amend DMMC 10.36.070 to make the existing practice, which is consistent with state law, explicitly apply to speeding violations detected by speed cameras and provide AOC with the clarity they require to allow speed camera tickets to be correctly processed.

#### **Alternatives**

The City Council may:

1. Enact the proposed Draft Ordinance as written.
2. Enact the proposed Draft Ordinance with modifications
3. Decline to enact the proposed Draft Ordinance.

#### **Financial Impact**

The proposed draft ordinance would explicitly codify the intended penalties for speed zone camera tickets and align with the assumptions that were used to project future revenue. Failing to pass the ordinance could result in 1) AOC not allowing us to process park zone speed camera tickets, resulting in total loss of those revenues; 2) higher revenues that would likely face a legal challenge; or 3) reduced revenues, depending on how AOC interprets our code provisions.

#### **Recommendation**

Staff recommends that the City Council enact Draft Ordinance 24-002 as written.

**CITY ATTORNEY'S FIRST DRAFT 01/17/2024**

**DRAFT ORDINANCE NO. 24-002**

**AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON** relating to automated speed camera enforcement and amending DMMC 10.36.070, *Penalty*.

**WHEREAS**, pursuant to chapter 10.04 DMMC, the City adopted by reference the State's Model Traffic Ordinance which authorizes issuance of citations for violating the posted speed limit, and

**WHEREAS**, in 2005, the Legislature adopted Engrossed Substitute Senate Bill 5060, enacting RCW 46.63.170 which authorizes the use of automated traffic safety cameras to detect certain traffic infractions, including speeding in school zones and red light violations upon passage of a local ordinance authorizing the use of said automated cameras, and

**WHEREAS**, in 2012 the City Council adopted Ordinance 1512, authorizing the use of automated traffic safety cameras to detect speeding in school zones, codified at DMMC chapter 10.36, and

**WHEREAS**, in the 2022 session, the Legislature amended RCW 46.63.170 to expand the purposes and locations where automatic safety cameras may be deployed to detect traffic infractions, including the detection of speeding in "public park safety zones", as defined by the statute, and

**WHEREAS**, in 2023 the City Council adopted Ordinance 1769, amending chapter 10.36 DMMC and authorizing the use of automated traffic safety cameras to detect speeding violations in public park speeding zones, and

**WHEREAS**, in implementing the public park speed camera program, the Administrative Office of the Courts sought clarity on the intended penalty for speed violations detected under the cameras authorized by DMMC chapter 10.36, and

**WHEREAS**, the City Council wishes to clarify its intent that the maximum penalty for speeding infractions detected by enforcement camera be, to the extent permitted by law, to be the same maximum penalty as other speeding infractions of the same type and degree, and

**WHEREAS**, the City Council finds that the adoption of this Ordinance is necessary and proper to protect public safety and welfare; now therefore,

**THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:**

**Sec. 1.** DMMC 10.36.070 and section 1(7) of Ordinance No. 1512 as amended by section 4 of Ordinance No. 1769 are each amended to read as follows:

**Penalty.**

(1) The maximum penalty for infractions detected within a school zone under authority of, and committed pursuant to, the provisions of this chapter shall be the lesser of the monetary penalty for a violation of RCW 46.61.440 as provided under RCW 46.63.110 for the applicable miles per hour exceeding the speed limit, including all applicable statutory assessments, or \$250.00. The monetary penalty for a violation of this chapter is consistent with the authority of RCW 46.63.170 and shall not exceed the maximum amount of fine issued for other parking infractions within the City.

(2) The maximum penalty for infractions detected outside of a school zone under authority of, and committed pursuant to, the provisions of this chapter shall be the lesser of the monetary penalty for a violation of RCW 46.61.400 as provided under RCW 46.63.110 for the applicable miles per hour exceeding the speed limit, including all applicable statutory assessments, or \$250.00. The monetary penalty for a violation of this chapter is consistent with the authority of RCW 46.63.170 and shall not exceed the maximum amount of fine issued for other parking infractions within the City.

(23) Revenue from fines assessed under authority of this chapter shall be used solely for traffic safety purposes or as otherwise provided by state law. For purposes of this section, the term "traffic safety purposes" may include, but is not limited to, the following:

- (a) Personnel costs for employees or contractors who are involved in automated speed enforcement planning

and implementation, including professional services such as traffic engineering services;

(b) Personnel costs for employees or contractors who are involved in automated speed enforcement, court hearings, fine collection or other processing, including expert witness fees;

(c) Costs associated with training of employees or contractors involved with the automated speed enforcement program;

(d) Purchase and/or maintenance of equipment, including signage, related to the automated speed enforcement program;

(e) Costs associated with traffic safety projects in the transportation capital fund unrelated to the automated speed enforcement program.

(34) When required by RCW 46.63.170, the City shall remit monthly to the state 50 percent of the noninterest money received for infractions issued under this chapter for exceeding the speed limit within a public park speed zone in excess of the cost to administer, install, operate, and maintain the automated traffic safety cameras, including the cost of processing infractions, to the State Treasurer to be deposited in the Cooper Jones active transportation safety account created in RCW 46.68.480.

**Sec. 2. Severability - Construction.**

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

(2) If the provisions of this Ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this Ordinance is deemed to control.

Ordinance No. \_\_\_\_\_  
Page 4 of 4

**Sec. 3. Effective date.** This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

**PASSED BY** the City Council of the City of Des Moines this \_\_\_\_ day of \_\_\_\_\_, 2024 and signed in authentication thereof this \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
M A Y O R

APPROVED AS TO FORM:

\_\_\_\_\_  
Acting City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk

Published: