



WORK SESSION AGENDA

BOARD OF CLALLAM COUNTY COMMISSIONERS

223 East 4th Street Room 160

Port Angeles, Washington

Monday, January 24, 2022 – 8:00 a.m.

****ATTENTION****

In response to the current pandemic, to promote social distancing, and in compliance with Governor's Proclamation and the recommendation of the Clallam County Health Officer, the Board of Commissioners meetings will be virtual only. The Board of Commissioners strongly encourages public comments to be submitted in writing.

This meeting can be viewed on a live stream at this link:
<http://www.clallam.net/features/meetings.html>

If you would like to participate in the meeting via Zoom audio only, call 253-215-8782 and use meeting ID: 875 561 7844 and passcode: 12345

If you would like to participate in the meeting via Zoom video conference, visit <https://zoom.us/j/8755617844> and use meeting ID: 875 561 7844 and passcode: 12345

Public comment and questions can be directed to the Clerk of the Board at 360-417-2256 or agores@co.clallam.wa.us.

Administration – 9 a.m.

1. [Calendar/Correspondence](#)
2. [Contract with Salish Behavioral Health Administrative Services Organization for substance use disorder outpatient services](#)

[Contract](#) 

3. [Agreement with OlyPen, Inc. for internet access for the courthouse](#)

[Agreement](#) 

4. [Contract with CivicPlus to architect a new Clallam County website](#)

[Contract](#) 

5. [Agreement with Washington State Military Department and the U.S. Department of Homeland Security for funds to assist Clallam County Emergency Management in preparing for all hazards/\\$14,225](#)

[Agreement](#) 

6. [Agreement with Washington State Military Department and the U.S. Department of Homeland Security for funds to assist Clallam County Emergency Management in preparing for all hazards/\\$41,792](#)

Agreement 

7. Agreement with Olympic Unitarian Universalist Fellowship for use of their facilities in emergencies

Agreement 

Public Works

8. Resolution declaring the temporary closure of East Beach Road No. 92210 (6a)*

Resolution 

Community Development

9. Briefing and notice of hearing to be held Tuesday, February 15th, 2022 at 10:30 a.m. for an Ordinance amending Title 31, Comprehensive Plan Map, and Title 33, Zoning Map of the Clallam County Code

Briefing and notice of hearing 

Board of Commissioners

10. Review of Clallam Economic Development Council annual contract

Review 

11. Briefing and notice of hearing to be held Tuesday, February 15th, 2022 at 10:30 a.m. for an Ordinance titled Farm Waste Line Facility Franchise

Briefing and notice of hearing 

12. Clallam County Charter Update – Working group

Update 

13. Briefing and notice of hearing to be held Tuesday, February 15th, 2022 at 10:30 a.m. for a Resolution Amending Clallam County Policy 225 Employee Benefits

Briefing and notice of hearing 

14. Affordable Housing discussion and next steps

Discussion 

15. Review and finalize list of topics for joint meeting with Representative Kilmer

Review 

16. Appointing Jeannie Dickinson to the Homelessness Task Force

Resolution 

17. Appointing Brandon Janisse to the Boundary Review Board

Resolution 

18. Appointing Rachel Anderson to the Solid Waste Advisory Committee

Resolution 

General Discussion/Items for Future Agendas

- A. ADU Ordinance update and call for hearing (February 7)
- B. Marine Resources Committee update (February 14)
- C. Continued Work Session – Topic TBD (February 14 at 1 p.m.)
- D. National Park update (March 7 at 10:30 a.m.)
- E. Continued Work Session – Topic TBD (March 14 at 1 p.m.)
- F. Department of Natural Resources joint meeting (March 21 at 1 p.m.)

EXECUTIVE SESSION

The Board may recess into Executive Session to consider employment or dismissal of personnel, to review the performance of a public employee, to consult with legal counsel, to consider the position to be taken in collective bargaining, to consider acquisition or sale of real estate, or other matters per RCW 42.30.110

- Other items may be added at the discretion of the Board and additional Work Sessions may be scheduled if more time is needed to allow for adequate discussion.
- Written testimony presented by members of the public during the Board meeting is considered a public document and must be submitted to the Clerk of the Board.
- Copies of public documents from Board meetings are available by contacting the Public Records Department.



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

2
1/24/22

Department: **Juvenile Services**

WORK SESSION ☒ Meeting Date: 01/24/2022

REGULAR AGENDA ☒ Meeting Date: 02/01/2022

Required originals approved and attached? ☒
Will be provided on:

Item summary:

- | | | |
|---|--|--------------------------------------|
| ☐ Call for Hearing | ☒ Contract/Agreement/MOU - Contract # 851.22.001 | |
| ☐ Resolution | ☐ Proclamation | ☐ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance | ☐ Other |

Documents exempt from public disclosure attached: ☐

Executive summary:

Standard Contract between Salish Behavioral Health Administrative Services Organization (SBHASO) and Clallam County Juvenile & Family Services True Star Behavioral Health Services for substance use disorder outpatient services beginning October 1, 2021 thru March 21, 2023.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

Resulting revenue has been included in the 2022 budget.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)
Review and sign.

County Official signature & print name:

Jody Jacobsen Jody Jacobsen

Name of Employee/Stakeholder attending meeting:

Jody Jacobsen & Cindy Hanson

Relevant Departments: *JS*

Date submitted: 01/10/2022

1/14/2022 *js*

* Work Session/Reg Meeting - Submit 2 single sided/not stapled copies + 2 AIS and 3 originals (stapled) + AIS
** Regular Meeting - Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

**SALISH BEHAVIORAL HEALTH ADMINISTRATIVE SERVICES ORGANIZATION
STANDARD CONTRACT**

Contract Number: KC-648-21

Contractor: True Star Behavioral Health

Amount: \$74,839

Contract Term: October 1, 2021 – March 31, 2023

CFDA#: 93.959

Purpose: This contract is entered into for the purpose of ensuring the provision of behavioral health services for residents from Clallam County.

This contract is made between True Star Behavioral Health (hereinafter "Contractor") and the Salish Behavioral Health Administrative Services Organization (hereinafter "SBHASO"). This notification of contract, including all material incorporated by reference, contains all terms and conditions agreed to by the parties hereto. 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. The Kitsap County Department of Human Services shall act as administrator of this contract on behalf of the SBHASO.

The rights and obligations of the parties shall be subject to, and governed by, the terms and conditions contained herein and by the Statement of Work, General Agreement, Special Terms and Conditions, Business Associate Agreement and the Budget/Rate Sheet. In the event of any inconsistency in this notification of contract, including the items incorporated herein by reference, the inconsistency shall be resolved by giving precedence in the following order: (1) General Agreement; (2) Special Terms and Conditions; (3) Statement of Work; (4) Budget/Rate Sheet.

As evidenced by signatures hereon, the parties accept the terms and conditions of this contract.

**SALISH BEHAVIORAL HEALTH
ADMINISTRATIVE SERVICES
ORGANIZATION, By
KITSAP COUNTY BOARD OF
COMMISSIONERS, Its Administrative
Entity**

Edward E. Wolfe, Chair

Charlotte Garrido, Commissioner

Robert Gelder, Commissioner

DATE _____

ATTEST

Dana Daniels, Clerk of the Board

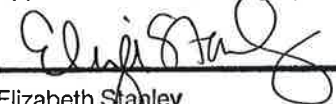
**CONTRACTOR: True Star
Behavioral Health-Clallam County
Juvenile and Family Services**

Name: Mark Ozias, Chair
Title: Clallam County Board of
Commissioners

I attest that I have the authority to sign
this contract on behalf of True Star
Behavioral Health-Clallam County
Juvenile and Family Services

DATE

Approved as to form only by:



Elizabeth Stanley
Civil Deputy Prosecuting Attorney
Clallam County

GENERAL AGREEMENT

SECTION I. CONTRACTOR REQUIREMENTS

Contractor agrees to perform the services as set forth in the Statement of Work Attachment B, as attached herein.

A. Authority

Contractor possesses legal authority to apply for the funds covered under this contract.

B. Assignment/ Subcontract

1. Contractor shall not assign its rights and/or duties under this contract without the prior written consent of the SBHASO.
2. Contractor shall obtain written approval for assignment from the Contract Administrator prior to entering into any subcontract for the performance of any services contemplated by this contract; provided, however, that approval shall not be unreasonably withheld.
 - a. In the event that the Contractor enters into any subcontract agreement funded with money from this contract, the Contractor is responsible for subcontractor:
 - o Compliance with applicable terms and conditions of this contract;
 - o Compliance with all applicable law; and.
 - o Provision of insurance coverage for its activities.

C. Limitations on Payments

1. Contractor shall pay no wages in excess of the usual and accustomed wages for personnel of similar background, qualifications and experience.
2. Contractor shall pay no more than reasonable market value for equipment and/or supplies.
3. Any cost incurred by Contractor over and above the year-end sums set out in the budgets shall be at Contractor's sole risk and expense.

D. Compliance with Laws

1. Contractor shall comply with all applicable provisions of the Americans with Disabilities Act and all regulations interpreting or enforcing such act.

2. Contractor shall comply with all applicable federal, state and local statutes, regulations, rules and ordinances. Applicable laws and regulations include, but are not limited to:
- a. Title XIX and Title XXI of the Social Security Act.
 - b. Title VI of the Civil Rights Act of 1964.
 - c. Title IX of the Education Amendments of 1972, regarding any education programs and activities.
 - d. The Age Discrimination Act of 1975.
 - e. The Rehabilitation Act of 1973.
 - f. The Budget Deficit Reduction Act of 2005.
 - g. The Washington Medicaid False Claims Act and the Federal False Claims Act (FCA).
 - h. The Health Insurance Portability and Accountability Act (HIPPA).
 - i. The American Recovery and Investment Act (ARRA).
 - j. The Patient Protection and Affordable Care Act (PPACA or ACA).
 - k. The Health Care and Education Reconciliation Act.
 - l. The Mental Health Parity and Addiction Equity Act (MHPAEA) and final rule.
 - m. 21 C.F.R. Food and Drugs, Chapter 1 Subchapter C – Drugs – General.
 - n. 42 C.F.R. Subchapter A, Part 2- Confidentiality of Alcohol and Drug Abuse Patient Records.
 - o. 42 C.F.R. Subchapter A, Part 8 – Certification of Opioid Treatment Programs.
 - p. 45 C.F.R. Part 96 Block Grants.
 - q. 45 C.F.R § 96.126 Capacity of Treatment for Intravenous Substance Abusers who Receive Services under Block Grant funding.
 - r. Chapter 70.02 RCW Medical Records – Health Care Information Access and Disclosure.
 - s. Chapter 71.05 RCW Mental Illness.
 - t. Chapter 71.24 RCW Community Mental Health Services Act.
 - u. Chapter 71.34 RCW Mental Health Services for Minors.
 - v. Chapter 246-341 WAC.
 - w. Chapter 43.20A RCW Department of Social and Health Services.
 - x. Senate Bill 6312 (Chapter 225. Laws of 2014) State Purchasing of Mental Health and Chemical Dependency Treatment Services.
 - y. All federal and State professional and facility licensing and accreditation requirements/standards that apply to services performed under the terms of this Contract.
 - z. Reporting of abuse as required by RCW 26.44.030.
 - aa. Federal Drug and Alcohol Confidentiality Laws in 42 C.F.R. Part 2.
 - bb. Copeland Anti-Kickback Act.
 - cc. Davis-Bacon Act.
 - dd. Byrd Anti-Lobbying Amendment.

- ee. Any services provided to an individual enrolled in Medicaid are subject to applicable Medicaid rules.
- 3. Contractor shall comply with SBHASO policies, procedures and practices.
- 4. Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, marital status, religion, sex, sexual orientation, national origin, Vietnam era or disabled veteran's status, age, the presence of any sensory, mental or physical disability; provided, that the prohibition against discrimination in employment because of disability shall not apply if the particular disability prevents the individual from performing the essential functions of his or her employment position, even with reasonable accommodation. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-off or termination, rates of pay or other forms of compensations, and selection for training, including apprenticeship.

E. Indemnification

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless the Salish Behavioral Health Administrative Services Organization, Kitsap County, Jefferson County and Clallam County, and the elected and appointed officials, officers, employees and agents of each of them, from and against all claims resulting from or arising out of the performance of this contract, whether such claims arise from the acts, errors or omissions of Contractor, its subcontractors, third parties, the Salish Behavioral Health Administrative Services Organization, Kitsap County, Jefferson County or Clallam County, or anyone directly or indirectly employed by any of them or anyone for whose acts, errors or omissions any of them may be liable. "Claim" means any loss, claim, suit, action, liability, damage or expense of any kind or nature whatsoever, including but not limited to attorneys' fees and costs, attributable to personal or bodily injury, sickness, disease or death, or to injury to or destruction of property, including the loss of use resulting therefrom. Contractor's duty to indemnify, defend and hold harmless includes but is not limited to claims by Contractor's or any subcontractor's officers, employees or agents. Contractor's duty, however, does not extend to claims arising from the sole negligence or willful misconduct of the Salish Behavioral Health Administrative Services Organization, Kitsap County, Jefferson County or Clallam County, or the elected and appointed officials, officers, employees and agents of any of them. For the purposes of this indemnification provision, Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington and acknowledges that this waiver was mutually negotiated by the parties. This provision shall survive the expiration or termination of this contract.

F. Insurance

1. For the duration of the contract and until all work specified in the contract is completed, Contractor shall maintain in effect all insurance as required herein. Work under this contract shall not commence until evidence of all required insurance and bonding is provided to the SBHASO. Evidence of such insurance shall consist of a completed copy of the Certificate of Insurance, signed by the insurance agent for the Contractor and returned to
Program Lead, Salish Behavioral Health Administrative Services
Organization
Kitsap County Department of Human Services
614 Division Street, MS-23
Port Orchard, WA 98366.
2. The Contractor's insurer shall have a minimum A.M. Best's Rating of A-VII.
3. Coverage shall include the following terms and conditions:
 - a. The policy shall be endorsed and certificate shall reflect that the SBHASO and Clallam, Jefferson and Kitsap Counties are named as an additional insureds on the Contractor's General Liability Policy with respect to the activities under this Contract.
 - b. The policy shall provide and the certificate shall reflect that the insurance afforded applies separately to each insured against which a claim is made or a suit is brought except with respect to the limits of the Contractor's liability.
 - c. The policy shall be endorsed and the certificate shall reflect that the insurance afforded therein shall be primary insurance and any insurance or self-insurance carried by Kitsap County on behalf of the SBHASO shall be excess and not contributory insurance to that provided by the Contractor.
 - d. If for any reason, any material change occurs in the coverage during the course of this contract, such changes shall not become effective until forty-five (45) days after Kitsap County Risk Management has received written notice of changes.
 - e. SBHASO and Clallam, Jefferson and Kitsap Counties have no obligation to report occurrences unless a claim is filed with the SBHASO; and SBHASO or Clallam, Jefferson or Kitsap Counties have no obligation to pay premiums.

4. The Contractor shall insure that every officer, director, or employee who is authorized to act on behalf of the Contractor for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks or other instruments of payment for program costs shall be bonded to provide protection against loss.
 - a. Fidelity bonding secured pursuant to this contract must have coverage of \$100,000 or the highest planned advance or reimbursement for the program year, whichever is greater.
 - b. If requested, the Contractor will provide a copy of the bonding instrument or a certification of the same from the bond issuing agency.
5. Workers' Compensation and Employer Liability. The Contractor will maintain workers' compensation insurance as required by Title 51, Revised Code of Washington, and will provide evidence of coverage to the Kitsap County Risk Management Division. If the contract is for over \$50,000, then the Contractor will also maintain employer liability coverage with a limit of not less than \$1 million.
6. The Contractor shall have insurance coverage and limits as follows:
 - a. Comprehensive Liability

Comprehensive General Liability Insurance and Comprehensive Automobile Liability Insurance with limits of not less than:

COVERAGE	LIMITS OF LIABILITY
-----------------	----------------------------

Comprehensive General Liability Insurance

- | | |
|---|-----------------------------|
| a. Bodily Injury Liability | \$1,000,000 each occurrence |
| b. Property Damage Liability | \$1,000,000 each occurrence |
| OR | |
| c. Combined Bodily Injury/Property Damage Liability | \$2,000,000 aggregate |

Comprehensive Automobile Liability Insurance

- | | |
|------------------------------|--|
| a. Bodily Injury Liability | \$1,000,000 each person
\$1,000,000 each occurrence |
| b. Property Damage Liability | \$1,000,000 each occurrence |

COVERAGE

LIMITS OF LIABILITY

OR

c. Combined Single Limit Coverage of \$2,000,000

b. Professional Liability Insurance with limits of not less than:

Professional Liability Insurance \$1,000,000 each occurrence

G. Conflict of Interest

Contractor agrees to avoid organizational conflict of interest and the Contractor's employees will avoid personal conflict of interest and the appearance of conflict of interest in disbursing contract funds for any purpose and in the conduct of procurement activities.

H. Documentation

1. Contractor shall maintain readily accessible records and documents sufficient to provide an audit trail needed by the SBHASO to identify the receipt and expenditure of funds under this contract, and to keep on record all source documents such as time and payroll records, mileage reports, supplies and material receipts, purchased equipment receipts, and other receipts for goods and services.
2. The Contractor is required to maintain property record cards and property identification tabs as may be directed by SBHASO codes and changes thereto. This applies only to property purchased from funds under this contract specifically designated for such purchases. Ownership of equipment purchased with funds under this contract so designated for purchase shall rest in the SBHASO and such equipment shall be so identified.
3. The Contractor shall provide a detailed record of all sources of income for any programs it operates pursuant to this contract, including state grants, fees, donations, federal funds and others for funds outlined in appropriate addenda. Expenditure of all funds payable under this contract must be in accordance with the approved Statement of Work.
4. The SBHASO shall have the right to review the financial and service components of the program as established by the Contractor by whatever means are deemed expedient by the SBHASO, or their respective delegates. Such review may include, but is not limited to, with reasonable notice, on-site inspection by SBHASO agents or employees, inspection of

all records or other materials which the SBHASO deems pertinent to this contract and its performance, except those deemed confidential by law.

5. All property and patent rights, including publication rights, and other documentation, including machine-readable media, produced by the Contractor in connection with the work provided for under this contract shall vest in the SBHASO. The Contractor shall not publish any of the results of this contract work without the advance written permission of the SBHASO. Such material will be delivered to the SBHASO upon request.

SECTION II. RELATIONSHIP OF THE PARTIES

The parties intend that an independent contractor relationship will be created by this contract, and the conduct and control of the services will lie solely with the Contractor. No official, officer, agent, employee, or servant of the Contractor shall be, or deemed to be, an official, officer, employee, servant, or otherwise of the SBHASO for any purpose; and the employees of the Contractor are not entitled to any of the benefits the SBHASO provides for SBHASO employees. It is understood that the SBHASO does not agree to use Contractor exclusively. Contractor will be solely and entirely responsible for its acts and for the acts of its officials, officers, agents, employees, servants, subcontractors, or otherwise during the performance of this agreement.

In the performance of the services herein contemplated, Contractor is an independent contractor with the authority to control and direct the performance of the details of the work, SBHASO being interested only in the results obtained. However, the work contemplated herein must meet the approval of the SBHASO and shall be subject to SBHASO's general right of inspection and supervision to secure the satisfactory completion thereof.

In the event that any of the Contractor's officials, officers, employees, agents, servants or otherwise, carry on activities or conduct themselves in any manner which may either jeopardize the funding of this agreement or indicate said officials, officers, employees, agents or servants are unfit to provide those services as set forth within, the Contractor shall be responsible for taking adequate measures to prevent said official, officer, employee, agent or servant from performing or providing any of the services as called for within.

SECTION III. MODIFICATION

No change, addition or erasure of any portion of this agreement shall be valid or binding upon either party. There shall be no modification of this agreement, except in writing, executed with the same formalities as this present instrument. Either party may request that the contract terms be renegotiated when circumstances, which were neither foreseen nor reasonably foreseeable by the parties at the time of contracting, arise during the period of performance of this contract. Such circumstances must have a

substantial and material impact upon the performance projected under this contract and must be outside of the control of either party.

SECTION IV. TERMINATION

A. Failure to Perform

This contract may be terminated, in whole, or in part, without limiting remedies, by either party to this contract if the other party materially fails to perform in accordance with the terms of this contract. In this event, the aggrieved party shall deliver ten (10) working days advance written notification to the other party specifying the performance failure and the intent to terminate.

B. Without Cause

Either party to this contract may elect to terminate this contract without cause by delivering a ninety (90) day written notice of intent to terminate to the other party.

C. Funding

The SBHASO may unilaterally terminate or negotiate modification of this contract at any time if its federal, or state grants are suspended, reduced, or terminated before or during this contract period, or if federal or state grant terms and regulations change significantly.

In the event of early contract termination initiated by either party for whatever reason, the Contractor is only entitled to costs incurred prior to the time of contract termination.

SECTION V. LEGAL REMEDIES

Nothing in this contract shall be construed to limit either party's legal remedies including, but not limited to, the right to sue for damages or specific performance should either party materially violate any of the terms of this contract. Failure to act on any default shall not constitute waiver of rights on such default or on any subsequent default.

SECTION VI. VENUE AND CHOICE OF LAW

Any action at law, suit in equity, or other judicial proceeding for the enforcement of this contract or any provision thereof shall be instituted only in the courts of the State of Washington, County of Kitsap. It is mutually understood and agreed that this contract

shall be governed by the laws of the State of Washington, both as to its interpretation and performance.

SECTION VII. WAIVER

No official, officer, employee, or agent of SBHASO has the power, right, or authority to waive any of the conditions or provisions of this contract. No waiver of any breach of this agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this agreement or at law shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law. The failure of the SBHASO to enforce at any time any of the provisions of this contract, or to require at any time performance by Contractor of any provisions hereof, shall in no way be construed to be a waiver of such provisions, or in any way affect the validity of this contract or any part, hereof, or the right of SBHASO to thereafter enforce each and every provision.

SECTION VIII. NOTICES

All notices called for or provided for in this contract shall be in writing and must be served on the party either personally or by certified mail and shall be deemed served when deposited in the United States mail. Such notice shall be made to:

Jody Jacobsen, Director
True Star Behavioral Health-Clallam
County Juvenile and Family Services
1912 W. 18th Street
Port Angeles, WA 98363-5121

Stephanie Lewis, Administrator
Kitsap County Human Services
614 Division St., MS-23
Port Orchard, WA 98366-4676

SECTION IX. PAYMENTS

- A. All payments to be made by Kitsap County, on behalf of the SBHASO, under this agreement shall be made to: True Star Behavioral Health, City of Port Angeles, County of Clallam, State of Washington.
- B. This contract shall not exceed the amount set forth in the contract compensation/rate sheet, Attachment C. Contractor agrees to participate in and be bound by determinations arising out of the SBHASO's disallowed cost resolution process.

SECTION X. DURATION

The Contractor is authorized to commence October 1, 2021 providing services pursuant to this contract. This agreement shall terminate on March 31, 2023, unless terminated sooner as provided herein.

SECTION XI. WHOLE AGREEMENT

This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this contract shall supersede all previous communications, representations, or agreements, either verbal or written, between parties.

SECTION XII. SEVERABILITY

It is understood and agreed by the parties that if any part, term, or provision of this contract is held by the courts to be illegal or in conflict with any law of the state where made, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this contract did not contain the particular part, term, or provision held to be invalid.

SECTION XIII. ATTACHMENTS. The parties acknowledge that the following attachments, which are attached to this Contract, are expressly incorporated by this reference:

Attachment A – Special Terms and Conditions
Attachment B – Statement of Work
Attachment C – Budget/Rate Sheet
Attachment D – Business Associate Agreement
Attachment E – Data Security and Confidentiality
Attachment F – Certification Regarding Lobbying
Attachment G – Debarment Certification

The rights and obligations of the parties shall be subject to, and governed by, the terms and conditions contained herein and by the Statement of Work, General Agreement, Special Terms and Conditions, Business Associate Agreement and the Budget. In the event of any inconsistency in this notification of contract, including the items incorporated herein by reference, the inconsistency shall be resolved by giving precedence in the following order: (1) General Agreement; (2) Special Terms and Conditions; (3) Statement of Work; (4) Budget/Rate Sheet.

ATTACHMENT A: SPECIAL TERMS AND CONDITIONS

Section II. CONTRACTOR REQUIREMENTS

A. PROGRAM REQUIREMENTS

1. General

- a. Contractor shall adhere to established SBHASO protocols for determining eligibility for services consistent with this contract.
- b. Contractor shall participate in training when requested by SBHASO on behalf of the HCA. Exceptions must be in writing and include a plan for how the required information shall be provided to them.
- c. Contractor shall not differentiate or discriminate in providing services to clients because of race, color, religion, national origin, ancestry, age, marital status, gender identity, sexual orientation, physical, sensory or mental handicap, socioeconomic status, or participation in publicly financed programs of health care services, or any other basis prohibited by law. Contractor shall render services to clients in the same location, in the same manner, in accordance with the same standards, and within the same time availability regardless of payor.
- d. Contract shall provide Individuals with access to translated information and interpreter services as described in the Materials and Information Section of this Contract.
- e. Contractor agrees to comply with the appointment wait time standards of this Contract. SBHASO shall monitor for timely access and require corrective action if Contractor fails to comply with appointment wait time standards.
- f. Contractor shall respond in a full and timely manner to law enforcement inquiries regarding an individual's eligibility to possess a firearm under RCW 9.41.040(2)(a)(ii).
 - i. Contractor shall report new commitment data within twenty-four (24) hours.

2. Quality Improvement

- a. Contractors receiving GFS or FBG funds shall cooperate with SBHASO or HCA-sponsored Quality Improvement (QI) activities.
- b. Contractor shall adequately document services provided to Individuals for all delegated activities including QI, Utilization Management, and Individual Rights and Protections.
- c. Contractor shall implement a Grievance process that complies with WAC 182-538C-110.

- d. Contractor shall make information available to Individuals regarding their right to a Grievance or Appeal in the case of:
 - i. Denial or termination of service related to medical necessity determinations
 - ii. Failure to act upon a request for services with reasonable promptness.
 - iii. Termination of this Contract shall not be grounds for an appeal, Administrative Hearing, or a Grievance for the Individual if similar services are immediately available in the service area.
- e. Contractor shall comply with Chapter 71.32 RCW (Mental Health Advance Directives)
- f. Contract shall use the Integrated Co-Occurring Disorder Screen Tool (GAIN-SS found at <https://www.hca.wa.gov/billers-providers-partners/behavioral-health-recovery/gain-ss>). Contractor shall provide training for staff that will be using the tool(s) to address the screening and assessment process, the tool and quadrant placement. This process is subject to Corrective Action if not implemented and maintained throughout the period of contract performance.

3. Program Integrity

- a. Contractor shall have and comply with policies and procedures that guide its officers, employees and agents to comply with Program Integrity requirements.
- b. Contractor shall investigate and disclose to HCA immediately upon becoming aware of any person in their employment who has been convicted of a criminal offense related to that person's involvement under Medicare, Medicaid, or Title XX of the Social Security Act since the inception of those programs.
- c. Contractor shall have a Fraud, Waste and Abuse program which includes:
 - i. A process to inform officers, employees, agents and subcontractors about the False Claims Act.
 - ii. Administrative procedures to detect and prevent Fraud, waste and abuse, and a mandatory compliance plan.
 - iii. Standards of conduct that articulate the Contractor's commitment to comply with all applicable federal and state standards.
 - iv. The designation of a compliance officer and compliance committee that is accountable to senior management.
 - v. Training for all affected parties.
 - vi. Effective lines of communication between the compliance officer and the Contractor's staff.
 - vii. Enforcement of standards through well-publicized disciplinary policies.
 - viii. Provision for internal monitoring and auditing.
 - ix. Provision for prompt response to detected violations, and for development of corrective action initiatives.

- d. Contractor shall subrogate, to the state of Washington for all criminal, civil and administrative action recoveries undertaken by any government entity, including, but not limited to, all claims the Contractor has or may have against any entity or individual that directly or indirectly receives funds under this Contract.
 - i. For the purpose of this section, "subrogation" means the right of any state of Washington government entity or local law enforcement to stand in the place of a Contractor or Individual in the collection against a third party.
- e. Contractor shall conduct criminal background checks and maintain related policies and procedures and personnel files consistent with the requirements in Chapter 43.43 RCW and, Chapter 246-341 WAC.
- f. Contractor shall participate in the SBHASO Credentialing and Recredentialing process as indicated by SBHASO Policies and Procedures.
 - i. Contractor credentialing files are confidential and are scanned into a secure imaging system. This document retrieval system is protected by user ID and password to prevent unauthorized access. These files are protected from discovery and may not be reproduced or distributed, except for confidential peer review and credentialing purposes consistent with state laws.
 - ii. When the SBHASO has reached a credentialing decision, the Contractor will be notified in writing, within 60 calendar days of the decision date. The credentialing determination notification will specify the range of actions that may be taken by the Contractor, including the appeal process.
 - iii. The Contractor has the right to:
 - a. Review information submitted to support their credentialing application.
 - b. Correct erroneous information.
 - c. Receive the status of their credentialing or recredentialing application, upon request.
 - d. Appeal the credentialing decision to the Credentialing Committee in writing within 60 days from the date the decision is communicated. Any appeals will be reviewed by the Credentialing Committee; a determination will be made within 30 calendar days of receipt and written notice will be sent. There will be no subsequent appeal to this final decision.
 - iv. If Contractor loses their accreditation, licenses, or any other essential credentialing requirements (e.g. Liability

Insurance) prior to the re-credentialing period, they must notify the SBHASO in writing within 15 calendar days.

- v. Re-Credentialing: Contractor re-credentialing is performed at minimum every 36 months or as indicated by SBHASO.
 - g. Contractor shall complete monthly Exclusion Checks for all employees, volunteers, and all individuals identified on the Disclosure of Ownership Form to include:
 - i. Office of Inspector General – <https://exclusions.oig.hhs.gov/>
 - ii. System for Award Management – <https://www.sam.gov/SAM/pages/public/searchRecords/search.jsf>
 - iii. Washington State – <https://www.hca.wa.gov/billers-providers-partners/apple-health-medicaid-providers/provider-termination-and-exclusion-list>
 - HCA Medicaid and DSHS social services list.
 - h. Contractor shall submit an attestation of completion of all Exclusion checks to SBHASO by the last business day of the month.
 - i. Information about Individuals, including their medical records, shall be kept confidential in a manner consistent with state and federal laws and Regulations.
 - j. SBHASO may pursue contract termination as outlined in General Terms and Conditions, Failure to Perform, if Contractor becomes excluded from participation in the Medicaid program.
4. Care Coordination and Priority Populations
- a. Contractor shall provide discharge planning services which shall, at a minimum,
 - i. Coordinate a community-based discharge plan for each Individual served under this Contract, beginning at intake. Discharge planning shall apply to all Individuals regardless of length of stay or whether they complete treatment.
 - ii. Coordinate exchange of assessment, admission, treatment progress, and continuing care information with the referring entity. Contact with the referral agency shall be made within the first week of residential treatment.
 - iii. Establish referral relationships with assessment entities, outpatient providers, vocational or employment services, and courts which specify aftercare expectations and services, including procedure for involvement of entities making referrals in treatment activities.
 - iv. Coordinate, as needed, with DBHR prevention services, vocational services, housing services and supports, and other community resources and services that may be appropriate, including the DCYF, and the DSHS Economic Services

Administration including Community Service Offices (CSOs), Tribal governments and non-Tribal Indian Healthcare Providers.

- b. Contractor shall develop and implement processes to enable information and data sharing to support Care Coordination, consistent with this Contract.
 - c. Priority admission to residential treatment must be given to the priority populations identified in this contract.
 - d. Contractor shall coordinate services to financially eligible individuals who are in need of medical services.
5. Health Information Systems
Contractor shall establish and maintain a health information system that complies with the requirements of OCIO Security Standard 141.10, and the Data, Security and Confidentiality Exhibit, and provides the information necessary to meet Contractor's obligations under this Contract. OCIO Security Standards are available at: <https://ocio.wa.gov>.
6. Records Retention
Records retention during the term of this Contract is for ten (10) years following termination or expiration of this Contract, or if any audit, claim, litigation, or other legal action involving the records is started before expiration of the ten (10) year period. The records shall be retained until completion and resolution of all issues arise there from or until the end of the ten (10) year period, whichever is later.
7. Public Records
All records required to be maintained by this Contract or by state law, except medical, treatment and personnel records, shall be considered to be public records and maintained in accordance with applicable laws. Medical and treatment records shall be confidential and shall not be published or open to public inspection except that such records may be inspected by the Director of the Health Care Authority, or designee; and Contract Administrator for the purpose of program review, monitoring and comparative cost studies.

B. FISCAL REQUIREMENTS AND MONITORING

- 1. Withhold of Payment
Failure of the Contractor to comply with the terms of this Contract shall give the SBHASO the right to withhold payment of any further funds under this Contract
- 2. Reimbursement
In the event that it is determined that any funds were distributed under color of this contract, which violate the terms and conditions herein, such sums shall be reimbursed to the SBHASO upon written demand. Neither payment of any funds under color of this contract, nor any action of the SBHASO or its officials, officers, agents or employees, prior to the discovery of the violation, shall constitute a waiver thereof.

3. Right to Hearing

All notices shall be given in writing specifying the reasons for such demands, reimbursement, termination, or amendment or such other actions contemplated in this Contract and the Contractor shall have the right to a hearing within ten (10) days from such determination before the SBHASO Executive Board for determination of the action and prior to commencement of any civil litigation, by the Contractor.

4. Monitoring

- a. SBHASO conducts on-going monitoring of Contractor's performance under this Contract. If deficiencies are identified in Contractor's performance, SBHASO will follow the Corrective Action process defined in Section G. In addition to on-going monitoring:
 - i. SBHASO shall conduct Contractor review which shall include at least one (1) onsite visit every three (3) years to each contractor site providing state funded or FBG funded treatment services during the period of performance of this contract in order to monitor and document compliance with requirements.
 - ii. SBHASO shall ensure that Contractor has complied with data submission requirements established by HCA for all services funded under the Contract.
 - iii. SBHASO shall ensure that Contractor updates patient funding information when the funding source changes.
 - iv. SBHASO requires Contractor to identify funding sources consistent with the Payments and Sanctions Section of this Contract, FBG reporting requirements, and the rules for payer responsibility found in the table, "How do providers identify the correct payer" within the Apple Health Mental Health Services Billing Guide" which is available on the Health Care Authority's website (<https://www.hca.wa.gov>)
 - iv. SBHASO shall maintain written or electronic records of all Contractor monitoring activities and make them available to HCA upon request.

5. Audit Requirements

- a. Contractor shall comply with all applicable required audits including to conduct a facility inspection, and the federal Office of Management and Budget (OMB) Super Circular 2 C.F.R. 200.501 and 45 C.R.R 75.501 audits.
 - i. SBHASO shall submit a copy of the OMB audit performed by the State Auditor to the HCA Contact within ninety (90) days of receipt by the SBHASO of the completed audit.
 - a. If Contractor is subject to OMB Super Circular audit, the SBHASO shall require a copy of the completed Single Audit and ensure corrective action is taken for any audit finding, per OMB Super Circular requirements
 - b. If Contractor is not subject to OMB Super Circular audit, the SBHASO shall perform Contractor monitoring in compliance with federal requirements.

6. Federal Block Grant

- a. FBG funds may not be used to pay for services provided prior to the execution of Contract, or to pay in advance of service delivery. Contract and amendments must be in writing and executed by both parties prior to any services being provided.
- b. FBG fee-for-service, set rate, performance-based, Cost Reimbursement, and lump sum Contracts shall be based on reasonable costs.
- c. Contractor must receive an independent audit if the Contractor expends a total of \$750,000 or more in federal awards from any and/or all sources in any state fiscal year. Contractor shall submit to the SBHASO the data collection form and reporting package specified in 2 C.F.R. Part 200, Subpart F, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor within ten (10) days of audit reports being completed and received by Contractor. SBHASO shall follow up with any corrective actions for Contractor audit findings in accordance with 2 D.F.R. Part 200, Subpart F. SBHASO shall retain documentation of all Contractor monitoring activities; and, upon request by HCA, shall immediately make all audits and/or monitoring documentation available to the HCA.
- d. SBHASO shall conduct and/or make arrangements for an annual fiscal review of each Contractor receiving FBG funds, regardless of reimbursement methodology (i.e.: fee-for-service, set rate, performance-based or cost reimbursement contracts), and shall provide HCA with documentation of these annual fiscal reviews upon request. The annual fiscal review shall ensure that:
 - i. Expenditures are accounted for by revenue source.
 - ii. No expenditures were made for items identified in the Payment and Sanctions Section of this Contract.
 - iii. Expenditures are made only for the purposes stated in this Contract, and for services that were actually provided.
- e. Contractor shall participate in the peer review process when requested by the HCA. (42 U.S.C. 300x-53(a) and 45 C.F.R. 96.136). The MHBG and SABG requires an annual peer review by individuals with expertise in the field of drug abuse treatment (for SABG) and individuals with expertise in the field of mental health treatment (for MHBG). At least five percent (5%) of treatment providers will be reviewed.
- f. FBG funds may not be used, directly or indirectly, to purchase, prescribe, or provide marijuana or treatment using marijuana. Treatment in this context includes the treatment of opioid use disorder. FBG funds also cannot be provided to any individual or organization that permits marijuana use for the purposes of treating substance use or mental disorders. See, e.g., 45 C.F.R. § 75.300(a), 21 U.S.C. §§ 812(c)(10) and 841 (prohibiting the possession, manufacture, sale, purchase or distribution of marijuana). This prohibition does not apply to those providing such treatment in the context of clinical research permitted by

the DEA and under the Federal Drug Administration (FDA)-approved investigational new drug application where the article being evaluated is marijuana or a constituent thereof that is otherwise a banned substance under federal law.

7. Suspension, Debarment and Lobbying

The Contractor shall certify, on a separate for (Attachment F), that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency. Contractor shall actively monitor its employees for excluded status in accordance with SBHASO Policies and Procedures. The Contractor, on a separate form (Attachment G), will certify that it does not use Federal funds for lobbying purposes.

C. REPORTING REQUIREMENTS

1. Data Reporting Requirements

- a. Contractor shall comply with add data reporting requirements promulgated by the Health Care Authority (HCA), including the Service Encounter Reporting Instructions (SERI) and the SBHASO Data Dictionary. Contractor shall provide data to the SBHASO as needed for performance improvement or other projects.
- b. Data shall be uploaded into the SBHASO data system within 30 days of the end of the month in which services were delivered.

D. BILLING PROCEDURES

The Contractor shall be paid within the limits established within Attachment C: Budget/Rate Sheet. Any costs incurred by the Contractor over and above the total sums set out in Attachment C: Budget/Rate Sheet, shall be at the Contractor's sole risk and expense.

The Contractor shall submit invoices for payment no later than 45 calendar days following the end of month that service was provided. Invoices for psychiatric inpatient treatment may be submitted within 90 calendar days following the end of month of discharge.

The SBHASO shall pay the Contractor monthly for services identified in the Statement of Work of this Contract, subject to the availability of funds from the Health Care Authority and Contractor's compliance with this Contract. Such payment shall be made within thirty (30) days of the SBHASO's receipt of an invoice from the Contractor.

E. FAITH BASED ORGANIZATIONS (FBO)

1. SBHASO requires FBO to meet the requirements of 42 C.F.R. Part 54 as follows:
 - a. Individuals requesting or receiving SUD services shall be provided with a choice of SUD treatment providers.
 - b. The FBO shall facilitate a referral to an alternative provider within a reasonable time frame when requested by the recipient of services.

- c. The FBO shall report to the SBHASO all referrals made to alternative providers.
- d. The FBO shall provide Individuals with a notice of their rights.
- e. The FBO shall provide Individuals with a summary of services that includes any religious activities.
- f. Funds received from the FBO must be segregated in a manner consistent with federal Regulations.
- g. No funds may be expended for religious activities.

F. Indemnification

Contractor agrees to hold harmless HCA and its employees, and all Individuals served under the terms of this Contract in the event of non-payment by the SBHASO.

Contractor further agrees to indemnify and hold harmless HCA and its employees against all injuries, deaths, losses, damages, losses, damages, claims, suits, liabilities, judgments, costs and expenses which may in any manner accrue against HCA or its employees through the intentional misconduct, negligence, or omission of SBHASO, its agents, officers, employees or contractors.

G. Corrective Action Process

The SBHASO conducts reviews of Contractors. During the course of any review conducted, if performance is below Contract standards, the SBHASO will request that the Contractor provide a Corrective Action Plan. SBHASO will work with Contractor staff in creating Corrective Action Plans, when requested.

If the Contract Administrator finds indications of ongoing potential non-compliance during the contract monitoring processes or learns that the Contractor, or its subcontractors, are out of compliance with any of the terms or conditions of this Contract, the follow process will be pursued.

1. Informal Meeting

Informal process wherein the Administrator alerts the appropriate Contractor's staff of the potential non-compliance and an agreeable solution is reached.

2. Official Verbal Notification

If the informal meeting does not result in resolution, the SBHSAO will contact the Contractor for the purpose of official verbal notification of possible non-compliance to establish a date when representatives of the SBHASO and the Contractor shall meet and discuss areas of contention and attempt to resolve the issues.

3. Written Summary

Within five (5) working days of such verbal notification, the SBHASO will provide the Contractor representative a written summary of the areas of non-compliance or potential non-compliance by certified mail. Notice shall be sent to the individual identified in the General Agreement.

4. Discussion

Within twenty (20) days of the date of the written notification, a discussion between SBHASO and Contractor staff shall be conducted to address areas of non-compliance or potential non-compliance.

5. Withhold Payments

If the SBHASO and the Contractor cannot agree upon a resolution within ten (10) working days of the discussion described in the previous paragraph, the SBHASO shall withhold contract payments related to the area(s) of non-compliance or potential non-compliance, unless a written, time-limited extension of the period to agree upon corrective action is issued by the SBHASO.

Attachment B: Statement of Work

True Star

Program	Priority	Program Description/Major Features	Number Served	Target Demographic
True Star Treatment Services	Youth	SUD assessment, UA, and recommended Outpatient Service, which may include: Intensive Outpatient/Outpatient Aftercare Services, Inpatient referral and placements, Relapse Prevention, Family Counseling, and Case Management	3-5 youth/month totaling 25-35 individuals	Youth that do not qualify for Medicaid; insured youth whose families cannot afford deductible or service is not covered; court-involved youth
True Star Recovery Supports	Recovery supports and Transportation	Recovery Supports Services as determined by Bio/Psycho/Social interview and assessment, which may include Education Support, Employment Services / Job Readiness, Housing Support Services, Life Skills, Parenting Education, Relapse Prevention, Self-help Support Groups, Spiritual and Faith-based services connections and referrals, and Transportation & Communication (phone/internet)	3-5/month for 18 months	Youth that do not qualify for Medicaid; insured youth whose families cannot afford deductible or service is not covered; court-involved youth

Attachment C:

Budget Summary	
Contractor:	True Star
Contract No:	KC-648-21
Contract Period:	10/01/2021 - 3/31/2023
Enhanced Substance Abuse Block Grant	CFDA#: 93.959
Expenditure	Current
Contract Period: 10/1/2021-3/31/2023	
SUD Outpatient Treatment (Youth)	\$69,369
Recovery Supports	\$1,500
Transportation	\$2,068
Technology	\$1,902
Budget Total	\$74,839

Available Budget: Cost reimbursement
All rates are all-inclusive.

ATTACHMENT D: BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this “**Agreement**”) is effective as of the 1st day of October, 2021 (“**Effective Date**”) by and between SALISH BEHAVIORAL HEALTH-ADMINISTRATIVE SERVICES ORGANIZATION (SBHASO) and True Star Behavioral Health (Contractor) (individually, a “**Party**” and, collectively, the “**Parties**”).

- A. The Parties wish to enter into this Agreement to comply with the administrative simplification section of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, as may be amended from time to time (collectively, “**HIPAA**”).
- B. SBHASO is a behavioral health-administrative services organization, a Business Associate of certain upstream Covered Entities (“**Upstream Covered Entities**”), and a lawful holder of Part 2 Information, as defined below, as provided under the Confidentiality of Alcohol and Drug Abuse Patient Records regulations at 42 CFR Part 2 (“**Part 2**”). SBHASO also formerly was a Covered Entity and may continue to Use, Disclose, and maintain PHI from when it was a Covered Entity.
- C. The Parties have entered into one or more arrangements (collectively, the “**Service Contract**”) under which Contractor will provide certain services to SBHASO that may involve Contractor creating, receiving, maintaining, or transmitting PHI, as defined below, and Contractor may be considered a Subcontractor Business Associate of SBHASO under HIPAA and a subcontractor of a lawful holder under Part 2.

NOW, THEREFORE, in consideration of the Parties’ continuing obligations under the Service Contract, their compliance with HIPAA and Part 2, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to this Agreement.

- I. **DEFINITIONS.** Except as otherwise defined in this Agreement, capitalized terms in this Agreement shall have the definitions set forth in HIPAA. “**Individual**” shall have the same meaning as the term “Individual” in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g). “**Part 2 Information**” means alcohol abuse, drug abuse, or substance use disorder information covered by Part 2. “**PHI**” shall have the same meaning as the term “Protected Health Information” that is created, received, maintained, or transmitted by Contractor from or on behalf of SBHASO. PHI includes, without limitation, Electronic PHI, mental health information, sexually transmitted disease information, and Part 2 Information. “**PII**” means personally identifiable information as defined under Washington law.

II. **PERMITTED USES AND DISCLOSURES BY CONTRACTOR.**

- 2.1 **Performance of Service Contract.** Contractor may use and disclose PHI and PII to perform functions, activities, or services for, or on behalf of, SBHASO as specified in the Service Contract as long as the use or disclosure would not violate HIPAA, Part 2, and state and federal laws (collectively, “**Law**”), if done by Salish BH-ASO or an Upstream Covered Entity.
- 2.2 **Management; Administration; Legal Responsibilities.** Contractor may use PHI and PII for its proper management and administration and to fulfill its legal responsibilities, as long as the uses are permitted under Law for an Upstream Covered Entity, SBHASO, and Contractor.
- 2.3 **Required by Law.** Except as otherwise limited in this Agreement, Contractor may disclose PHI and PII as Required by Law. Contractor shall: (i) to the extent permitted by Law, immediately notify SBHASO prior to the disclosure; (ii) cooperate with SBHASO in making any disclosures

Required by Law, including efforts to challenge or limit the disclosure; and (iii) provide a copy of all information disclosed relating to this Agreement or the Service Contract.

- 2.4 **De-Identified Information.** Contractor may not use or disclose PHI or PII to create de-identified information or Limited Data Sets or to otherwise anonymize or aggregate PHI or PII for its own use or disclosure, without prior, express, written approval from SBHASO.
- 2.5 **Minimum Necessary.** Contractor shall make all reasonable efforts to access, use, disclose, or request only the minimum necessary amount of PHI or PII to accomplish the intended, permitted purpose of the access, use, disclosure, or request. Contractor shall comply with SBHASO's policies and procedures concerning minimum necessary requirements. The Parties shall collaborate in determining what quantum of information constitutes the "minimum necessary" amount for Contractor to accomplish its intended purposes.

III. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR.

- 3.1 **Compliance with this Agreement.** Notwithstanding anything to the contrary, Contractor agrees to not use or further disclose PHI or PII other than as permitted or required by this Agreement or as Required by Law.
- 3.2 **Safeguards.** Contractor agrees to: (i) use appropriate safeguards to prevent use or disclosure of PHI and PII other than as provided for by this Agreement; (ii) implement the administrative, physical, and technical safeguards of the Security Standards for the Protection of Electronic Protected Health Information (the "Security Rule") that reasonably and appropriately protect the confidentiality, integrity, and availability of any PHI; (iii) comply with those requirements under the Security Rule that apply to Business Associates; and (iv) implement appropriate safeguards to protect Part 2 Information.
- 3.3 **Notification.**
 - 3.3.1 **Impermissible Use or Disclosure.** Contractor shall report to SBHASO any use or disclosure of PHI or PII not permitted under this Agreement, regardless of whether the use or disclosure rises to the level of a Breach.
 - 3.3.2 **Security Incident.** Contractor shall report to SBHASO any Security Incident of which Contractor becomes aware, regardless of whether the Security Incident rises to the level of a Breach. This Agreement constitutes notification of "unsuccessful" Security Incidents that do not present a risk to PHI or PII such as: (i) "pings" on an information system firewall; (ii) port scans; and (iii) attempts to log on to an information system or enter a database with an invalid password or user name.
 - 3.3.3 **Breach Notification.** Contractor shall report any Breach of Unsecured PHI, as required by the Notification of a Breach of Unsecured Protected Health Information Standards (the "Breach Notification Rule").
 - 3.3.4 **Part 2 Information.** Contractor shall report to SBHASO unauthorized uses, disclosures, or breaches of Part 2 Information.
 - 3.3.5 **Reporting Requirements.** Contractor shall make the report as soon as practical and in any event within five (5) business days of Contractor's discovery of one of the events described in Sections 3.3.1, 3.3.2, 3.3.3, and 3.3.4 (each, an "Event"). Contractor shall supplement the information provided in the report as it becomes available. An Event shall be treated as discovered by Contractor as of the first day on which the Event is known to Contractor or, through the exercise of reasonable diligence, would have been known to Contractor.

- 3.3.6 **Content of Notification.** Contractor shall provide: (i) information as required by the Breach Notification Rule and to fully inform SBHASO of each Event; and (ii) any additional information requested by SBHASO. At a minimum, the report of an Event shall include, to the extent possible:
- (a) The identification of each Individual whose PHI or PII has been, or is reasonably believed by Contractor to have been, accessed, acquired, used, or disclosed during or as a result of the Event;
 - (b) A brief description of what happened, including the date of the Event and the date of discovery of the Event;
 - (c) A description of the types of PHI or PII involved in the Event (such as whether full name, Social Security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - (d) Any steps Individuals should take to protect themselves from potential harm resulting from the Event;
 - (e) A brief description of what Contractor is doing to investigate the Event, to mitigate harm to Individuals, and to protect against any further Events; and
 - (f) Contact procedures for SBHASO or Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
- 3.4 **Subcontractors.** Contractor shall ensure any Subcontractor whom Contractor permits to create, receive, maintain, or transmit PHI or PII on behalf of Contractor or SBHASO, agrees in writing: (i) to the same restrictions and conditions that apply through this Agreement to Contractor; and (ii) to comply with the requirements of the Security Rule that apply to Business Associates. Contractor shall not permit a Subcontractor to create, receive, maintain, or transmit PHI or PII unless Contractor has performed adequate due diligence on the Subcontractor and found Subcontractor's safeguards appropriate.
- 3.5 **Restrictions.** Contractor agrees to comply with any requests for restrictions on certain uses and disclosures of PHI or PII of which SBHASO informs Contractor.
- 3.6 **Access.** At the request of SBHASO, within ten (10) business days, unless a shorter time period is requested, in the manner, form, and format requested by SBHASO, Contractor shall make available PHI and PII so that SBHASO or an Upstream Covered Entity may respond to an Individual's request for access to PHI and PII in accordance with the Standards for Privacy of Individually Identifiable Health Information (the "**Privacy Rule**") and other Law. In the event an Individual requests from Contractor access to PHI or PII, Contractor, to the extent permitted by Law, shall forward the request to SBHASO within two (2) business days.
- 3.7 **Amendment.** At the request of SBHASO in a reasonable time and manner and in the form and format requested by SBHASO, Contractor shall make amendments to PHI and PII so that SBHASO or an Upstream Covered Entity may respond to an Individual's request for an amendment by SBHASO in accordance with the Privacy Rule and other Law. In the event an Individual requests from Contractor any amendments, to the extent permitted by Law, Contractor shall forward the request to SBHASO within two (2) business days.
- 3.8 **Accounting of Disclosures.** Contractor shall document any disclosures that are required to be in an accounting of disclosures under the Privacy Rule and, upon request, shall provide information required to be included in an accounting of disclosures to SBHASO to permit SBHASO or an Upstream Covered Entity to comply with the Privacy Rule and other Law. In the event an Individual requests from Contractor, an accounting of disclosures, to the extent

permitted by law, Contractor shall forward the request to Salish BH-ASO within two (2) business days.

- 3.9 **Disclosures to the Secretary.** Contractor agrees that it will make its internal practices, books, and records available to the Secretary of the United States Department of Health and Human Services (the “Secretary”), for the purpose of determining an Upstream Covered Entity’s, SBHASO’s or Contractor’s compliance with HIPAA, and to SBHASO for the purpose of determining Contractor’s compliance with this Agreement, HIPAA, and other Law, in a time and manner designated by the Secretary or SBHASO. Contractor: (i) immediately shall notify Salish BH-ASO of any requests from the Secretary pertaining to an investigation of an Upstream Covered Entity’s, SBHASO’s, or Contractor’s compliance with HIPAA; (ii) cooperate with Salish BH-ASO in responding to the Secretary’s request; and (iii) provide to SBHASO a copy of all documents provided to the Secretary.

3.10 **Part 2 Information.**

3.10.1 **Part 2 Obligations of Contractor.** To the extent that, in performing services for or on behalf of SBHASO under the Service Contract, Contractor uses, discloses, maintains, or transmits Part 2 Information, Contractor acknowledges and agrees that it: (i) is fully bound by Part 2; (ii) with respect to Part 2 Information received by SBHASO pursuant to an authorization or consent, will limit its use and disclosure of Part 2 Information to Payment and Health Care Operations purposes; and (iii) if necessary, will resist in judicial proceedings any efforts to obtain access to Part 2 Information except as permitted by Part 2.

3.10.2 **Notice.** 42 CFR Part 2 prohibits unauthorized disclosure of these records.

3.10.3 **Redisclosure.** Contractor shall not redisclose Part 2 Information to a third party unless the third party is a contract agent of Contractor helping Contractor provide services under the Service Contract and only as long as the agent further discloses Part 2 Information only back to Contractor or SBHASO.

3.10.4 **Compliance.** Contractor acknowledges that any unauthorized disclosure of Part 2 Information may be a federal criminal offense.

- 3.11 **Sexually Transmitted Disease Information Notice.** With respect to sexually transmitted disease information: This information has been disclosed to you (Contractor) from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of it without the specific written authorization for the release of medical or other information is NOT sufficient for this purpose.

- 3.12 **Covered Entity Obligations.** To the extent that Contractor is to carry out one or more of Covered Entity obligations under the Privacy Rule, Contractor shall comply with the requirements of the Privacy Rule that apply to a Covered Entity in the performance of the obligations.

- 3.13 **On-Site Services.** Contractor agrees that, while present at any SBHASO facility and/or when accessing SBHASO’s computer networks, it and all of its Workforce, agents, and Subcontractors at all times will comply with any network access and other security practices, policies, and procedures established by SBHASO including, without limitation, those established pursuant to HIPAA.

- 3.14 **No Sale of PHI.** Contractor agrees that it will not directly or indirectly receive remuneration in exchange for any PHI or PII without: (a) the written authorization of each applicable Individual, except when expressly permitted by the Privacy Rule; and (b) the advance written permissions of SBHASO.

- 3.15 **No Impermissible Marketing or Fundraising Communication.** Contractor agrees that it will not engage in Marketing or fundraising communications that would not be permitted by SBHASO or an Upstream Covered Entity under HIPAA.
- 3.16 **Mitigation.** Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI or PII by Contractor in breach of this Agreement, failure to comply with applicable Law, and any Event, as defined in Section 3.3.
- 3.17 **Compliance with Applicable Law.** Contractor shall comply with applicable Law. Contractor shall not act or fail to act in a manner that causes SBHASO to not be in compliance with applicable Law.

IV. OBLIGATIONS OF SBHASO. SBHASO shall not request Contractor to act in a manner that is not permissible under HIPAA.

V. TERM AND TERMINATION.

- 5.1 **Term.** The term of this Agreement shall be effective as of the Effective Date and shall terminate upon the expiration or termination of the Service Contract.
- 5.2 **Termination.** Upon SBHASO's knowledge of a material breach by Contractor of its obligations under this Agreement, SBHASO may notify Contractor, and Contractor shall have thirty (30) days from receipt of that notice to cure the breach or end the violation. Notwithstanding anything to the contrary in the Service Contract, if Contractor fails to cure the breach or end the violation within the designated time period, then SBHASO immediately may terminate the Service Contract upon notice.
- 5.3 **Effect of Termination.**
- 5.3.1 **Return or Destruction.** Except as provided in 5.3.2, upon termination of this Agreement, Contractor, within ten (10) days, shall return or destroy all PHI and PII. Any destruction shall be in a manner consistent with HIPAA and related guidance. This provision also shall apply to PHI and PII that is in the possession of agents or Subcontractors of Contractor. Neither Contractor nor its agents or Subcontractors shall retain copies of the PHI. Upon request, Contractor shall provide a certificate of appropriate destruction of the PHI and PII.
- 5.3.2 **Continued Protections.** In the event that Contractor determines that returning or destroying the PHI and PII is infeasible, Contractor shall provide within ten (10) days to SBHASO notification of the conditions that make return or destruction infeasible of PHI and PII. Upon mutual agreement of the Parties that return or destruction of PHI is infeasible and to the extent Contractor retains knowledge of the PHI and PII, Contractor shall extend the protections of this Agreement to the PHI and PII and limit further uses and disclosures of the PHI and PII to those purposes that make the return or destruction infeasible, for as long as Contractor maintains, or retains knowledge of, the PHI or PII.

VI. MISCELLANEOUS.

- 6.1 **Indemnification Obligation.** Notwithstanding anything to the contrary in the Service Contract, Contractor will indemnify, defend at SBHASO's request, and hold harmless SBHASO, its Workforce, County Authorities Executive Committee, Advisory Board, partners, agents, and Subcontractors (collectively "SBHASO Indemnified Parties") from and against any and all claims, actions, investigations, proceedings, losses, liability, damages, costs, and expenses (including attorneys' fees, costs of defense, and costs of investigation, mitigation, remediation, and notification) incurred or suffered by an SBHASO Indemnified Party (collectively, "Damages") that

arise out of, result from, allege, or relate to any of the following: (i) Contractor's breach of this Agreement, including any breach of any representation or warranty; (ii) any Event reported by Contractor under this Agreement; (iii) any violation of Law by or caused by Contractor or its Workforce, agents, or Subcontractors; or (iv) any negligent act or omission, willful misconduct, strict liability, or fraud by or of Contractor or its Workforce, agents, or Subcontractors.

- 6.2 **Coverage of Costs.** In addition, and without limitation of Supplier's obligations under Section 6.1, Supplier will pay the reasonable costs incurred by SBHASO and any affected Upstream Covered Entities in connection with the following items with respect to any Event: (a) any investigation to determine the cause of an Event, including forensic consultations; (b) legal advice regarding an Event; (c) provision of notification of an Event to affected Individuals, applicable government, relevant industry self-regulatory agencies, and the media; (d) provision of credit monitoring and/or identity theft services to affected Individuals; (e) operation of a call center to respond to questions from Individuals; and (f) other reasonable mitigation efforts as deemed necessary or appropriate by SBHASO and any affected Upstream Covered Entity.
- 6.3 **Process for Indemnification.** SBHASO will notify Contractor of any Damages for which it seeks indemnification. Upon a SBHASO request for defense, Contractor will use counsel reasonably satisfactory to the SBHASO Indemnified Parties to defend each claim related to the Damages and will keep the SBHASO Indemnified Parties informed of the status of the defense of each of the Damages. SBHASO will give Contractor reasonable assistance, at Contractor's expense, as Contractor may reasonably request. SBHASO will provide Contractor the opportunity to assume sole control over defense and settlement, as long as Contractor will not consent to the entry of any judgment or enter into any settlement without the SBHASO Indemnified Parties' prior written consent, which will not be unreasonably withheld. Any SBHASO Indemnified Party may participate in the defense at its own expense. Contractor's duty to defend is independent of its duty to indemnify, to mitigate, or to cover costs.
- 6.4 **Not Limited by Insurance Coverage.** Contractor's indemnification, mitigation, coverage of costs, and defense obligations will not be limited in any manner whatsoever by any required or other insurance coverage maintained by Contractor.
- 6.5 **No Limitations on Liability.** Notwithstanding any other provision of this Agreement or the Service Contract, in no event will any exclusions, disclaimers, waivers, or limitations of any nature whatsoever apply to any damages, liability, rights, or remedies arising from or in connection with: (i) Contractor's indemnification and defense obligations under this Agreement; (ii) Contractor's breach of this Agreement, including any breach of any representation or warranty; (iii) any Event reported by Contractor; (iv) any violation of Law by or caused by Contractor or its Workforce, agents, or Subcontractors; or (v) any negligent act or omission, willful misconduct, strict liability, or fraud by or of Contractor or its Workforce, agents, or Subcontractors.
- 6.6 **Ownership of Information.** The Parties agree that Contractor shall not have an ownership interest in PHI or PII or any derivations of the PHI or PII.
- 6.7 **Insurance.** Contractor shall maintain appropriate and adequate insurance coverage, including cyber insurance, to cover Contractor's obligations pursuant to this Agreement. Contractor's cyber insurance shall be no less than one million dollars (\$1,000,000) per occurrence. Upon request, Contractor shall provide evidence of insurance coverage.
- 6.8 **Equitable and Injunctive Relief.** The Parties acknowledge that the use or disclosure of PHI or PII in a manner inconsistent with this Agreement may cause SBHASO and its Upstream Covered

Entities irreparable damage and that SBHASO and its Upstream Covered Entities shall have the right to equitable and injunctive relief, without having to post bond, to prevent the unauthorized use or disclosure of PHI or PII and to damages as are occasioned by an Event in addition to other remedies available at law or in equity. SBHASO's and Upstream Covered Entities' remedies under this Agreement and the Service Contract shall be cumulative, and the exercise of any remedy shall not preclude the exercise of any other.

- 6.9 **Third Party Beneficiaries.** Notwithstanding anything to the contrary in the Service Contract or this Agreement, Individuals who are the subject of PHI shall be third party beneficiaries to this Agreement. Subject to the foregoing, nothing in this Agreement shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- 6.10 **Interpretation.** This Agreement shall be interpreted in a manner consistent with the Parties' intent to comply with HIPAA, Part 2, and other Law. Any ambiguity of this Agreement shall be resolved in favor of a meaning that permits the Parties to comply with HIPAA, Part 2, and other Law. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of HIPAA, HIPAA shall control. In the event of any inconsistency between this Agreement and the Service Contract or any other agreement between the Parties, the terms of this Agreement shall control. Nothing in this Agreement shall be construed as a waiver of any legal privilege or protection, including for trade secrets or confidential commercial information.
- 6.11 **Survival.** The obligations of Contractor under Sections 3.2, 3.3, 3.6, 3.8, 3.10, 3.11, 3.14, 3.16, 5.3, 6.1, 6.2, 6.3, 6.4, 6.6, 6.8, and 6.9 of this Agreement shall survive the expiration, termination, or cancellation of this Agreement, the Service Contract, and/or the business relationship of the Parties, and shall continue to bind Contractor, its Workforce, agents, employees, subcontractors, successors, and assigns as set forth in this Agreement.
- 6.12 **Amendment.** This Agreement may be amended or modified only in a writing signed by the Parties. The Parties agree that they will negotiate amendments to this Agreement to conform to any changes in HIPAA and Part 2.
- 6.13 **Assignment.** Neither Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party.
- 6.14 **Independent Contractor.** None of the provisions of this Agreement are intended to create, nor will they be deemed to create, any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. No agency relationship is deemed created by this Agreement.
- 6.15 **Governing Law.** To the extent this Agreement is not governed exclusively by HIPAA, Part 2, or other Law, it will be governed by and construed in accordance with the laws of the State of Washington.
- 6.16 **No Waiver.** No change, waiver, or discharge of any liability or obligation under this Agreement on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.
- 6.17 **Severability.** In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.

6.18 **Notice.** Any notification required in this Agreement shall be made in writing to the representative of the Party who signed this Agreement or the person currently serving in that representative's position with the other Party.

6.19 **Entire Agreement.** This Agreement constitutes the entire understanding of the Parties with respect to its subject matter and supersedes all prior agreements, oral or written.

ATTACHMENT E: DATA USE, SECURITY AND CONFIDENTIALITY

1 Definitions

The definitions below apply to this Attachment:

- 1.1 **“Authorized User”** means an individual or individuals with an authorized business need to access HCA’s Confidential Information under this Contract.
- 1.2 **“Breach”** means the unauthorized acquisition, access, use, or disclosure of Data shared under this Contract that compromises the security, confidentiality or integrity of the Data.
- 1.3 **“Business Associate”** means a Business Associate as defined in 45 CFR 160.103, who performs or assists in the performance of an activity for or on behalf of HCA, a Covered Entity that involves the use or disclosure of protected health information (PHI). Any reference to Business Associate in this DSA includes Business Associate’s employees, agents, officers, Subcontractors, third party contractors, volunteers, or directors.
- 1.4 **“Business Associate Agreement”** means the HIPAA Compliance section of this Exhibit and includes the Business Associate provisions required by the U.S. Department of Health and Human Services, Office for Civil Rights.
- 1.5 **“Covered Entity”** means HCA, which is a Covered Entity as defined in 45 C.F.R. § 160.103, in its conduct of covered functions by its health care components.
- 1.6 **“Data”** means the information that is disclosed or exchanged as described by this Contract. For purposes of this Attachment, Data means the same as “Confidential Information.”
- 1.7 **“Designated Record Set”** means a group of records maintained by or for a Covered Entity, that is: the medical and billing records about Individuals maintained by or for a covered health care provider; the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or Used in whole or part by or for the Covered Entity to make decisions about Individuals.
- 1.8 **“Disclosure”** means the release, transfer, provision of, access to, or divulging in any other manner of information outside the entity holding the information.
- 1.9 **“Electronic Protected Health Information (ePHI)”** means Protected Health Information that is transmitted by electronic media or maintained as described in the definition of electronic media at 45 C.F.R. § 160.103.
- 1.10 **“Hardened Password”** after July 1, 2019 means a string of characters containing at least three of the following character classes: upper case letters; lower case letters; numerals; and special characters, such as an asterisk, ampersand or exclamation point.
 - 1.10.1 Passwords for external authentication must be a minimum of 10 characters long.
 - 1.10.2 Passwords for internal authentication must be a minimum of 8 characters long.
 - 1.10.3 Passwords used for system service or service accounts must be a minimum of 20 characters long.

- 1.11 **"HIPAA"** means the Health Insurance Portability and Accountability Act of 1996, as amended, together with its implementing regulations, including the Privacy Rule, Breach Notification Rule, and Security Rule. The Privacy Rule is located at 45 C.F.R. Part 160 and Subparts A and E of 45 C.F.R. Part 164. The Breach Notification Rule is located in Subpart D of 45 C.F.R. Part 164. The Security Rule is located in 45 C.F.R. Part 160 and Subparts A and C of 45 C.F.R. Part 164.
- 1.12 **"HIPAA Rules"** means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Parts 160 and Part 164.
- 1.13 **"Medicare Data Use Requirements"** refers to the four documents attached and incorporated into this Exhibit as Schedules 1, 2, 3, and 4 that set out the terms and conditions Contractor must agree to for the access to and use of Medicare Data for the Individuals who are dually eligible in the Medicare and Medicaid programs.
- 1.14 **"Minimum Necessary"** means the least amount of PHI necessary to accomplish the purpose for which the PHI is needed.
- 1.15 **"Portable/Removable Media"** means any Data storage device that can be detached or removed from a computer and transported, including but not limited to: optical media (e.g. CDs, DVDs); USB drives; or flash media (e.g. CompactFlash, SD, MMC).
- 1.16 **"Portable/Removable Devices"** means any small computing device that can be transported, including but not limited to: handhelds/PDAs/Smartphones; Ultramobile PC's, flash memory devices (e.g. USB flash drives, personal media players); and laptops/notebook/tablet computers. If used to store Confidential Information, devices should be Federal Information Processing Standards (FIPS) Level 2 compliant.
- 1.17 **"PRISM"** means the DSHS secure, web-based clinical decision support tool that shows administrative data for each Medicaid Client and is organized to identify care coordination opportunities.
- 1.18 **"Protected Health Information"** or "PHI" has the same meaning as in HIPAA except that it in this Contract the term includes information only relating to individuals.
- 1.19 **"ProviderOne"** means the Medicaid Management Information System, which is the State's Medicaid payment system managed by HCA.
- 1.20 **"Security Incident"** means the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system.
- 1.21 **"Tracking"** means a record keeping system that identifies when the sender begins delivery of Confidential Information to the authorized and intended recipient, and when the sender receives confirmation of delivery from the authorized and intended recipient of Confidential Information.
- 1.22 **"Transmitting"** means the transferring of data electronically, such as via email, SFTP, web-services, AWS Snowball, etc.
- 1.23 **"Transport"** means the movement of Confidential Information from one entity to another, or within an entity, that: places the Confidential Information outside of a Secured Area or system (such as a local area network); and is accomplished other than via a Trusted System.

- 1.24 **“Trusted System(s)”** means the following methods of physical delivery: (1) hand-delivery by a person authorized to have access to the Confidential Information with written acknowledgement of receipt; (2) United States Postal Service (“USPS”) first class mail, or USPS delivery services that include Tracking, such as Certified Mail, Express Mail or Registered Mail; (3) commercial delivery services (e.g. FedEx, UPS, DHL) which offer tracking and receipt confirmation; and (4) the Washington State Campus mail system. For electronic transmission, the Washington State Governmental Network (SGN) is a Trusted System for communications within that Network.
- 1.25 **“U.S.C.”** means the United States Code. All references in this Exhibit to U.S.C. chapters or sections will include any successor, amended, or replacement statute. The U.S.C. may be accessed at <http://uscode.house.gov/>
- 1.26 **“Unique User ID”** means a string of characters that identifies a specific user and which, in conjunction with a password, passphrase, or other mechanism, authenticates a user to an information system.
- 1.27 **“Use”** includes the sharing, employment, application, utilization, examination, or analysis, of Data.

2 Data Classification

- 2.1 The State classifies data into categories based on the sensitivity of the data pursuant to the Security policy and standards promulgated by the Office of the state of Washington Chief Information Officer. (See Section 4 of this Exhibit, Data Security, of Securing IT Assets Standards No. 141.10 in the State Technology Manual at <https://ocio.wa.gov/policies/141-securing-information-technology-assets/14110-securing-information-technology-assets>.)

The Data that is the subject of this Contract is classified as Category 4 – Confidential Information Requiring Special Handling. Category 4 Data is information that is specifically protected from disclosure and for which:

- 2.1.1 Especially strict handling requirements are dictated, such as by statutes, regulations, or agreements;
- 2.1.2 Serious consequences could arise from unauthorized disclosure, such as threats to health and safety, or legal sanctions.

3 PRISM Access- N/A

4 Constraints on Use of Data

- 4.1 This Contract does not constitute a release of the Data for the Contractor's

discretionary use. Contractor must use the Data received or accessed under this Contract only to carry out the purpose of this Contract. Any ad hoc analyses or other use or reporting of the Data is not permitted without SBHASO's and HCA's prior written consent.

- 4.2 Data shared under this Contract includes data protected by 42 C.F.R. Part 2. In accordance with 42 C.F.R. § 2.32, this Data has been disclosed from records protected by federal confidentiality rules (42 C.F.R. Part 2). The federal rules prohibit Receiving Party from making any further disclosure of the Data that identifies a patient as having or having had a substance use disorder either directly, by reference to publicly available information, or through verification of such identification by another person unless further disclosure is expressly permitted by the written consent of the individual whose information is being disclosed or as otherwise permitted by 42 C.F.R. Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose (42 C.F.R. § 2.31). The federal rules restrict any use of the SUD Data to investigate or prosecute with regard to a crime any patient with a substance use disorder, except as provided at 42 C.F.R. § 2.12(c)(5) and § 2.65.
 - 4.2.1 The information received under subsection 7.7 of the Contract is also protected by federal law, including 42 C.F.R. Part 2, Subpart D, § 2.53, which requires HCA and their Subcontractors to:
 - 4.2.1.1 Maintain and destroy the patient identifying information in a manner consistent with the policies and procedures established under 42 C.F.R. § 2.16;
 - 4.2.1.2 Retain records in compliance with applicable federal, state, and local record retention laws; and
 - 4.2.1.3 Comply with the limitations on disclosure and Use in 42 C.F.R. Part 2, Subpart D, § 2.53(d).
- 4.3 Any disclosure of Data contrary to this Contract is unauthorized and is subject to penalties identified in law.
- 4.4 The Contractor must comply with the *Minimum Necessary Standard*, which means that Contractor will use the least amount of PHI necessary to accomplish the Purpose of this Contract.
 - 4.4.1 Contractor must identify:
 - 4.4.2 Those persons or classes of persons in its workforce who need access to PHI to carry out their duties; and
 - 4.4.3 For each such person or class of persons, the category or categories of PHI to which access is needed and any conditions appropriate to such access.

- 4.4.4 Contractor must implement policies and procedures that limit the PHI disclosed to such persons or classes of persons to the amount reasonably necessary to achieve the purpose of the disclosure, in accordance with this Contract.

5 Security of Data

5.1 Data Protection

- 5.1.1 The Contractor must protect and maintain all Confidential Information gained by reason of this Contract, information that is defined as confidential under state or federal law or regulation, or Data that HCA has identified as confidential, against unauthorized use, access, disclosure, modification or loss. This duty requires the Contractor to employ reasonable security measures, which include restricting access to the Confidential Information by:

- 5.1.1.1 Allowing access only to staff that have an authorized business requirement to view the Confidential Information.
- 5.1.1.2 Physically securing any computers, documents, or other media containing the Confidential Information.

5.2 Data Security Standards

- 5.2.1 Contractor must comply with the Data Security Requirements set out in this section and the Washington OCIO Security Standard, 141.10, which will include any successor, amended, or replacement regulation (<https://ocio.wa.gov/policies/141-securing-information-technology-assets/14110-securing-information-technology-assets>.) The Security Standard 141.10 is hereby incorporated by reference into this Contract.
- 5.2.2 Data Transmitting
 - 5.2.2.1 When transmitting Data electronically, including via email, the Data must be encrypted using NIST 800-series approved algorithms (<http://csrc.nist.gov/publications/PubsSPs.html>). This includes transmission over the public internet.
 - 5.2.2.2 When transmitting Data via paper documents, the Contractor must use a Trusted System.
- 5.2.3 Protection of Data. The Contractor agrees to store and protect Data as described.
 - 5.2.3.1 Data at Rest:

5.2.3.1.1

Data will be encrypted with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the data. Access to the Data will be restricted to Authorized Users through the use of access control lists, a Unique User ID, and a Hardened Password, or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Systems that contain or provide access to Confidential Information must be located in an area that is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

5.2.3.2 Data stored on Portable/Removable Media or Devices

5.2.3.2.1

Confidential Information provided by SBHASO or HCA on Removable Media will be encrypted with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the Data.

5.2.3.2.2

HCA's Data must not be stored by the Contractor on Portable Devices or Media unless specifically authorized within the Contract. If so authorized, the Contractor must protect the Data by:

- a. Encrypting with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the data;
- b. Controlling access to the devices with a Unique User ID and Hardened Password or stronger authentication method such as a physical token or biometrics;
- c. Keeping devices in locked storage when not in use;
- d. Using check-in/check-out procedures when devices are shared;

- e. Maintaining an inventory of devices; and
- f. Ensuring that when being transported outside of a Secured Area, all devices containing Data are under the physical control of an Authorized User.

5.2.3.3 Paper Documents. Any paper records containing Confidential Information must be protected by storing the records in a Secured Area that is accessible only to authorized personnel. When not in use, such records must be stored in a locked container, such as a file cabinet, locking drawer, or safe, to which only authorized persons have access.

5.2.4 Data Segregation

- 5.2.4.1 HCA Data received under this Contract must be segregated or otherwise distinguishable from non-HCA Data. This is to ensure that when no longer needed by the Contractor, all of HCA's Data can be identified for return or destruction. It also aids in determining whether HCA's Data has or may have been compromised in the event of a security breach.
- 5.2.4.2 HCA's Data must be kept in one of the following ways:
 - 5.2.4.2.1 On media (e.g. hard disk, optical disc, tape, etc.) which contains only HCA Data;
 - 5.2.4.2.2 In a logical container on electronic media, such as a partition or folder dedicated to HCA's Data;
 - 5.2.4.2.3 In a database that contains only HCA Data;
 - 5.2.4.2.4 Within a database – HCA data must be distinguishable from non- HCA Data by the value of a specific field or fields within database records;
 - 5.2.4.2.5 Physically segregated from non-HCA Data in a drawer, folder, or other container when stored as physical paper documents.
- 5.2.4.3 When it is not feasible or practical to segregate HCA's Data from non-HCA data, both HCA's Data

and the non-HCA data with which it is commingled must be protected as described in this Exhibit.

5.3 Data Disposition

- 5.3.1 Upon request by SBHASO or HCA, at the end of the Contract term, or when no longer needed, Confidential Information/Data must be returned to HCA or disposed of as set out below, except as required to be maintained for compliance or accounting purposes.
- 5.3.2 Media are to be destroyed using a method documented within NIST 800-88 (<http://csrc.nist.gov/publications/PubsSPs.html>).
- 5.3.3 For Data stored on network disks, deleting unneeded Data is sufficient as long as the disks remain in a Secured Area and otherwise meet the requirements listed in Section 4.b.iii, above. Destruction of the Data as outlined in this section of this Exhibit may be deferred until the disks are retired, replaced, or otherwise taken out of the Secured Area.

6 Data Confidentiality and Non-Disclosure

6.1 Data Confidentiality.

- 6.1.1 The Contractor will not use, publish, transfer, sell or otherwise disclose any Confidential Information gained by reason of this Contract for any purpose that is not directly connected with the purpose of this Contract, except:
 - 6.1.1.1 as provided by law; or
 - 6.1.1.2 with the prior written consent of the person or personal representative of the person who is the subject of the Confidential Information.

6.2 Non-Disclosure of Data

- 6.2.1 The Contractor will ensure that all employees or Subcontractors who will have access to the Data described in this Contract (including both employees who will use the Data and IT support staff) are instructed and aware of the use restrictions and protection requirements of this Attachment before gaining access to the Data identified herein. The Contractor will ensure that any new employee is made aware of the use restrictions and protection requirements of this Attachment before they gain access to the Data.

6.2.2 The Contractor will ensure that each employee or Subcontractor who will access the Data signs a non-disclosure of confidential information agreement regarding confidentiality and non-disclosure requirements of Data under this Contract. The Contractor must retain the signed copy of employee non-disclosure agreement in each employee's personnel file for a minimum of six years from the date the employee's access to the Data ends. The Contractor will make this documentation available to SBHASO or HCA upon request.

6.3 Penalties for Unauthorized Disclosure of Data

6.3.1 The Contractor must comply with all applicable federal and state laws and regulations concerning collection, use, and disclosure of Personal Information and PHI. Violation of these laws may result in criminal or civil penalties or fines.

6.3.2 The Contractor accepts full responsibility and liability for any noncompliance with applicable laws or this Contract by itself, its employees, and its Subcontractors.

7 Data Shared with Subcontractors

If Data access is to be provided to a Subcontractor under this Contract, the Contractor must include all of the Data security terms, conditions and requirements set forth in this Attachment in any such Subcontract.

However, no subcontract will terminate the Contractor's legal responsibility to HCA for any work performed under this Contract nor for oversight of any functions and/or responsibilities it delegates to any subcontractor. Contractor must provide an attestation by January 31, each year that all Subcontractor meet, or continue to meet, the terms, conditions, and requirements in this Attachment.

8 Data Breach Notification

8.1 The Breach or potential compromise of Data must be reported to the SBHASO Privacy Officer at IClauson@co.kitsap.wa.us and to the SBHASO Contract Manager at Sjlewis@co.kitsap.wa.us within five (5) business days of discovery. If the Contractor does not have full details, it will report what information it has, and provide full details within fifteen (15) business days of discovery. To the extent possible, these reports must include the following:

8.1.1 The identification of each non-Medicaid Individual whose PHI has been or may have been improperly accessed, acquired, used, or disclosed;

8.1.2 The nature of the unauthorized use or disclosure, including a brief description of what happened, the date of the event(s), and the date of discovery;

- 8.1.3 A description of the types of PHI involved;
- 8.1.4 The investigative and remedial actions the Contractor or its Subcontractor took or will take to prevent and mitigate harmful effects, and protect against recurrence;
- 8.1.5 Any details necessary for a determination of the potential harm to Individuals whose PHI is believed to have been used or disclosed and the steps those Individuals should take to protect themselves; and
- 8.1.6 Any other information SBHASO or HCA reasonably requests.
- 8.2 The Contractor must take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law or HCA including but not limited to 45 C.F.R. Part 164, Subpart D; RCW 42.56.590; RCW 19.255.010; or WAC 284-04-625.
- 8.3 The Contractor must notify SBHASO in writing, as described in 8.a above, within two (2) business days of determining notification must be sent to non-Medicaid Individuals.
- 8.4 At SBHASO's or HCA's request, the Contractor will provide draft Individual notification to HCA at least five (5) business days prior to notification, and allow HCA an opportunity to review and comment on the notifications.
- 8.5 At SBHASO's or HCA's request, the Contractor will coordinate its investigation and notifications with HCA and the Office of the state of Washington Chief Information Officer (OCIO), as applicable.

9 HIPAA Compliance

This section of the Attachment is the Business Associate Agreement (BAA) required by HIPAA. The Contractor is a "Business Associate" of SBHASO as defined in the HIPAA Rules.

- 9.1 HIPAA Point of Contact. The point of contact for the Contractor for all required HIPAA-related reporting and notification communications from this Section and all required Data Breach Notification from Section 8, is:

Salish Behavioral Health Administrative Services Organization
Attention: Ileea Clauson, Privacy Officer
614 Division St., MS-23
Port Orchard, WA 98366
Telephone: (360) 337-4833
Email: IClauson@co.kitsap.wa.us

- 9.2 Compliance. Contractor must perform all Contract duties, activities, and

tasks in compliance with HIPAA, the HIPAA Rules, and all attendant regulations as promulgated by the U.S. Department of Health and Human Services, Office for Civil Rights, as applicable.

- 9.3 Use and Disclosure of PHI. Contractor is limited to the following permitted and required uses or disclosures of PHI:
 - 9.3.1 Duty to Protect PHI. Contractor must protect PHI from, and will use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164, Security Standards for the Protection of Electronic Protected Health Information, with respect to ePHI, to prevent unauthorized Use or disclosure of PHI for as long as the PHI is within Contractor's possession and control, even after the termination or expiration of this Contract.
 - 9.3.2 Minimum Necessary Standard. Contractor will apply the HIPAA Minimum Necessary standard to any Use or disclosure of PHI necessary to achieve the purposes of this Contractor. See 45 C.F.R. § 164.514(d)(2) through (d)(5).
 - 9.3.3 Disclosure as Part of the Provision of Services. Contractor will only Use or disclose PHI as necessary to perform the services specified in this Contract or as required by law, and will not Use or disclose such PHI in any manner that would violate Subpart E of 45 C.F.R. Part 164, Privacy of Individually Identifiable Health Information, if done by Covered Entity, except for the specific Uses and disclosures set forth below.
 - 9.3.4 Use for Proper Management and Administration. Contractor may Use PHI for the proper management and administration of the Contractor or to carry out the legal responsibilities of the Contractor.
 - 9.3.5 Disclosure for Proper Management and Administration. Contractor may disclosure PHI for the proper management and administration of Contractor, subject to HCA approval, or to carry out the legal responsibilities of the Contractor, provided the disclosures are required by law, or Contractor obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Contractor of any instances of which it is aware in which the confidentiality of the information has been Breached.
 - 9.3.6 Impermissible Use or Disclosure of PHI. Contractor must report to the HIPAA Point of Contact, in writing, all Uses or disclosures of PHI not provided for by this Contract within five (5) business days of becoming aware of the unauthorized Use or disclosure of PHI, including Breaches of unsecured PHI as required at 45 C.F.R. §

164.410, Notification by a Business Associate, as well as any Security Incident of which Contractor becomes aware. Upon request by SBHASO or HCA, Contractor will mitigate, to the extent practicable, any harmful effect resulting from the impermissible Use or disclosure.

- 9.3.7 Failure to Cure. If SBHASO learns of a pattern or practice of the Contractor that constitutes a violation of Contractor's obligations under the term of this Attachment and reasonable steps by the Contractor do not end the violation, SBHASO may terminate this Contract, if feasible. In addition, if Contractor learns of a pattern or practice of its Subcontractor(s) that constitutes a violation of Contractor's obligations under the terms of their contract and reasonable steps by the Contractor do not end the violation, Contractor must terminate the Subcontract, if feasible.
- 9.3.8 Termination for Cause. Contractor authorizes immediate termination of this Contract by SBHASO, if SBHASO determines Contractor has violated a material term of this Business Associate Agreement. SBHASO may, at its sole option, offer Contractor an opportunity to cure a violation of this Business Associate Agreement before exercising a termination for cause.
- 9.3.9 Consent to Audit. Contractor must give reasonable access to PHI, its internal practices, records, books, documents, electronic data, and/or all other business information received from, or created, received by Contractor on behalf of SBHASO or HCA, to the Secretary of the United States Department of Health and Human Services (DHHS) and/or to HCA for use in determining compliance with HIPAA privacy requirements.
- 9.3.10 Obligations of Business Associate upon Expiration or Termination. Upon expiration or termination of this Contract for any reason, with respect to PHI received from SBHASO or HCA, or created, maintained, or received by Contractor, or any Subcontractors, on behalf of SBHASO or HCA, Contractor must:
 - 9.3.10.1 Retain only that PHI which is necessary for Contractor to continue its proper management and administration or to carry out its legal responsibilities;
 - 9.3.10.2 Return to SBHASO or HCA or destroy the remaining PHI that the Contractor or any Subcontractors still maintain in any form;
 - 9.3.10.3 Continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164, Security Standards for Protection of Electronic Protected Health Information, with respect to

ePHI to prevent Use or disclosure of the PHI, other than as provided for in this Section, for as long as Contractor or any Subcontractor retains PHI;

9.3.10.4 Not Use or disclose the PHI retained by Contractor or any Subcontractors other than for the purposes for which such PHI was retained and subject to the same conditions set out in Section 9.3, Use and Disclosure of PHI, that applied prior to termination; and

9.3.10.5 Return to SBHASO or HCA or destroy the PHI retained by Contractor, or any Subcontractors, when it is no longer needed by Contractor for its proper management and administration or to carry out its legal responsibilities.

9.3.11 Survival. The obligations of Contractor under this Section will survive the termination or expiration of the Contract.

9.4 Individual Rights.

9.4.1 Accounting of Disclosures.

9.4.1.1 Contractor will document all disclosures, except those disclosures that are exempt under 45 C.F.R. § 164.528, of PHI and information related to such disclosures.

9.4.1.2 Within ten (10) business days of a request from SBHASO or HCA, Contractor will make available to HCA the information in Contractor's possession that is necessary for HCA to respond in a timely manner to a request for an accounting of disclosures of PHI by the Contractor. See 45 C.F.R. §§ 164.504(e)(2)(ii)(G) and 164.528(b)(1).

9.4.1.3 At the request of SBHASO or HCA, or in response to a request made directly to the Contractor by an Individual, Contractor will respond, in a timely manner and in accordance with HIPAA and the HIPAA Rules, to requests by Individuals for an accounting of disclosures of PHI.

9.4.1.4 Contractor record keeping procedures will be sufficient to respond to a request for an accounting under this section for the ten (10) years prior to the date on which the accounting was requested.

9.4.2 Access.

9.4.2.1 Contractor will make available PHI that it holds that is part of a Designated Record Set when requested by

HCA or the Individual as necessary to satisfy HCA's obligations under 45 C.F.R. § 164.524, Access of Individuals to Protected Health Information.

- 9.4.2.2 When the request is made by the Individual to the Contractor or if SBHASO or HCA ask the Contractor to respond to a request, the Contractor must comply with requirements in 45 C.F.R. § 164.524, Access of Individuals to Protected Health Information, on form, time and manner of access. When the request is made by HCA, the Contractor will provide the records to HCA within ten (10) business days.

9.4.3 Amendment.

- 9.4.3.1 If SBHASO or HCA amends, in whole or in part, a record or PHI contained in an Individual's Designated Record Set and SBHASO or HCA has previously provided the PHI or record that is the subject of the amendment to Contractor, then SBHASO will inform Contractor of the amendment pursuant to 45 C.F.R. § 164.526(c)(3), Amendment of Protected Health Information.

- 9.4.3.2 Contractor will make any amendments to PHI in a Designated Record Set as directed by SBHASO or HCA or as necessary to satisfy SBHASO's and HCA's obligations under 45 C.F.R. § 164.526, Amendment of Protected Health Information.

- 9.5 Subcontracts and other Third Party Agreements. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii), 164.504(e)(1)(i), and 164.308(b)(2), Contractor must ensure that any agents, Subcontractors, independent contractors, or other third parties that create, receive, maintain, or transmit PHI on Contractor's behalf, enter into a written contract that contains the same terms, restrictions, requirements, and conditions as the HIPAA compliance provisions in this Contract with respect to such PHI. The same provisions must also be included in any contracts by a Contractor's Subcontractor with its own business associates as required by 45 C.F.R. §§ 164.314(a)(2)(b) and 164.504(e)(5).

- 9.6 Obligations. To the extent the Contractor is to carry out one or more of HCA's obligation(s) under Subpart E of 45 C.F.R. Part 164, Privacy of Individually Identifiable Health Information, Contractor must comply with all requirements that would apply to HCA in the performance of such obligation(s).

- 9.7 Liability. Within ten (10) business days, Contractor must notify the HIPAA Point of Contact of any complaint, enforcement or compliance action initiated by the Office for Civil Rights based on an allegation of violation of the HIPAA Rules and must inform HCA of the outcome of that action.

Contractor bears all responsibility for any penalties, fines or sanctions imposed against the Contractor for violations of the HIPAA Rules and for any imposed against its Subcontractors or agents for which it is found liable.

9.8 Miscellaneous Provisions.

9.8.1 Regulatory References. A reference in this Contract to a section in the HIPAA Rules means the section as in effect or amended.

9.8.2 Interpretation. Any ambiguity in this Exhibit will be interpreted to permit compliance with the HIPAA Rules.

10 Inspection

SBHASO and HCA reserve the right to monitor, audit, or investigate the use of Personal Information and PHI of Individuals collected, used, or acquired by Contractor during the terms of this Contract. All SBHASO and HCA representatives conducting onsite audits of Contractor agree to keep confidential any patient-identifiable information which may be reviewed during the course of any site visit or audit.

11 Indemnification

The Contractor must indemnify and hold SBHASO and HCA and its employees harmless from any damages related to the Contractor's or Subcontractor's unauthorized use or release of Personal Information or PHI of Individuals.

ATTACHMENT F: CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and believe, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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) 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 Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall 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. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Contractor Organization

Signature of Certifying Official

Date

**ATTACHMENT G: CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
AND OTHER RESPONSIBILITY MATTERS** Primary Covered Transactions 45 CFR 76

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principles:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
 - b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connections with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charges by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1.b. of this certification; and
 - d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participants are unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

This Certification is executed by the person(s) signing below who warrant they have authority to execute this Certification.

CONTRACTOR:

Name:

Title:

Date: _____

 An official website of the United States government. [Here's how you know >](#)

Visit our tips page to learn how to best use the Exclusions Database. If you experience technical difficulties, please email the webmaster at webmaster@oig.hhs.gov.

Exclusions Search Results: Entities

No Results were found for

True Star Behavioral Health

 **If no results are found, this individual or entity (if it is an entity search) is not currently excluded. Print this Web page for your documentation**

[Search Again](#)

Search conducted 11/29/2021 6:33:20 PM EST on OIG LEIE Exclusions database.

Source data updated on 11/9/2021 8:00:00 AM EST

[Return to Search](#)



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

3
1/24/22

Department: Information Technology

WORK SESSION ☒ **Meeting Date:** JANUARY 24

REGULAR AGENDA ☒ **Meeting Date:** 2/1/22

Required originals approved and attached? ☒
Will be provided on:

Item summary:

☐ Call for Hearing

☒ Contract/Agreement/MOU

I.T. Contract #
411-22-001

issued:
01/19/2022

☐ Resolution

☐ Proclamation

☐ Budget Item

☐ Draft Ordinance

☐ Final Ordinance

☐ Other

Documents exempt from public disclosure attached: ☐

Executive summary:

Internet Access: We are looking for approval to engage in a 36 month contract with Olypen to provide dedicated Internet access for the courthouse. We will be increasing Internet bandwidth from 100 MBPS to 500 MBPS, and saving \$3,600 in recurring costs over the duration of the contract. The additional bandwidth is required to support additional bandwidth demands for increased video conferencing and migration to various cloud-based software solutions.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

Approved Funds for this request are already in the 2022 Information Technology Budget

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)

Request Board signature of documents

County Official signature & print name:

A handwritten signature in blue ink, appearing to read "Mark Doten".

Mark Doten, IT Director

Name of Employee/Stakeholder attending meeting: Mark Doten

Relevant Departments: _Information Technology

Date submitted: January 19, 2022

* Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting - Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

DIA INTERNET SERVICE AGREEMENT

[Agreement No. 211220-012]

This Agreement for Services ("Agreement") by and between OlyPen, Inc. ("OlyPen"), 735 W Washington Street, Sequim, WA 98382 and Clallam County, 223 E 4th St, Port Angeles, WA 98362 ("Subscriber"), states the terms and conditions under which OlyPen, an Internet Service Company will provide Dedicated Internet Service to Subscriber.

1. DESCRIPTION OF SERVICE. OlyPen will provide to Subscriber Dedicated Internet Service (DIA) at service level specified in **Service Order Agreement 211220-012 ("SOA")**.

2. PAYMENT. The Subscriber agrees to pay an installation fee ("NRC") and monthly recurring charges ("MRC") for the Service, as set forth in the SOA. The Subscriber agrees to pay all applicable federal, state and local fees or taxes. If the Subscriber's use or modification of equipment or software supplied by OlyPen requires a visit to the Subscriber's facilities for repair or correction, OlyPen reserves the right to charge the Subscriber for such site visit.

Installation fees are due at the time of installation. Subscriber shall pay monthly charges in advance. Any amount not paid within thirty (30) days will be subject to late charges of 1.5% of the balance due. OlyPen may charge a reasonable service fee for all returned checks and bankcard or charge card charge-backs. The Subscriber shall be responsible for all expenses (including reasonable attorney's fees) incurred by OlyPen in collecting any unpaid amounts due in accordance with this Agreement.

3. EFFECTIVE DATE & TERM. The term of this Agreement shall be a minimum term of 36 months or as otherwise specified in the SOA, whichever is greater, and shall become effective on the effective date stated in the SOA.

4. INSTALLATION AND ACCESS. Subscriber shall be responsible, at its own expense, for all site preparation activities necessary for installation of the Service, as described in the SOA, including the relocation of the Subscriber's equipment, as necessary to access the Service. OlyPen shall schedule one or more installation visits with the Subscriber, as necessary. The Subscriber's authorized representative must be present during installation. Following installation, the Subscriber shall provide OlyPen with reasonable access at normal business hours to the premises to inspect, repair and maintain OlyPen's equipment. Such access shall include landlord permission, where applicable.

6. SUPPORT AND MAINTENANCE. OlyPen shall provide routine Subscriber support for access to the Service via a local or toll free number. Routine Subscriber support shall be limited to OlyPen's then-current standard hours of operation as published on OlyPen's website at www.olypen.com. OlyPen shall also provide non-routine Subscriber support via a local or toll-free number 24 hours per day, seven days per week, in the event of complete service outage. If an onsite or dispatch is required to resolve a Service issue, for either a non-routine or routine Subscriber service issue, and the Subscriber service issue is not the result of OlyPen equipment or the OlyPen network, the Subscriber may be liable for service charges at OlyPen's then-current rates and terms.

7. SERVICE PERFORMANCE. OlyPen shall use commercially reasonable efforts to assure that the Service is available to the Subscriber 24 hours per day, seven days per week. It is possible however, that there will be interruption of the Service. If an outage condition is known sufficiently far enough in advance, OlyPen shall attempt to provide the Subscriber with electronic mail notification. The Subscriber understands and agrees that the Service may be unavailable from time to time either for scheduled or unscheduled maintenance, technical difficulties, or for other reasons beyond OlyPen's control. The temporary unavailability of the Service shall not constitute a breach of contract or a failure by OlyPen to perform its obligations under the Agreement.

8. TERMINATION. Either party may terminate this Agreement for Cause. "Cause" means the failure of a party to perform a material obligation under this Agreement, which failure is not remedied: (1) for payment defaults by Subscriber, within five (5) days of separate written notice from OlyPen of such default; or (2) for any other material

DIA INTERNET SERVICE AGREEMENT

breach, within thirty (30) days of written notice. Subscriber will remain liable for charges accrued but unpaid as of the termination date.

Early Termination. If, prior to conclusion of the Term, this Agreement is terminated either by OlyPen for Cause or by Subscriber other than Cause, then Subscriber will also be liable for 80% of the MRC times the number of months (or fraction thereof) remaining in the Terms after the Minimum Service Period ("Termination Charge").

9. DISCLAIMER OF WARRANTIES. OLYPEN DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION GIVEN BY OLYPEN, ITS AFFILIATES, AGENTS, OR CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES WILL CREATE ANY WARRANTY. SUBSCRIBER ASSUMES TOTAL RESPONSIBILITY FOR USE OF THE SERVICE.

10. LIMITATIONS OF LIABILITY. NEITHER PARTY, ITS AFFILIATES, AGENTS, OR CONTRACTORS WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, RELIANCE, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR FOR ANY LOST PROFITS OR REVENUES OR LOST DATA OR COSTS OF COVER RELATING TO THE SERVICE OR THIS AGREEMENT, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS ASSERTED. WITH REGARD TO ANY SERVICE RELATED CLAIM BY SUBSCRIBER FOR DAMAGES THAT IS NOT LIMITED BY THE PRECEDING SENTENCE, SUBSCRIBER'S EXCLUSIVE REMEDIES FOR SUCH CLAIM WILL BE LIMITED TO THE APPLICABLE OUT-OF-SERVICE CREDITS, IF ANY. This limitation of liability will not apply to a party's indemnification obligations or Subscriber's payment obligation for charges under this Agreement (e.g. Service charges, Taxes, interest, and termination or cancellation charges).

11. PERSONAL INJURY, DEATH AND PROPERTY DAMAGE. Each party will be responsible for the actual, physical damages it directly causes to the other party in the course of its performance under this Agreement, limited to damages resulting from personal injury or death to a party's employees and loss or damage to a party's personal tangible property arising from the negligent acts or omissions of the liable party; PROVIDED, HOWEVER, THAT NEITHER PARTY, ITS AFFILIATES, AGENTS, OR CONTRACTORS WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, RELIANCE, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR FOR ANY LOST PROFITS OR REVENUES OR LOST DATA OR COSTS OF COVER.

12. CONFIDENTIALITY; PUBLICITY. Neither party will, without the prior written consent of the other party: (a) disclose any of the terms of this Agreement or use the name or marks of the other party or its Affiliates; or (b) disclose or use (except as expressly permitted by or required to achieve the purposes of, this Agreement) the Confidential Information of the other party. A party may disclose Confidential Information if required to do so by a governmental agency, by operation of law, or if necessary in any proceeding to establish rights or obligations under this Agreement.

13. FORCE MAJEUR. The Subscriber agrees that OlyPen shall not be liable for any inconvenience, loss, liability or damage resulting from any failure or interruption of service, directly or indirectly caused by circumstances beyond OlyPens' control, including but not limited to denial of use of poles or other facilities of a utility company, labor disputes, acts of war, natural causes, mechanical or power failures, or any order of law or ordinance in any way restricting the operation of the Service.

14. INDEMNIFICATION. The Subscriber agrees to indemnify and hold harmless OlyPen from any claims, demands, lawsuits, judgments, awards or fines against OlyPen related to Subscriber's use of the Service or the violation of the Acceptable Use Policy or the Privacy Policy incorporated herein by reference, and which can be viewed at www.olypen.com. The Subscriber agrees to pay any attorney's fees incurred by OlyPen in bringing any action related to the Service or a breach of the terms of this Agreement.

15. GOVERNING LAW; DISPUTE RESOLUTION. This Agreement and all matters arising out of or related to this Agreement shall be governed by the laws of the State of Washington, without regard to conflicts of law provisions. The Subscriber agrees that the federal and state courts of Washington alone have jurisdiction arising under this

DIA INTERNET SERVICE AGREEMENT

Agreement and the Subscriber consents to personal jurisdiction of those courts with respect to any other disputes arising under this Agreement.

16. MISCELLANEOUS.

Authorized Party. The Subscriber represents to OlyPen that the Subscriber has the authority to execute, deliver and carry out the terms of this Agreement.

No Rights or Remedies for Third Parties. This Agreement is not intended to give and does not give any rights or remedies to any person other than OlyPen and the Subscriber.

Severability. If for any reason a court or competent jurisdiction finds any provision of the Agreement, or portion thereof, to be unenforceable, that provision shall be enforced to the maximum extent permitted by law.

No Assignment or Transfer. The Subscriber may not assign this Agreement or its rights or obligations under this Agreement without prior written consent. The Service shall be provide to the Subscriber at the office address specified in the SOA as the installation address. The Subscriber may not transfer the Subscriber's or the Subscriber's rights and obligations under the Agreement to any other person or to any other address without OlyPen's prior written consent. If requested to move Service to an address serviceable by OlyPen, the Subscriber agrees to pay any new installation and/or construction costs at the new address.

Waiver. Except as otherwise provide herein, the failure of OlyPen to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce such provision.

Entire Agreement. This Agreement and the SOA referenced herein constitute the entire Agreement with respect to the Service. This Agreement supersedes and nullifies all prior understandings, promises and undertakings, if any, made orally or in writing by or on behalf of the parties with respect to the subject matter of this Agreement.

Subscriber:

_____ Date: _____

Name: _____

Title: _____

Olypen:

_____ Date: _____

Name: _____

Title: _____



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

4
1/24/22

Department: Information Technology

WORK SESSION ☒ **Meeting Date:** JANUARY 24

REGULAR AGENDA ☒ **Meeting Date:** 2-1-22

Required originals approved and attached? ☒
Will be provided on:

Item summary:

☐ Call for Hearing

☐ Resolution

☐ Draft Ordinance

☒ Contract/Agreement/MOU

☐ Proclamation

☐ Final Ordinance

I.T. Contract #

411-22-002

☐ Budget Item

☐ Other

issued:

01/19/2022

Documents exempt from public disclosure attached: ☐

Executive summary:

Website Redesign: We need signature on a contract to engage with CivicPlus to architect a new Clallam County website. The cost is \$68,945, and is an approved part of the 2022 Information Technology Budget. The contract has been reviewed and accepted by county legal services.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

Approved Funds for this request are already in the 2022 Information Technology Budget

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)

Request Board signature of documents

County Official signature & print name:  Mark Doten, IT Director

Name of Employee/Stakeholder attending meeting: Mark Doten

Relevant Departments: _Information Technology

Date submitted: January 19, 2022

* Work Session Meeting - Submit 1 single sided/not stapled copy

** Regular Meeting - Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

I.T. Contract #
411-22-002

issued:
01/19/2022



CivicPlus

302 South 4th St. Suite 500
Manhattan, KS 66502
US

Quote #:

Q-19356-1

Date:

9/13/2021 2:36 PM

Expires On:

12/31/2021

Product:

CivicEngage

Client:

Clallam County WA - CivicEngage

Bill To:

Clallam County WA - CivicEngage

SALESPERSON	Phone	EMAIL	DELIVERY METHOD	PAYMENT METHOD
Colleen Burke	x	colleen.burke@civicplus.com		Net 30

CivicEngage - Statement of Work

QTY	PRODUCT NAME	DESCRIPTION	PRODUCT TYPE
1.00	Annual - CivicEngage Central	Annual - CivicEngage Central	Renewable
1.00	Hosting & Security Annual Fee - CivicEngage Central	Hosting & Security Annual Fee - CivicEngage Central	Renewable
1.00	SSL Management – CP Provided Only	SSL Management – CP Provided Only 1 per domain (Annually Renews)	Renewable
1.00	DNS and Domain Hosting Setup (http://URL)	DNS and Domain Hosting Setup (https://www.clallam.net/)	One-time
1.00	DNS and Domain Hosting Annual Fee (http://URL)	DNS and Domain Hosting Annual Fee (https://www.clallam.net/)	Renewable
1.00	Premium Implementation - CivicEngage	Premium Implementation	One-time
1.00	4yr Redesign Premium Annual - CivicEngage Central	4yr Redesign Premium Annual - CivicEngage Central	Renewable
900.00	Content Development - 1 Page - CivicEngage	Content Development - 1 Page - CivicEngage	One-time
6.00	System Training (4h, virtual) - CivicEngage	CivicEngage System Training - Virtual, Half Day Block	One-time
1.00	Agendas & Minutes Migration - PDF - 100 Meetings - CivicEngage	Content Migration : Agendas & Minutes - Per 100 Meetings (Approx. 1 year)	One-time
4.00	Virtual Content Consulting - CivicEngage	Virtual Content Consulting 1/2 day block - CivicEngage	One-time
Total Investment - Year 1		USD 68,945.00	
Annual Recurring Services - Year 2		USD 8,782.20	

Total Days of Quote:365

1. This Statement of Work ("SOW") shall be subject to the terms and conditions of the CivicPlus Master Services Agreement located at <https://www.civicplus.com/master-services-agreement> ("MSA"), to which this SOW is hereby attached as the CivicEngage Statement of Work. By signing this SOW, Client expressly agrees to the terms and conditions of the MSA throughout the Term of this SOW.
2. This SOW shall remain in effect for an initial term equal to 365 days from the date of signing ("Initial Term"). In the event that neither party gives 60 days' notice to terminate prior to the end of the Initial Term, or any subsequent Renewal Term, this SOW will automatically renew for an additional 1-year renewal term ("Renewal Term"). The Initial Term and all Renewal Terms are collectively referred to as the "Term".
3. The Total Investment - Year 1 will be invoiced as follows:
 - a. Upon signing this SOW, thirty percent (30%) of the Total Investment Year 1 Fees;
 - b. The earlier of 6 months from signing or upon completion of CivicEngage Implementation (completion of training), the remaining seventy percent (70%) of the Total Investment Year 1.
4. Annual Recurring Services shall be invoiced on the start date of each Renewal Term. Annual Recurring Services, including but not limited to hosting, support and maintenance services, shall be subject to a 5% annual increase beginning in year 2 of service. Client will pay all invoices within 30 days of the date of such invoice.
5. Client agrees that CivicPlus shall not migrate, convert, or port content or information that could reasonably be construed as time sensitive, such as calendar or blog content, during the Project Development.
6. If a Recurring Redesign line item is included with the Client's quote in this SOW, starting after 48 months of continuous service under this SOW, Client shall be entitled to receive a redesign at no additional cost. Client may initiate such redesign any time after 48 months of continuous service. Upon the initiation of an eligible redesign project, Client may begin accumulating eligibility towards a subsequent redesign after another 48 months of continuous service. Redesigns that include additional features not available on the original website may be subject to additional charges. Additional features include, but are not limited to, additional modules and integration of third-party software. Recurring Redesigns are eligible for the website, subsite, and department headers included in this SOW only. Any subsequently purchased website, subsite, and department header shall not be included in a redesign hereunder.
7. Client allows CivicPlus to display a "Government Websites by CivicPlus" insignia, and web link at the bottom of their web pages. Client understands that the pricing and any related discount structure provided under this SOW assumes such perpetual permission.
Signature Page to Follow.

Acceptance

By signing below, the parties are agreeing to be bound by the covenants and obligations specified in this SOW and the MSA terms and conditions found at: <https://www.civicplus.com/master-services-agreement>.

IN WITNESS WHEREOF, the parties have caused this SOW to be executed by their duly authorized representatives as of the dates below.

Client

CivicPlus

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:

Contact Information

*all documents must be returned: Master Service Agreement, Statement of Work, and Contact Information Sheet.

Organization	URL	
Street Address		
Address 2		
City	State	Postal Code
CivicPlus provides telephone support for all trained clients from 7am –7pm Central Time, Monday-Friday (excluding holidays). Emergency Support is provided on a 24/7/365 basis for representatives named by the Client. Client is responsible for ensuring CivicPlus has current updates.		
Emergency Contact & Mobile Phone		
Emergency Contact & Mobile Phone		
Emergency Contact & Mobile Phone		
Billing Contact	E-Mail	
Phone	Ext.	Fax
Billing Address		
Address 2		
City	State	Postal Code
Tax ID #	Sales Tax Exempt #	
Billing Terms	Account Rep	
Info Required on Invoice (PO or Job #)		
Are you utilizing any external funding for your project (ex. FEMA, CARES):		
Y [] or N []		
Please list all external sources:		
Contract Contact	Email	
Phone	Ext.	Fax
Project Contact	Email	
Phone	Ext.	Fax



Master Service Agreement and Statement of Work Addendum

THIS Master Services Agreement and Statement of Work Addendum ("Addendum") hereby sets forth the (i) additional terms and conditions applicable to the Master Services Agreement, found at: [www.civicplus.com/master-services-agreement], and/or Statement of Work ("Agreements") and/or (ii) amendments to specific provisions of the terms and conditions which exist in the Agreements (collectively, the "Special Terms"), as described below, as agreed upon by CivicPlus and CLIENT. The Special Terms shall be deemed to amend, modify, supplement, replace and/or supersede (as applicable) any inconsistent provisions of the Agreements, to the extent of the inconsistency.

ALL TERMS AND CONDITIONS OF THE AGREEMENTS NOT EXPRESSLEY MODIFIED HEREIN SHALL REMAIN IN FULL FORCE AND EFFECT.

Capitalized terms used and not defined herein shall have the meanings assigned to them in the Agreements (to which this Addendum is attached and incorporated).

1. ADDITIONAL TERMS

2. AMENDMENTS

The terms and conditions of the Agreement are hereby amended as follows:

Document and Section	Amended Language
MSA § 29	The liability of either Party arising out of or related to this Agreement, or any associated SOW, will not exceed the Annual Recurring Services amounts paid by Client in the year prior to such claim of liability.
MSA § 30	In no event will either Party be liable to the other Party for any consequential, indirect, special, incidental, or punitive damages arising out of or related to this Agreement.
MSA § 31	The liabilities limited by Section 29 and 30 apply: (a) to liability for negligence; (b) regardless of the form of action, whether in contract, tort, strict product liability, or otherwise; (c) even if a Party is advised in advance of the possibility of the damages in question and even if such damages were foreseeable; and (d) even if a Party's remedies fail of their essential purposes. If applicable law limits the application of the provisions of this Limitation of Liability section, CivicPlus' liability will be limited to the maximum extent permissible.
MSA § 45	This section intentionally omitted.

Acceptance

IN WITNESS WHEREOF, the Parties have caused this Addendum to be executed by their duly authorized representatives as of the dates below.

Client

CivicPlus

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

5
1/24/22

Department: Sheriff's Office

WORK SESSION ☒ **Meeting Date:** 01/24/22

REGULAR AGENDA ☒ **Meeting Date:** 02/01/22

Required originals approved and attached? ☒
Will be provided on:

Item summary:

- | | | |
|---|---|---|
| ☐ Call for Hearing | ☒ Contract/Agreement/MOU - Contract # 817-22-02 | |
| ☐ Resolution | ☐ Proclamation | ☒ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance | ☐ Other |

Documents exempt from public disclosure attached: ☐

Executive summary:

The County received a Fiscal Year 2021 Emergency Management Performance Grant in the amount of \$14,225. Grant #E22-227. The purpose of this grant is to provide U.S. Department of Homeland Security/Federal Emergency Management Agency award funds to assist Clallam County Emergency Management in preparing for all hazards. Clallam intends to utilize these funds to sustain, enhance, or develop exercise plans and training, and to promote community involvement to youth and community stakeholders. The Work Plan is contained in Attachment D of the agreement.

The agreement is for the period of 06/01/21 through 12/31/22.

Budgetary impact: If a budget action is required, has it been submitted and a copy attached? ☒

A budget change form is submitted to account for the revenue and expenditures in the 00100.817 Sheriff's Emergency Services budget.

Recommended action:

Recommend approval by the Board and signature by the Chair.

County Official signature & print name: W.L. Benedict W.L. Benedict, Sheriff

Name of Employee/Stakeholder attending meeting: Ron Cameron, Undersheriff

Relevant Departments: Sheriff's Office

Date submitted: 01/19/22

* Work Session Meeting - Submit 1 single sided/not stapled copy

** Regular Meeting - Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

Washington State Military Department

EMERGENCY MANAGEMENT PERFORMANCE GRANT AMERICAN RESCUE PLAN ACT AGREEMENT FACE SHEET

1. Subrecipient Name and Address: Clallam, County of Sheriff's Office Emergency Management (EM) 223 E 4th Street, Suite 12 Port Angeles, WA 98362-3000		2. Grant Agreement Amount: \$14,255 <i>County Contract #817-22-02</i>		3. Grant Agreement Number: E22-227	
4. Subrecipient Contact, phone/email: Elizabeth Waknitz, 360-417-2393 ewaknitz@co.clallam.wa.us		5. Grant Agreement Start Date: June 1, 2021		6. Grant Agreement End Date: December 31, 2022	
7. Department Contact, phone/email: Deborah Henderson, 253-512-7470 deborah.henderson@mil.wa.gov		8. Data Universal Numbering System (DUNS): 075739235		9. UBI # (state revenue): 054-004-559	
10. Funding Authority: Washington State Military Department (the "DEPARTMENT") and the U.S. Department of Homeland Security (DHS)					
11. Federal Award ID # (FAIN): EMS-2021-EP-00008-S01		12. Federal Award Date: 08/30/2021		13. Assistance Listings # (formerly CFDA) & Title: 97.042 (21EMPG-ARPA)	
14. Total Federal Amount: \$2,136,034		15. Program Index # & OBJ/SUB-OBJ: 713PA NZ			16. EIN: 91-6001298
17. Service Districts: (BY LEGISLATIVE DISTRICT): 24 (BY CONGRESSIONAL DISTRICT): 6		18. Service Area by County(ies): Clallam		19. Women/Minority-Owned, State Certified: ☒ N/A ☐ NO ☐ YES, OMWBE # _____	
20. Agreement Classification: ☐ Personal Services ☐ Client Services ☒ Public/Local Gov't ☐ Research/Development ☐ A/E ☐ Other			21. Contract Type (check all that apply): ☐ Contract ☒ Grant ☒ Agreement ☐ Intergovernmental (RCW 39.34) ☐ Interagency		
22. Subrecipient Selection Process: ☒ "To all who apply & qualify" ☐ Competitive Bidding ☐ Sole Source ☐ A/E RCW ☐ N/A ☐ Filed w/OFM? ☐ Advertised? ☐ YES ☐ NO			23. Subrecipient Type (check all that apply): ☐ Private Organization/Individual ☐ For-Profit ☒ Public Organization/Jurisdiction ☐ Non-Profit ☐ CONTRACTOR ☒ SUBRECIPIENT ☐ OTHER		
24. PURPOSE & DESCRIPTION: The purpose of the Fiscal Year (FY) 2021 Emergency Management Performance Grant American Rescue Plan Act (21EMPG-ARPA) 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. The Department is the Recipient and Pass-through Entity of the 21EMPG-ARPA DHS Award Letter for Grant No. EMS-2021-EP-00008-S01, 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.					
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); 21EMPG-ARPA Award Letter EMS-2021-EP-00008-S01 (Attachment C); Work Plan (Attachment D); Timeline (Attachment E); Budget (Attachment F); 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: 1. Applicable Federal and State Statutes and Regulations 2. DHS/FEMA Award and program documents 3. Work Plan, Timeline, and Budget 4. Special Terms and Conditions 5. General Terms and Conditions, and, 6. Other provisions of the Agreement incorporated by reference					
WHEREAS, the parties hereto have executed this Agreement on the day and year last specified below. FOR THE DEPARTMENT: Signature _____ Date _____ Regan Anne Hesse, Chief Financial Officer Washington State Military Department FOR THE SUBRECIPIENT: Signature _____ Date _____ Mark Ozias, Chair Clallam County Board of County Commissioners					
BOILERPLATE APPROVED AS TO FORM: Dawn C. Cortez [August 10, 2021] Assistant Attorney General			APPROVED AS TO FORM (if applicable): <i>Bert D. Boughton</i> Subrecipient's Legal Review _____ Date _____		

SPECIAL TERMS AND CONDITIONS**ARTICLE I. KEY PERSONNEL**

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

SUBRECIPIENT		DEPARTMENT	
Name	Elizabeth Waknitz	Name	Deborah Henderson
Title	Grant Coordinator	Title	Program Coordinator
Email	ewaknitz@co.clallam.wa.us	Email	deborah.henderson@mil.wa.gov
Phone	360-417-2393	Phone	253-512-7470
Name	Ron Cameron	Name	Tirzah Kincheloe
Title	Undersheriff	Title	Program Manager
Email	rcameron@co.clallam.wa.us	Email	tirzah.kincheloe@mil.wa.gov
Phone	360-417-2570	Phone	253-512-7456
Name	Alice Hoffman	Name	Courtney Bemus
Title	Chief Civil Deputy	Title	Program Assistant
Email	ahoffman@co.clallam.wa.us	Email	courtney.bemus@mil.wa.gov
Phone	360-417-2257	Phone	253-316-6438
Name	Anne Chastain	Name	
Title	EM Program Coordinator	Title	
Email	achastain@co.clallam.wa.us	Email	
Phone	360-417-2483	Phone	

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 21EMPG-ARPA 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 (FY) 2021 Emergency Management Performance Grant (EMPG)* document, the *FEMA Preparedness Grants Manual* document (the Manual), the *DHS Award Letter for Grant No. EMS-2021-EP-00008-S01*, 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 21EMPG-ARPA 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 21EMPG-ARPA 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 21EMPG-ARPA 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 (FY) 2021 Emergency Management Performance Grant (EMPG)* document, the Manual, the *DHS Award Letter for Grant No. EMS-2021-EP-00008-S01* 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 21EMPG-ARPA 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 minimus 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 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 reimbursements, 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 forty-five (45) days after the Grant Agreement End Date, 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) 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 describing all completed activities under this Agreement.
- c. In conjunction with the final report, the Subrecipient shall submit a separate report detailing how the EMPG Training requirements were met for all personnel funded by federal or matching funds under this Agreement.
- d. 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.

- e. The Subrecipient shall participate in the State's annual 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.

4. 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)
 - D. Assistance Listings Number (formerly CFDA Number)
 - 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 their 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 categories for the EMPG 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 and 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 EMPG, the Subrecipient must contact the Department Key Personnel for assistance in seeking FEMA approval prior to acquisition.
- d. Unless expressly provided otherwise, all equipment must meet all mandatory regulatory and/or DHS/FEMA adopted standards to be eligible for purchase using federal award funds.
- e. If funding is allocated to emergency communications, the Subrecipient must ensure that all projects comply with SAFECOM Guidance on Emergency Communications Grants ensuring the investments are compatible, interoperable, resilient, and support national goals and objectives for improving emergency communications.

- f. 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). 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 applicable NOFO.

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

- i. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, (or any subsidiary or affiliate of such entities);
 - ii. 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);
 - iii. Telecommunications or video surveillance services provided by such entities or using such equipment; or
 - iv. 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.
- g. 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.

5. 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.

6. PROCUREMENT

- a. 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).
- b. For all sole source contracts expected to exceed \$250,000, the Subrecipient must submit to the Department for pre-procurement review and approval the procurement documents, such as requests 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 reviewing and approving sole source justifications of any non-federal entity to which the Subrecipient makes a subaward.

7. SUBRECIPIENT MONITORING

- a. The Department will monitor the activities of the Subrecipient from award to closeout. The goal of the Department's monitoring activities will be to ensure that agencies 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. 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.
- 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.

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

- a. The Subrecipient must comply with the Title VI of the Civil Rights Act of 1964 (Title VI) prohibition against discrimination on the basis of national origin, which requires that Subrecipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. 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>.

9. 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 FY 2021 federal preparedness funding, to include EMPG, the Subrecipient will ensure all NIMS objectives have been initiated and/or are in progress toward completion. NIMS Implementation Objectives are located at https://www.fema.gov/sites/default/files/2020-07/fema_nims_implementation-objectives-20180530.pdf.

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 21EMPG-ARPA 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 of the Subrecipient's application for funding, as approved by the Department and incorporated into this Agreement.

- b. Funding may not be used to replace or supplant existing local or tribal government funding of emergency management programs.
- c. The Subrecipient shall provide a fifty percent cash match of non-federal origin. 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 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. In the final report, the Subrecipient shall identify how the match was met and documented.
- d. Subrecipients shall participate in the State's annual Integrated Preparedness Planning Workshop (IPPW). Non-participation may result in withholding of funding under future grant years.
- e. If funding is allocated to non-DHS FEMA training, the Subrecipient must request prior approval from the Department Key Personnel before attending the training. The Department will coordinate approval with the State Training Point of Contact. . If funding is allocated to non-DHS FEMA training, the Subrecipient must request prior approval from the Department Key Personnel prior to attending 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, the training must fall within the FEMA mission scope and be included in 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.
- f. 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 requirements outlined in the NIMS Training Program located at https://www.fema.gov/pdf/emergency/nims/nims_training_program.pdf (to include ICS-100, ICS-200, IS-700, and IS-800 for most personnel) and
 - ii. Either (1) the FEMA Professional Development Series IS-120, IS-230, IS-235, IS-240, IS-241, IS-242, and IS-244, or (2) the National Emergency Management Basic Academy.

The Subrecipient will report training course completion by individual personnel along with the final report.

C. DHS TERMS AND CONDITIONS

As a Subrecipient of 21EMPG-ARPA funding, the Subrecipient shall comply with all applicable DHS terms and conditions of the 21EMPG-ARPA Award Letter and its incorporated documents for DHS Grant No. EMS-2021-EP-00008-S01, 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 section 1352, title 31, U.S. Code.

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 200.317 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 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)*.
- 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 panel 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 panel 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 panel shall, by majority vote, resolve the dispute. Each party shall bear the cost for its panel member and its attorney fees and costs and share equally the cost of the third panel 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

The Subrecipient shall comply with all applicable federal and state non-discrimination laws, regulations, and policies. No person shall, on the grounds of age, race, creed, color, sex, sexual orientation, religion, national origin, marital status, honorably discharged veteran or military status, or disability (physical, mental, or sensory) be denied the benefits of, or otherwise be subjected to discrimination under any project, program, or activity, funded, in whole or in part, under this Agreement.

A.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 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**

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 parties intend that an independent contractor relationship will be created by this Agreement. 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 by reason of this Agreement, nor will the Subrecipient make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the Department or of the state of Washington by reason of this Agreement, including, but not limited to, Workmen's 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.

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 and not by reason of this Agreement.

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 Subrecipient. 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 UTILIZATION OF MINORITY AND WOMEN BUSINESS ENTERPRISES (MWBE)

The Subrecipient is encouraged to utilize business firms that are certified as minority-owned and/or women-owned in carrying out the purposes of this Agreement. The Subrecipient may set utilization standards, based upon local conditions or may use the state of Washington MWBE goals, as identified in WAC 326-30-041.

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.

**21EMPG-ARPA Award Letter
EMS-2021-EP-00008-S01****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-2021-EP-00008

Dear Bret Daugherty:

Congratulations, on behalf of the Department of Homeland Security, your application for financial assistance submitted under the Fiscal Year (FY) 2021 Emergency Management Performance Grants has been approved in the amount of \$2,136,034.00. As a condition of this award, you are required to contribute a cost match in the amount of \$2,136,034.00 of non-Federal funds, or 50 percent of the total approved project costs of \$4,272,068.00.

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 2021 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, DUNS number, EIN and banking information. Please ensure that the DUNS 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-2021-EP-00008-S01

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Article I - 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 II - Universal Identifier and System of Award Management

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 III - Environmental Planning and Historic Preservation (EHP) Review

DHS/FEMA funded activities that may require an EHP review are subject to the FEMA Environmental Planning and Historic Preservation (EHP) review process. This review does not address all federal, state, and local requirements. Acceptance of federal funding requires 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. To access the FEMA EHP screening form and instructions, go to the DHS/FEMA website at: <https://www.fema.gov/media-library/assets/documents/90195>. In order to initiate EHP review of your project(s), you must complete all relevant sections of this form and submit it to the Grant Programs Directorate (GPD) along with all other pertinent project information. 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 order, regulations, and policies.

If ground disturbing activities occur during construction, applicant will monitor ground disturbance, and if any potential archeological resources are discovered, applicant will immediately cease work in that area and notify the pass-through entity, if applicable, and DHS/FEMA.

Article IV - 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. FEMA is also 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. 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 V - 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. No. 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 VI - 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 VII - 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 VIII - 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 IX - 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 X - 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 XI - 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), Pub. L. No. 107-56, which amends 18 U.S.C. sections 175-175c.

Article XII - Age Discrimination Act of 1975

Recipients must comply with the requirements of the *Age Discrimination Act of 1975*, Pub. L. No. 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 XIII - 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 XIV - 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 XV - Trafficking Victims Protection Act of 2000 (TVPA)

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 XVI - 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 XVII - 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 XVIII - 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 XIX - DHS Specific 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.

1. Recipients must cooperate with any compliance reviews or compliance investigations conducted by DHS.
2. Recipients must give DHS access to, and the right 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, personnel, and other individuals and information as may be necessary, as required by DHS regulations and other applicable laws or program guidance.
3. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.
4. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.
5. Recipients of federal financial assistance from DHS must complete the *DHS Civil Rights Evaluation Tool* within thirty (30) days of receipt of the Notice of Award or, for State Administrative Agencies, thirty (30) days from receipt of the DHS Civil Rights Evaluation Tool from DHS or its awarding component agency. After the initial submission for the first award under which this term applies, recipients are required to provide this information 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. 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>.

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 prior to expiration of the 30-day deadline.

Article XX - 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 at <http://www.dhs.gov/xlibrary/assets/>

privacy/privacy_pia_guidance_june2010.pdf and Privacy Template at https://www.dhs.gov/sites/default/files/publications/privacy_pia_template_2017.pdf as useful resources respectively.

Article XXI - 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 XXII - 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 3000. 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 XXIII - Activities Conducted Abroad

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

Article XXIV - 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 XXV - 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 XXVI - 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 XXVII - Hotel and Motel Fire Safety Act of 1990

In accordance with Section 6 of the *Hotel and Motel Fire Safety Act of 1990*, 15 U.S.C. section 2225a, 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 the *Federal Fire Prevention and Control Act of 1974*, (codified as amended at 15 U.S.C. section 2225.)

Article XXVIII - 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.

Article XXIX - 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. section 41102) 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 XXX - Reporting of Matters Related to Recipient Integrity and Performance

If the total value of any currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of 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 XXXI - 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 XXXII - 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 XXXIII - 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 XXXIV - 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 XXXV - 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 C.F.R. Part 17 and 44 C.F.R. Part 19.

Article XXXVI - 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 XXXVII - Reporting Subawards and Executive Compensation

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 XXXVIII - 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 XXXIX - 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 XL - Assurances, Administrative Requirements, Cost Principles, Representations and Certifications

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 applicable to their program as instructed by the awarding agency. Please contact the DHS FAO if you have any questions.

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.

By accepting this agreement, the recipient and its executives, as defined in 2 C.F.R. section 170.315, certify that the recipient's 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 XLI - Disposition of Equipment Acquired Under the Federal Award

When original or replacement equipment acquired under this award by the recipient or its subrecipients 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.

Article XLII - 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.

BUDGET COST CATEGORIES

Personnel	\$438,972.00
Fringe Benefits	\$170,301.00
Travel	\$0.00
Equipment	\$0.00
Supplies	\$16,875.00
Contractual	\$3,596,694.00
Construction	\$0.00
Indirect Charges	\$49,226.00
Other	\$0.00

Obligating Document for Award/Amendment

1a. AGREEMENT NO. EMS-2021-EP-00008-S01	2. AMENDMENT NO. ***	3. RECIPIENT NO. 916001095G	4. TYPE OF ACTION AWARD	5. CONTROL NO. FY2021R10EMPGARPA
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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
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9. NAME OF RECIPIENT PROJECT OFFICER Tirzah Kincheloe	PHONE NO. 2535127456	10. NAME OF FEMA PROJECT COORDINATOR Central Scheduling and Information Desk Phone: 800-368-6498 Email: Askcsid@dhs.gov
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11. EFFECTIVE DATE OF THIS ACTION 10/01/2020	12. METHOD OF PAYMENT PARS	13. ASSISTANCE ARRANGEMENT Cost Reimbursement	14. PERFORMANCE PERIOD From: 10/01/2020 To: 09/30/2023 Budget Period 10/01/2020 09/30/2023
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1 5. DESCRIPTION OF ACTION

a. (Indicate funding data for awards or financial changes)

PROGRAM NAME ACRONYM	CFDA NO.	ACCOUNTING DATA (ACCS CODE) XXXX-XXX-XXXXXX-XXXXX-XXXX-XXXX-X	PRIOR TOTAL AWARD	AMOUNT AWARDED THIS ACTION + OR (-)	CURRENT TOTAL AWARD	CUMULATIVE NON-FEDERAL COMMITMENT
Emergency Management Performance Grants	97.042	2021-FD-GA01-R107- -4120-D	\$0.00	\$2,136,034.00	\$2,136,034.00	See Totals
			\$0.00	\$2,136,034.00	\$2,136,034.00	\$2,136,034.00

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)
Tirzah Kincheloe, MrsDATE
Wed Sep 01 18:27:36 GMT
2021

18. FEMA SIGNATORY OFFICIAL (Name and Title)

THERESA MUSCAT BARA , Program Manager

DATE
Mon Aug 30 15:41:01 GMT
2021

WORK PLAN

FY 2021 Emergency Management Performance Grant- American Rescue Plan Act

Emergency Management Organization: Clallam County

The purpose of EMPG-ARPA is to assist with the enhancement, sustainment and improvement of state, local, and tribal emergency management programs. Activities conducted using EMPG-ARPA funding should relate directly to the five elements of emergency management: prevention, protection, response, recovery, and mitigation. Washington State does not require a specific number of activities to receive EMPG-ARPA funding. However, there are required capabilities that must be sustained in order to remain eligible for EMPG-ARPA 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		3.2 Coordination
Primary Core Capability		Operational Coordination
Secondary Core Capability		Public and Private Services and Resources
Build or Sustain		Building
WORK PLANNED	IDENTIFIED GAP/NEED	ANTICIPATED PROJECT IMPACT
1 Plan and coordinate multi-jurisdictional exercises for ARES, EOC staff, and ECC teams.	The county began this project last year and made great strides in interaction between groups, but still needs to reinforce these systems and make interoperability more automatic among the groups.	By streamlining systems and procedures to communicate during drills, there will be less confusion and hesitancy when working with different groups. This will improve information gathering and sharing, increase safety of responders in the field, and provide more consistent and helpful information to be disseminated to other responders and the public.
2 Develop a current strategic plan for the Clallam County Emergency Management Department that will involve the resources and capabilities of the entire region.	Plans to update the strategic plan were delayed due to staffing shortages in combination with the pandemic and will be prioritized as soon as possible.	The updating process will strengthen and engage the whole community, increasing collaboration and interaction. Having a current plan will expedite responses and reduce redundancies and confusion following emergencies.

Priority Area #2		4.10 Exercises, Evaluations, and Corrective Actions
Primary Core Capability		Long-term Vulnerability Reduction
Secondary Core Capability		Planning
Build or Sustain		Building
WORK PLANNED	IDENTIFIED GAP/NEED	ANTICIPATED PROJECT IMPACT
1 Promote community involvement with all stages of planning and participation in upcoming CR22 exercises.	Youth and community stakeholders, such as business owners, need to prepare and adopt a readiness attitude that would allow them to respond and recover from hazards.	Planned, actionable training activities will engage participants and emphasize what preparation looks like and can accomplish.

2	Involve more community members, professional responders, and volunteer teams in the CR22 exercises. Coordinate these exercises with our state and federal partners.	Region specific catastrophe planning will impress upon many the need for planning and response practice and will help identify local resources and create a plan for how to utilize them.	Lessons observed and learned by professional, volunteer, and community members during exercises will build more confident and expedient responses using more concise communications.
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TIMELINE**FY 2021 Emergency Management Performance Grant- American Rescue Plan Act**

DATE	TASK
June 1, 2021	Grant Agreement Start Date
July 31, 2022	Submit reimbursement request
December 31, 2022	Grant Agreement End Date
February 15, 2023	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 reimbursements, all allowable costs should be submitted on the next scheduled reimbursement due date contained in the Timeline.

BUDGET

FY 2021 Emergency Management Performance Grant - American Rescue Plan Act

21EMPG-ARPA AWARD \$ 14,255.00

SOLUTION AREA	BUDGET CATEGORY	EMPG AMOUNT	MATCH AMOUNT
PLANNING	Personnel & Fringe Benefits	\$ -	\$ 14,255
	Travel/Per Diem	\$ -	\$ -
	Supplies	\$ -	\$ -
	Consultants/Contracts	\$ -	\$ -
	Other	\$ -	\$ -
	Subtotal	\$ -	\$ 14,255
ORGANIZATION	Personnel & Fringe Benefits	\$ -	\$ -
	Travel/Per Diem	\$ -	\$ -
	Supplies	\$ 4,000	\$ -
	Consultants/Contracts	\$ -	\$ -
	Other	\$ -	\$ -
	Subtotal	\$ 4,000	\$ -
EXERCISE	Personnel & Fringe Benefits	\$ -	\$ -
	Travel/Per Diem	\$ -	\$ -
	Supplies	\$ 5,000	\$ -
	Consultants/Contracts	\$ -	\$ -
	Other	\$ -	\$ -
	Subtotal	\$ 5,000	\$ -
TRAINING	Personnel & Fringe Benefits	\$ -	\$ -
	Travel/Per Diem	\$ -	\$ -
	Supplies	\$ 4,560	\$ -
	Consultants/Contracts	\$ -	\$ -
	Other	\$ -	\$ -
	Subtotal	\$ 4,560	\$ -
EQUIP	Equipment	\$ -	\$ -
	Subtotal	\$ -	\$ -
M&A	Personnel & Fringe Benefits	\$ 521	\$ -
	Travel/Per Diem	\$ -	\$ -
	Supplies	\$ -	\$ -
	Consultants/Contracts	\$ -	\$ -
	Other	\$ -	\$ -
	Subtotal	\$ 521	\$ -
	Indirect	\$ 174	\$ -
Indirect Cost Rate on file 33.33% for Time Period of: 1/1/21 - 12/31/21			
TOTAL Grant Agreement AMOUNT:		\$ 14,255	\$ 14,255

The Subrecipient will provide a match of **\$14,255** of non-federal origin, 50% of the total project cost (local budget plus EMPG-ARPA award).

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

Funding Source: U.S. Department of Homeland Security - PI# 713PA – EMPG-ARPA

CLALLAM COUNTY BUDGET CHANGE FORM



Date Submitted: 01/19/2022

Budget Hearing/Meeting Date: 02/22/22

- ☒ **Supplemental Appropriation** – increased expenditures due to unanticipated federal, state, or local funds
- ☐ **Debatable Emergency** – public emergency other than a non-debatable emergency which could not reasonably have been foreseen at the time of making the budget, requiring the expenditure of money not provided for in the budget.
- ☐ **Non-debatable Emergency** – for the relief of a stricken community requiring immediate address; to meet mandatory expenditures required by law
- ☐ **Budget Revision** – transfers or revisions within departments
- ☐ **Budget Reduction** – a reduction in revenues and/or expenditures

Budget Number xxxxx.xxx.	00100.817	Budget Name	Sheriff – Emergency Services
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REVENUE/SOURCE

BUDGET NUMBER xxxxx.xxx.	DEPT NAME	BARS NUMBER xxxxx.xx.xxxx	ACCOUNT DESCRIPTION	AMOUNT
00100.817	Sheriff – Emergency Services	33397.04._____	Homeland Security ARPA Emergency Mgmt	14,255
				14,255

EXPENDITURES

BUDGET NUMBER xxxxx.xxx.	DEPT NAME	BARS NUMBER xxxxx.xx.xxxx	ACCOUNT DESCRIPTION	AMOUNT
00100.817	Sheriff – Emergency Services	52510.31.0020	Operating Supplies	13,560
		52510.41.5130	Sheriff	522
		50800.00.0000	Ending Fund Balance	173
				14,255

Revenue/Source and Expenditure totals must agree.

REASON FOR BUDGET ACTION:

Receipt and expenditure of Washington State Military Department FY2021 EMPG-ARPA grant #E22-227.

County Official Approval: _____

(Obtain Budget Office Approval Prior to Submission to Clerk of the Board)



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

6
1/24/22

Department: Sheriff's Office

WORK SESSION ☒ **Meeting Date:** 01/24/22

REGULAR AGENDA ☒ **Meeting Date:** 02/01/22

Required originals approved and attached? ☒
Will be provided on:

Item summary:

- | | |
|---|---|
| ☐ Call for Hearing | ☒ Contract/Agreement/MOU - Contract # 817-22-01 |
| ☐ Resolution | ☐ Proclamation ☒ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance ☐ Other |

Documents exempt from public disclosure attached: ☐

Executive summary:

The County received a Fiscal Year 2021 Emergency Management Performance Grant in the amount of \$41,792. Grant #E22-211. The purpose of this grant is to provide U.S. Department of Homeland Security/Federal Emergency Management Agency award funds to assist Clallam County Emergency Management in preparing for all hazards. Clallam intends to utilize these funds to train a Public Information Office to act on behalf of the Emergency Operations Center, purchase equipment for emergency response teams, and to sustain, enhance, or develop exercise plans and training, and to promote community involvement to youth and community stakeholders. The Work Plan is contained in Attachment D of the agreement.

The agreement is for the period of 06/01/21 through 09/30/22.

Budgetary impact: If a budget action is required, has it been submitted and a copy attached? ☒

A budget change form is submitted to account for the revenue and expenditures in the 00100.817 Sheriff's Emergency Services budget.

Recommended action:

Recommend approval by the Board and signature by the Chair.

County Official signature & print name: W.L. Benedict W.L. Benedict, Sheriff

Name of Employee/Stakeholder attending meeting: Ron Cameron, Undersheriff

Relevant Departments: Sheriff's Office

Date submitted: 01/19/22

* Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting - Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

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

1. Subrecipient Name and Address: Clallam, County of Sheriff's Office Emergency Management (EM) 223 E 4th Street, Suite 12 Port Angeles, WA 98362-3000		2. Grant Agreement Amount: \$41,792 <i>County Contract # 817-22-01</i>	3. Grant Agreement Number: E22-211
4. Subrecipient Contact, phone/email: Elizabeth Waknitz, 360-417-2393 ewaknitz@co.clallam.wa.us		5. Grant Agreement Start Date: June 1, 2021	6. Grant Agreement End Date: September 30, 2022
7. Department Contact, phone/email: Deborah Henderson, 253-512-7470 deborah.henderson@mil.wa.gov		8. Data Universal Numbering System (DUNS): 075739235	9. UBI # (state revenue): 054-004-559
10. Funding Authority: Washington State Military Department (the "DEPARTMENT") and the U.S. Department of Homeland Security (DHS)			
11. Federal Award ID # (FAIN): EMS-2021-EP-00007-S01	12. Federal Award Date: 08/30/2021	13. Assistance Listings # (formerly CFDA) & Title: 97.042 (21EMPG)	
14. Total Federal Amount: \$7,582,922	15. Program Index # & OBJ/SUB-OBJ: 713PT NZ		16. EIN: 91-6001298
17. Service Districts: (BY LEGISLATIVE DISTRICT): 24 (BY CONGRESSIONAL DISTRICT): 6		18. Service Area by County(ies): Clallam	19. Women/Minority-Owned, State Certified: ☒ N/A ☐ NO ☐ YES, OMWBE # _____
20. Agreement Classification: ☐ Personal Services ☐ Client Services ☒ Public/Local Gov't ☐ Research/Development ☐ A/E ☐ Other _____		21. Contract Type (check all that apply): ☐ Contract ☒ Grant ☒ Agreement ☐ Intergovernmental (RCW 39.34) ☐ Interagency	
22. Subrecipient Selection Process: ☒ "To all who apply & qualify" ☐ Competitive Bidding ☐ Sole Source ☐ A/E RCW ☐ N/A ☐ Filed w/OFM? ☐ Advertised? ☐ YES ☐ NO		23. Subrecipient Type (check all that apply): ☐ Private Organization/Individual ☐ For-Profit ☒ Public Organization/Jurisdiction ☐ Non-Profit ☐ CONTRACTOR ☒ SUBRECIPIENT ☐ OTHER	
24. PURPOSE & DESCRIPTION: The purpose of the Fiscal Year (FY) 2021 Emergency Management Performance Grant (21EMPG) 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. The Department is the Recipient and Pass-through Entity of the 21EMPG DHS Award Letter for Grant No. EMS-2021-EP-00007-S01, 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.			
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); 21EMPG Award Letter EMS-2021-EP-00007-S01 (Attachment C); Work Plan (Attachment D); Timeline (Attachment E); Budget (Attachment F); 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: 1. Applicable Federal and State Statutes and Regulations 2. DHS/FEMA Award and program documents 3. Work Plan, Timeline, and Budget 4. Special Terms and Conditions 5. General Terms and Conditions, and, 6. Other provisions of the Agreement incorporated by reference			
WHEREAS, the parties hereto have executed this Agreement on the day and year last specified below. FOR THE DEPARTMENT: Signature _____ Regan Anne Hesse, Chief Financial Officer Washington State Military Department Date _____ FOR THE SUBRECIPIENT: Signature _____ Mark Ozias, Chair Clallam County Board of Commissioners Date _____			
BOILERPLATE APPROVED AS TO FORM: Dawn C. Cortez [August 10, 2021] Assistant Attorney General		APPROVED AS TO FORM (if applicable): <i>Bert D. Boughton</i> Subrecipient's Legal Review _____ Date _____	

SPECIAL TERMS AND CONDITIONS**ARTICLE I. KEY PERSONNEL**

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

SUBRECIPIENT		DEPARTMENT	
Name	Elizabeth Waknitz	Name	Deborah Henderson
Title	Grant Coordinator	Title	Program Coordinator
Email	ewaknitz@co.clallam.wa.us	Email	Deborah.henderson@mil.wa.gov
Phone	360-417-2393	Phone	253-512-7470
Name	Ron Cameron	Name	Tirzah Kincheloe
Title	Undersheriff	Title	Program Manager
Email	rcameron@co.clallam.wa.us	Email	tirzah.kincheloe@mil.wa.gov
Phone	360-417-2570	Phone	253-512-7456
Name	Alice Hoffman	Name	Courtney Bemus
Title	Chief Civil Deputy	Title	Program Assistant
Email	ahoffman@co.clallam.wa.us	Email	courtney.bemus@mil.wa.gov
Phone	360-417-2257	Phone	253-316-6438
Name	Anne Chastain	Name	
Title	EM Program Coordinator	Title	
Email	achastain@co.clallam.wa.us	Email	
Phone	360-417-2483	Phone	

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 21EMPG 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 (FY) 2021 Emergency Management Performance Grant (EMPG) document*, the *FEMA Preparedness Grants Manual* document (the Manual), the *DHS Award Letter for Grant No. EMS-2021-EP-00007-S01*, 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 21EMPG 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 21EMPG 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 21EMPG 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 (FY) 2021 Emergency Management Performance Grant (EMPG)* document, the Manual, the *DHS Award Letter for Grant No. EMS-2021-EP-00007-S01* 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 21EMPG 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 minimus 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 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 reimbursements, 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 forty-five (45) days after the Grant Agreement End Date, 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) 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 describing all completed activities under this Agreement.
- c. In conjunction with the final report, the Subrecipient shall submit a separate report detailing how the EMPG Training requirements were met for all personnel funded by federal or matching funds under this Agreement.
- d. 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.

- e. The Subrecipient shall participate in the State's annual 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.

4. 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)
 - D. Assistance Listings Number (formerly CFDA Number)
 - 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 their 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 categories for the EMPG 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 and 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 EMPG, the Subrecipient must contact the Department Key Personnel for assistance in seeking FEMA approval prior to acquisition.
- d. Unless expressly provided otherwise, all equipment must meet all mandatory regulatory and/or DHS/FEMA adopted standards to be eligible for purchase using federal award funds.
- e. If funding is allocated to emergency communications, the Subrecipient must ensure that all projects comply with SAFECOM Guidance on Emergency Communications Grants ensuring the investments are compatible, interoperable, resilient, and support national goals and objectives for improving emergency communications.

- f. 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). 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 applicable NOFO.

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

- i. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, (or any subsidiary or affiliate of such entities);
 - ii. 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);
 - iii. Telecommunications or video surveillance services provided by such entities or using such equipment; or
 - iv. 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.
- g. 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.

5. 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.

6. **PROCUREMENT**

- a. 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).
- b. For all sole source contracts expected to exceed \$250,000, the Subrecipient must submit to the Department for pre-procurement review and approval the procurement documents, such as requests 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 reviewing and approving sole source justifications of any non-federal entity to which the Subrecipient makes a subaward.

7. **SUBRECIPIENT MONITORING**

- a. The Department will monitor the activities of the Subrecipient from award to closeout. The goal of the Department's monitoring activities will be to ensure that agencies 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. 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.
- 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.

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

- a. The Subrecipient must comply with the Title VI of the Civil Rights Act of 1964 (Title VI) prohibition against discrimination on the basis of national origin, which requires that Subrecipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. 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>.

9. 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 FY 2021 federal preparedness funding, to include EMPG, the Subrecipient will ensure all NIMS objectives have been initiated and/or are in progress toward completion. NIMS Implementation Objectives are located at https://www.fema.gov/sites/default/files/2020-07/fema_nims_implementation-objectives-20180530.pdf.

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 21EMPG 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 of the Subrecipient's application for funding, as approved by the Department and incorporated into this Agreement.

- b. Funding may not be used to replace or supplant existing local or tribal government funding of emergency management programs.
- c. The Subrecipient shall provide a fifty percent cash match of non-federal origin. 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 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. In the final report, the Subrecipient shall identify how the match was met and documented.
- d. Subrecipients shall participate in the State's annual Integrated Preparedness Planning Workshop (IPPW). Non-participation may result in withholding of funding under future grant years.
- e. If funding is allocated to non-DHS FEMA training, the Subrecipient must request prior approval from the Department Key Personnel before attending the training. The Department will coordinate approval with the State Training Point of Contact. If funding is allocated to non-DHS FEMA training, the Subrecipient must request prior approval from the Department Key Personnel prior to attending 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, the training must fall within the FEMA mission scope and be included in 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.
- f. 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 requirements outlined in the NIMS Training Program located at https://www.fema.gov/pdf/emergency/nims/nims_training_program.pdf (to include ICS-100, ICS-200, IS-700, and IS-800 for most personnel) and
 - ii. Either (1) the FEMA Professional Development Series IS-120, IS-230, IS-235, IS-240, IS-241, IS-242, and IS-244, or (2) the National Emergency Management Basic Academy.

The Subrecipient will report training course completion by individual personnel along with the final report.

C. DHS TERMS AND CONDITIONS

As a Subrecipient of 21EMPG funding, the Subrecipient shall comply with all applicable DHS terms and conditions of the 21EMPG Award Letter and its incorporated documents for DHS Grant No. EMS-2021-EP-00007-S01, 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 section 1352, title 31, U.S. Code.

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 200.317 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 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)*.
- 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 panel 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 panel 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 panel shall, by majority vote, resolve the dispute. Each party shall bear the cost for its panel member and its attorney fees and costs and share equally the cost of the third panel 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

The Subrecipient shall comply with all applicable federal and state non-discrimination laws, regulations, and policies. No person shall, on the grounds of age, race, creed, color, sex, sexual orientation, religion, national origin, marital status, honorably discharged veteran or military status, or disability (physical, mental, or sensory) be denied the benefits of, or otherwise be subjected to discrimination under any project, program, or activity, funded, in whole or in part, under this Agreement.

A.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 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**

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 parties intend that an independent contractor relationship will be created by this Agreement. 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 by reason of this Agreement, nor will the Subrecipient make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the Department or of the state of Washington by reason of this Agreement, including, but not limited to, Workmen's 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.

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 and not by reason of this Agreement.

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 UTILIZATION OF MINORITY AND WOMEN BUSINESS ENTERPRISES (MWBE)

The Subrecipient is encouraged to utilize business firms that are certified as minority-owned and/or women-owned in carrying out the purposes of this Agreement. The Subrecipient may set utilization standards, based upon local conditions or may use the state of Washington MWBE goals, as identified in WAC 326-30-041.

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.

**21EMPG Award Letter
EMS-2021-EP-00007-S01**

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-2021-EP-00007

Dear Bret Daugherty:

Congratulations, on behalf of the Department of Homeland Security, your application for financial assistance submitted under the Fiscal Year (FY) 2021 Emergency Management Performance Grants has been approved in the amount of \$7,582,922.00. As a condition of this award, you are required to contribute a cost match in the amount of \$7,582,922.00 of non-Federal funds, or 50 percent of the total approved project costs of \$15,165,844.00.

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 2021 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, DUNS number, EIN and banking information. Please ensure that the DUNS 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

Agreement ArticlesThu Oct 01 00:00:00 GMT 2020

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-2021-EP-00007-S01

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Article I - 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 II - Universal Identifier and System of Award Management

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 III - Disposition of Equipment Acquired Under the Federal Award

When original or replacement equipment acquired under this award by the recipient or its subrecipients 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.

Article IV - 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. No. 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 V - 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 VI - 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. FEMA is also 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. 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 VII - 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 VIII - 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 IX - Environmental Planning and Historic Preservation (EHP) Review

DHS/FEMA funded activities that may require an EHP review are subject to the FEMA Environmental Planning and Historic Preservation (EHP) review process. This review does not address all federal, state, and local requirements. Acceptance of federal funding requires 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. To access the FEMA EHP screening form and instructions, go to the DHS/FEMA website at: <https://www.fema.gov/media-library/assets/documents/90195>. In order to initiate EHP review of your project(s), you must complete all relevant sections of this form and submit it to the Grant Programs Directorate (GPD) along with all other pertinent project information. 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 order, regulations, and policies.

If ground disturbing activities occur during construction, applicant will monitor ground disturbance, and if any potential archeological resources are discovered, applicant will immediately cease work in that area and notify the pass-through entity, if applicable, and DHS/FEMA.

Article X - 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 XI - 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)*, Pub. L. No. 107-56, which amends 18 U.S.C. sections 175-175c.

Article XII - Age Discrimination Act of 1975

Recipients must comply with the requirements of the *Age Discrimination Act of 1975*, Pub. L. No. 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 XIII - 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 XIV - 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 XV - Trafficking Victims Protection Act of 2000 (TVPA)

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 XVI - 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 XVII - 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 XVIII - 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 XIX - DHS Specific 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.

1. Recipients must cooperate with any compliance reviews or compliance investigations conducted by DHS.
2. Recipients must give DHS access to, and the right 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, personnel, and other individuals and information as may be necessary, as required by DHS regulations and other applicable laws or program guidance.
3. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.
4. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.
5. Recipients of federal financial assistance from DHS must complete the *DHS Civil Rights Evaluation Tool* within thirty (30) days of receipt of the Notice of Award or, for State Administrative Agencies, thirty (30) days from receipt of the DHS Civil Rights Evaluation Tool from DHS or its awarding component agency. After the initial submission for the first award under which this term applies, recipients are required to provide this information 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. 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>.

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 prior to expiration of the 30-day deadline.

Article XX - 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 at http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_guidance_june2010.pdf and Privacy Template at https://www.dhs.gov/sites/default/files/publications/privacy_pia_template_2017.pdf as useful resources respectively.

Article XXI - 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 XXII - 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 3000. 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 XXIII - Activities Conducted Abroad

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

Article XXIV - 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 XXV - 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 XXVI - 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 XXVII - Hotel and Motel Fire Safety Act of 1990

In accordance with Section 6 of the *Hotel and Motel Fire Safety Act of 1990*, 15 U.S.C. section 2225a, 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 the *Federal Fire Prevention and Control Act of 1974*, (codified as amended at 15 U.S.C. section 2225.)

Article XXVIII - 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.

Article XXIX - 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. section 41102) 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 XXX - Reporting of Matters Related to Recipient Integrity and Performance

If the total value of any currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of 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 XXXI - 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 XXXII - 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 XXXIII - 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 XXXIV - 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 XXXV - 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 C.F.R. Part 17 and 44 C.F.R. Part 19.

Article XXXVI - 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 XXXVII - Reporting Subawards and Executive Compensation

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 XXXVIII - 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 XXXIX - 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 XL - Assurances, Administrative Requirements, Cost Principles, Representations and Certifications

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 applicable to their program as instructed by the awarding agency. Please contact the DHS FAO if you have any questions.

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.

By accepting this agreement, the recipient and its executives, as defined in 2 C.F.R. section 170.315, certify that the recipient's 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 XLI - 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 XLII - 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.

BUDGET COST CATEGORIES

Personnel	\$4,066,819.00
Fringe Benefits	\$1,479,769.00
Travel	\$2,188.00
Equipment	\$0.00
Supplies	\$15,390.00
Contractual	\$9,247,406.00
Construction	\$0.00
Indirect Charges	\$354,272.00
Other	\$0.00

Obligating Document for Award/Amendment

1a. AGREEMENT NO. EMS-2021-EP-00007-S01	2. AMENDMENT NO. ***	3. RECIPIENT NO. 916001095G	4. TYPE OF ACTION AWARD	5. CONTROL NO. FY2021R10EMPG
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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
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9. NAME OF RECIPIENT PROJECT OFFICER Tirzah Kincheloe	PHONE NO. 2535127456	10. NAME OF FEMA PROJECT COORDINATOR Central Scheduling and Information Desk Phone: 800-368-6498 Email: Askcsid@dhs.gov
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11. EFFECTIVE DATE OF THIS ACTION 10/01/2020	12. METHOD OF PAYMENT PARS	13. ASSISTANCE ARRANGEMENT Cost Reimbursement	14. PERFORMANCE PERIOD From: 10/01/2020 To: 09/30/2023 Budget Period 10/01/2020 09/30/2023
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1 5. DESCRIPTION OF ACTION

b. (Indicate funding data for awards or financial changes)

PROGRAM NAME ACRONYM	CFDA NO.	ACCOUNTING DATA (ACCS CODE) XXXX-XXX-XXXXXX-XXXXX-XXXX-XXXX-X	PRIOR TOTAL AWARD	AMOUNT AWARDED THIS ACTION + OR (-)	CURRENT TOTAL AWARD	CUMULATIVE NON-FEDERAL COMMITMENT
Emergency Management Performance Grants	97.042	2021-FA-GA01-R107- -4120-D	\$0.00	\$7,582,922.00	\$7,582,922.00	See Totals
			\$0.00	\$7,582,922.00	\$7,582,922.00	\$7,582,922.00

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)
Tirzah Kincheloe, MrsDATE
Wed Sep 08 18:30:53 GMT
2021

18. FEMA SIGNATORY OFFICIAL (Name and Title)

THERESA MUSCAT BARA , Program Manager

DATE
Mon Aug 30 15:36:26 GMT
2021

WORK PLAN

FY 2021 Emergency Management Performance Grant

Emergency Management Organization: Clallam County Sheriff's Office

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 elements of emergency management: 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-Sustainment

Electrical bill for AHAB Tsunami sirens	Cellular phone service for EMD personnel	Satellite phone service for EMD personnel
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Priority Area #1		4.7 Communications and Warning
Primary Core Capability		Operational Communications
Secondary Core Capability		Infrastructure Systems
Build or Sustain		Building
WORK PLANNED	IDENTIFIED GAP/NEED	ANTICIPATED PROJECT IMPACT
1 Designate and train a Public Information Officer to act on behalf of the EOC.	Clallam County EOC trained a PIO last year, but this person has since resigned from their PIO role. We need to start over training a new PIO, as well as continuing where the work had left off. We still need to create a more cohesive messaging system throughout the county to coordinate individual municipalities and groups, creating a more streamlined public message.	Clallam County will have a trained and established PIO, with their inclusion in cooperative exercises and training, area agencies will establish a working rapport and create a climate of interaction and cooperation. Our PIO will be able to establish an information sharing network, which will increase efficiency and reduce duplication or confusion in public messaging.
2 Purchase equipment (laptops) and supplies (small components/accessories) to enhance communication capabilities for emergency response teams.	Inconsistent equipment hardware and software have made it difficult to share information between sections of the EOC. We have started updating the oldest computers but need to replace more of them. We also need to provide supplies to stabilize our back up communications infrastructure.	Updated computer and communication systems will allow a faster and more seamless interface between separate teams.

Priority Area #2		4.11 Emergency Public Information and Education
Primary Core Capability		Community Resilience
Secondary Core Capability		Long-term Vulnerability Reduction
Build or Sustain		Sustaining/Maintaining
WORK PLANNED	IDENTIFIED GAP/NEED	ANTICIPATED PROJECT IMPACT
1 Expand CERT and other Disaster Readiness trainings to youth through camps, scouts, schools, and social service club connections.	The rate of preparedness in our community has been stagnant. Youth are more receptive and will develop readiness habits they'll carry into the future.	The energy of the young will motivate other residents to participate in trainings about preparedness, recovery, and response. This will also increase the number of community residents preparing readiness kits or plans.
2 Promote county-wide preparedness focused on simple tasks that increase resilience. Normalize preparedness by integrating a preparedness component into existing community groups.	Recent cultural shifts in attitudes towards seatbelts, smoke detectors, and child car seats demonstrate that proper messaging can change societal attitudes. Previous efforts to increase community preparedness have met with resistance as unnecessary or difficult to achieve.	By breaking up goals into easily accomplished tasks with clear messaging on what is needed and how to plan, more community members will realize the value of readiness outweighs the effort required. Integrating information into existing groups will help normalize the goals and create the desire to emulate readiness behavior.
3 Continue to reach out to lower income or other disadvantaged groups, showing that preparedness is a reasonable and attainable goal.	In order to increase community readiness, we need to identify disadvantaged populations that may be resistant to planning for reasons outside of their control. Many families often view preparedness as unattainable due to their limited resources or difficulty accessing information.	By specifically creating solutions for different sections of our population, we'll increase the number of people creating plans and emergency kits, which will increase the resiliency of our community.

Priority Area #3		3.2 Coordination
Primary Core Capability		Operational Coordination
Secondary Core Capability		Public and Private Services and Resources
Build or Sustain		Sustaining/Maintaining
WORK PLANNED	IDENTIFIED GAP/NEED	ANTICIPATED PROJECT IMPACT
1 Plan and coordinate multi-jurisdictional exercises for ARES, EOC staff, and ECC teams.	The county began this project last year and made great strides in interaction between groups, but still needs to reinforce these systems and make interoperability more automatic among the groups.	By streamlining systems and procedures to communicate during drills, there will be less confusion and hesitancy when working with different groups. This will improve information gathering and sharing, increase safety of responders in the field, and provide more consistent and helpful information to be disseminated to other responders and the public.

2	Develop a current strategic plan for the Clallam County Emergency Management Department that will involve the resources and capabilities of the entire region.	Plans to update the strategic plan were delayed due to staffing shortages in combination with the pandemic and will be prioritized as soon as possible.	The updating process will strengthen and engage the whole community, increasing collaboration and interaction. Having a current plan will expedite responses and reduce redundancies and confusion following emergencies.
3	Involve more community members, professional responders, and volunteer teams in the CR22 exercises. Coordinate these exercises with state and federal partners.	Region specific catastrophe planning will impress upon many the need for planning and response practice and will help identify local resources and create a plan for how to utilize them.	Lessons observed and learned by professional, volunteer, and community members during exercises will build more confident and expedient responses using more concise communications.

TIMELINE**FY 2021 Emergency Management Performance Grant**

DATE	TASK
June 1, 2021	Grant Agreement Start Date
April 30, 2022	Submit reimbursement request
July 31, 2022	Submit reimbursement request
September 30, 2022	Grant Agreement End Date
November 15, 2022	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 reimbursements, all allowable costs should be submitted on the next scheduled reimbursement due date contained in the Timeline.

BUDGET

FY 2021 Emergency Management Performance Grant

21EMPG AWARD \$ 41,792.00

SOLUTION AREA	BUDGET CATEGORY	EMPG AMOUNT	MATCH AMOUNT
PLANNING	Personnel & Fringe Benefits	\$ -	\$ 41,792
	Travel/Per Diem	\$ -	\$ -
	Supplies	\$ -	\$ -
	Consultants/Contracts	\$ 4,000	\$ -
	Other	\$ -	\$ -
	Subtotal	\$ 4,000	\$ 41,792
ORGANIZATION	Personnel & Fringe Benefits	\$ -	\$ -
	Travel/Per Diem	\$ 2,500	\$ -
	Supplies	\$ 8,990	\$ -
	Consultants/Contracts	\$ -	\$ -
	Other - Communication Sustainment	\$ 3,500	\$ -
	Subtotal	\$ 14,990	\$ -
EXERCISE	Personnel & Fringe Benefits	\$ -	\$ -
	Travel/Per Diem	\$ -	\$ -
	Supplies	\$ 3,000	\$ -
	Consultants/Contracts	\$ -	\$ -
	Other	\$ -	\$ -
	Subtotal	\$ 3,000	\$ -
TRAINING	Personnel & Fringe Benefits	\$ -	\$ -
	Travel/Per Diem	\$ 2,500	\$ -
	Supplies	\$ 3,000	\$ -
	Consultants/Contracts	\$ 4,000	\$ -
	Other	\$ -	\$ -
	Subtotal	\$ 9,500	\$ -
EQUIP	Equipment	\$ 8,150	\$ -
	Subtotal	\$ 8,150	\$ -
M&A	Personnel & Fringe Benefits	\$ 1,614	\$ -
	Travel/Per Diem	\$ -	\$ -
	Supplies	\$ -	\$ -
	Consultants/Contracts	\$ -	\$ -
	Other	\$ -	\$ -
	Subtotal	\$ 1,614	\$ -
Indirect		\$ 538	\$ -
Indirect Cost Rate on file 0.00% for Time Period of: N/A			
TOTAL Grant Agreement AMOUNT:		\$ 41,792	\$ 41,792

The Subrecipient will provide a match of **\$41,792** 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 authorization from the Department.

Funding Source: U.S. Department of Homeland Security - PI# 713PT – EMPG

Budget Hearing/Meeting Date: 02/22/22

- Supplemental Appropriation** – increased expenditures due to unanticipated federal, state, or local funds
- Debatable Emergency** – public emergency other than a non-debatable emergency which could not reasonably have been foreseen at the time of making the budget, requiring the expenditure of money not provided for in the budget.
- Non-debatable Emergency** – for the relief of a stricken community requiring immediate address; to meet mandatory expenditures required by law
- Budget Revision** – transfers or revisions within departments
- Budget Reduction** – a reduction in revenues and/or expenditures

REVENUE/SOURCE

EXPENDITURES

Revenue/Source and Expenditure totals must agree.

Receipt and expenditure of Washington State Military Department FY2021 EMPG grant #E22-211.

County Official Approval: 
(Obtain Budget Office Approval Prior to Submission to Clerk of the Board)



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

7
1/24/22

Department: Sheriff

WORK SESSION ☒ **Meeting Date:** 01/24/22

REGULAR AGENDA ☒ **Meeting Date:** 02/01/22

Required originals approved and attached? ☒
Will be provided on:

Item summary:

- | | | |
|---|---|--------------------------------------|
| ☐ Call for Hearing | ☒ Contract/Agreement/MOU - Contract # 817-22-03 | |
| ☐ Resolution | ☐ Proclamation | ☐ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance | ☐ Other |

Documents exempt from public disclosure attached: ☐

Executive summary:

There are two steps to this action. First, is the review and approval of a Facility Use and Hold Harmless Agreement with the Olympic Unitarian Universalist Fellowship for use of their facilities in emergency situations and for training functions in the Sequim Operational Area.

Secondly, there is a template for the Facility Use and Hold Harmless Agreement that is identical to the agreement above to be executed as locations for shelters, central points of distribution or other emergency management needs to serve the citizens during an emergency.

Budgetary impact:

None

Recommended action:

Approval of the Agreement and the template.

County Official signature & print name: W.L. Benedict W.L. Benedict, Sheriff

Name of Employee/Stakeholder attending meeting: Ron Cameron, Undersheriff

Relevant Departments: Sheriff's Office

Date submitted: 01/19/22

* Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting - Submit 1 single sided/not stapled copy and originals (1 or 3 copies)



FACILITY USE AND HOLD HARMLESS AGREEMENT

This FACILITY USE AND HOLD HARMLESS AGREEMENT is made as of the date last written below, by and between the Olympic Unitarian Universalist Fellowship (the "OUUF") and Clallam County, a political subdivision of the State of Washington, (the "County"). OUUF and the County are sometimes individually referred to as "Party" and collectively referred to as "Parties."

WHEREAS, the County Department of Emergency Management (CCEM) is the lead local agency that plans for preparation and responds to both natural and man-made disasters; and

WHEREAS, OUUF supports the County's emergency management efforts; and

WHEREAS, emergency rehabilitation for responders, emergency supply distribution, and emergency management training are a critical component of any disaster response and recovery; and

WHEREAS, the county has emergency rehabilitation for responders, emergency supply distribution, and emergency management training as part of its comprehensive emergency management plan; and

WHEREAS, the OUUF owns and operates a site of worship for the Olympic Unitarian Universalist Fellowship; and

WHEREAS, the County desires to have access to and use of the OUUF site located at 1033 North Barr Rd in Clallam County (the "Property") in support of the County's emergency preparedness, response recovery and emergency management efforts; and

WHEREAS, it is in the common interest of the OUUF and the County to promote disaster preparedness and to have the means to implement the County's emergency management plan in the event of a disaster.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, and the benefits received by both Parties, OUUF and the County hereby agree as follows:

1. **Right of Access:** The OUUF hereby grants to the County a non-exclusive right to use the main sanctuary and the circular drive on the north side of the facility, located at 1033 Barr Road at no cost for the following activities:
 - a. Training sessions for professionals and volunteer emergency workers with prior notice given to OUUF for availability of the facility;
 - b. Shelter to be used as a resting period site (rehabilitation site) to be used by Emergency Responders during disasters;
 - c. Distribution of emergency supplies to the public during the entire duration of any actual emergency declared by the county
 - d. Emergency management activities during the entire duration of any actual emergency declared by the county.

In addition, CCEM Staff, responders, emergency volunteer workers and trainees may park their vehicles at 1033 Barr Road in proper places at no cost during training events and declared emergencies.

The County shall provide OUUF with a schedule of its training date(s) or training day(s) in advance so arrangements may be made.

2. **Indemnification.** The County will defend, indemnify and hold harmless OUUF , it's agents, employees, contractors, officers, directors, representatives, and assigns from and against any and all third party claims, demands, causes of action, losses damages , fines, penalties, liabilities, judgments, forfeitures, amounts paid in settlement, charges, costs (including court costs) and expenses of any nature whatsoever (including attorney fees, whether suit is instituted or not) (collectively "claims") asserted against or incurred by OUUF that result from or arise out of (i) any violation or of or failure to comply with the provisions of this agreement by the County or its agents, employees, contractors, officers, directors, representatives, assigns invitees and guests; or (ii) any activity conducted by the County or its agents, employees, contractors, officers, directors, representatives, assigns, invitees, and guests upon or related to the property. The County expressly waives immunity under the industrial insurance act, Title 51 RCW, for purposes of this provision and acknowledges this waiver was mutually negotiated by the parties.

3. **Disclaimer: Release.** The county and its agents, employees, contractors, officers, directors, representatives, assigns, invitees, and guests acknowledge and understand that the OUUF makes no representation or warranty whatsoever, expressed or implied, with respect to the property, including without limitation any hazards or dangers at the property. The County and its agents, employees, contractors, officers, directors, representatives, assigns, invitees, and guests further acknowledge and understand that they enter the property at their own risk. The County and its agents, employees, contractors, officers, directors, representatives, assigns, invitees, and guests hereby release the OUUF from all claims asserted against or incurred by the County or and its agents, employees, contractors, officers, directors, representatives, assigns, invitees, and guests that may arise in connections with the County's or its and its agents, employees, contractors, officers, directors, representatives, assigns, invitees, and guests access to the property: provided however, that the County and its agents, employees, contractors, officers, directors, representatives, assigns, invitees, and guests will not release OUUF for any action(s) of OUUF, its employees or its agents that are later determined to constitute willful misconduct.
4. **Statement.** This agreement, as it relates to indemnification or waiver, is subject to and subordinate to RCW 38.52.180. In so far as any section of this agreement conflicts with State law relating to emergency management, including but not limited to RCW 38.52.180, state law prevails. This agreement does not create any additional or different liability than that found in RCW 38.52.180 and any other applicable Washington State statute or rule.
5. **Term.** The term of this Agreement shall be perpetual. PROVIDED, however, that this Agreement may be terminated by either Party upon written notice given no less than sixty (60) days prior to the termination date.
6. **Modification of Agreement.** This Agreement may be modified by written agreement of the Parties
7. **Authority to Enter Agreement.** Each Party warrants that the individuals who have signed this agreement have the legal power, right, and authority to enter this agreement and bind each respective Party.
8. **Condition of Property.** The County shall promptly repair any damage to the Property caused by the acts or omissions of the County or and its agents, employees, contractors, officers, directors, representatives, assigns, invitees, and guests, in connection with the

County's use of the Property as authorized hereunder. The County shall not be held liable for normal wear and tear of the Property.

In WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers.

Olympic Unitarian Universalist Fellowship

By: _____ Date: _____

Title: _____

Clallam County

By: _____ Date: _____

Title: _____



FACILITY USE AND HOLD HARMLESS AGREEMENT

This FACILITY USE AND HOLD HARMLESS AGREEMENT is made as of the date last written below, by and between _____ and Clallam County, a political subdivision of the State of Washington, (the "County"). _____ and the County are sometimes individually referred to as "Party" and collectively referred to as "Parties."

WHEREAS, the County Department of Emergency Management (CCEM) is the lead local agency that plans for preparation and responds to both natural and man-made disasters; and

WHEREAS, _____ supports the County's emergency management efforts; and

WHEREAS, emergency rehabilitation for responders, emergency supply distribution, and emergency management training are a critical component of any disaster response and recovery; and

WHEREAS, the county has emergency rehabilitation for responders, emergency supply distribution, and emergency management training as part of its comprehensive emergency management plan; and

WHEREAS, _____ owns and operates a site referred to as _____; and

WHEREAS, the County desires to have access to and use of the _____ site located at _____ address _____ (the "Property") in support of the County's emergency preparedness, response recovery and emergency management efforts; and

WHEREAS, it is in the common interest of the _____ and the County to promote disaster preparedness and to have the means to implement the County's emergency management plan in the event of a disaster.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, and the benefits received by both Parties, _____ and the County hereby agree as follows:

1. **Right of Access:** _____ hereby grants to the County a non-exclusive right to use _____ (insert portions of building and/or grounds here) located at _____ (insert physical address here) at no cost for the following activities:
 - a. Training sessions for professionals and volunteer emergency workers with prior notice given to _____ for availability of the facility;
 - b. Shelter to be used as a resting period site (rehabilitation site) to be used by Emergency Responders during disasters;
 - c. Distribution of emergency supplies to the public during the entire duration of any actual emergency declared by the county
 - d. Emergency management activities during the entire duration of any actual emergency declared by the county.

In addition, CCEM Staff , responders, emergency volunteer workers and trainees may park their vehicles at _____ in proper places at no cost during training events and declared emergencies.

The County shall provide _____ with a schedule of its training date(s) or training day(s) in advance so arrangements may be made.

2. **Indemnification.** The County will defend, indemnify and hold harmless _____, it's agents, employees, contractors, officers, directors, representatives, and assigns from and against any and all third party claims, demands, causes of action, losses damages , fines, penalties, liabilities, judgments, forfeitures, amounts paid in settlement, charges, costs (including court costs) and expenses of any nature whatsoever (including attorney fees, whether suit is instituted or not) (collectively "claims") asserted against or incurred by _____ that result from or arise out of (i) any violation or of or failure to comply with the provisions of this agreement by the County or its agents, employees, contractors, officers, directors, representatives, assigns invitees and guests; or (ii) any activity conducted by the County or its agents, employees, contractors, officers, directors, representatives, assigns, invitees, and guests upon or related to the property. The County expressly waives

immunity under the industrial insurance act, Title 51 RCW, for purposes of this provision and acknowledges this waiver was mutually negotiated by the parties.

3. **Disclaimer: Release.** The county and its agents, employees, contractors, officers, directors, representatives, assigns, invitees, and guests acknowledge and understand that the _____ makes no representation or warranty whatsoever, expressed or implied, with respect to the property, including without limitation any hazards or dangers at the property. The County and its agents, employees, contractors, officers, directors, representatives, assigns, invitees, and guests further acknowledge and understand that they enter the property at their own risk. The County and its agents, employees, contractors, officers, directors, representatives, assigns, invitees, and guests hereby release the _____ from all claims asserted against or incurred by the County or and its agents, employees, contractors, officers, directors, representatives, assigns, invitees, and guests that may arise in connections with the County's or its and its agents, employees, contractors, officers, directors, representatives, assigns, invitees, and guests access to the property: provided however, that the County and its agents, employees, contractors, officers, directors, representatives, assigns, invitees, and guests will not release _____ for any action(s) of _____, its employees or its agents that are later determined to constitute willful misconduct.
4. **Statement.** This agreement, as it relates to indemnification or waiver, is subject to and subordinate to RCW 38.52.180. In so far as any section of this agreement conflicts with State law relating to emergency management, including but not limited to RCW 38.52.180, state law prevails. This agreement does not create any additional or different liability than that found in RCW 38.52.180 and any other applicable Washington State statute or rule.
5. **Term.** The term of this Agreement shall be perpetual. PROVIDED, however, that this Agreement may be terminated by either Party upon written notice given no less than sixty (60) days prior to the termination date.
6. **Modification of Agreement.** This Agreement may be modified by written agreement of the Parties

8. **Condition of Property.** The County shall promptly repair any damage to the Property caused by the acts or omissions of the County or and its agents, employees, contractors, officers, directors, representatives, assigns, invitees, and guests, in connection with the County's use of the Property as authorized hereunder. The County shall not be held liable for normal wear and tear of the Property.

In WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers.

By: _____ Date: _____
Title: _____

Clallam County

By: _____ Date: _____
Title: _____



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

8
1/24/22

Department: Public Works/Road

WORK SESSION ☒ **Meeting Date:** 01/24/2022

REGULAR AGENDA ☒ **Meeting Date:** 01/25/2022

Required originals approved and attached? ☒
Will be provided on:

Item summary:

- | | |
|--|--|
| ☐ Call for Hearing | ☐ Contract/Agreement/MOU - Contract # |
| ☒ Resolution | ☐ Proclamation |
| ☐ Draft Ordinance | ☐ Budget Item |
| | ☐ Final Ordinance |
| | ☐ Other |

Documents exempt from public disclosure attached: ☐

Executive summary:

The County Engineer closed East Beach Road on January 7, 2022 between US 101 and the Log Cabin Road access road due to rock, mud, and other slide debris onto the road in the area of the 2020 forest fire in Olympic National Park. Due to the continued slope stability concerns, the County Engineer is recommending that this approximately 3.16 mile segment remain closed until it has been determined that the road is safe for public use. Accommodations will be made for access by private land owners, Agency contractors, and emergency vehicles. The Clallam County Public Works/Roads Department and Olympic National Park will continue to monitor slide and treefall activity.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

None

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)

That the Commissioners review, approve & sign this resolution.

County Official signature & print name: Mary Petersen, Joe Donisi

Name of Employee/Stakeholder attending meeting: Joe Donisi

Relevant Departments: Road Dept.

Date submitted: 01/19/2022

* Work Session Meeting - Submit 1 single sided/not stapled copy

** Regular Meeting - Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

BOCCAgenda_East Beach Rd Closure (1-24-22)

Revised: 3-04-2019



CR RESOLUTION ____, 2022

DECLARING THE TEMPORARY CLOSURE OF EAST BEACH ROAD
ROAD NO. 92210

THE BOARD OF CLALLAM COUNTY COMMISSIONERS finds as follows:

1. The County Engineer closed East Beach Road on January 7, 2022 from its intersection with U.S. Hwy 101 (Milepost 0.00) and the Log Cabin Resort access road (approximately Milepost 3.16) due to rock, mud, and other slide debris onto the road in the area of the 2020 forest fire in Olympic National Park.
2. Due to continued slope stability concerns, the County Engineer is recommending that this approximately 3.16 mile segment of East Beach Road remain closed until it has been determined that the road is safe for public use.
3. Clallam County and Olympic National Park will continue to monitor slide and treefall activity.
4. Accommodations will be made for access by private land owners, Olympic National Park, and emergency vehicles.

NOW, THEREFORE, BE IT RESOLVED by the Board of Clallam County Commissioners, in consideration of the above findings of fact:

1. That East Beach Road shall be closed completely to the public between milepost 0.00 and milepost 3.16 until such time as it is determined that the road is safe for public use.
2. That the private land owners, Olympic National Park, and emergency vehicles will still have access during this closure period.
3. That the Public Works Department post and publish notices as required by R.C.W. 47.48.020.

PASSED AND ADOPTED this _____ day of _____ 2022

BOARD OF CLALLAM COUNTY COMMISSIONERS

Mark Ozias, Chair

ATTEST:

Randy Johnson

Loni Gores, CMC, Clerk of the Board

Bill Peach

Please Publish: January 28, 2022

Please Bill: Clallam County Public Works/Road Department
223 East Fourth Street, Suite 6
Port Angeles, WA 98362-3000



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

9
1/24/22

Department: DCD

WORK SESSION ☒ Meeting Date: January 24, 2022

REGULAR AGENDA ☒ Meeting Date: February 1, 2022

Required originals approved and attached? ☒
Will be provided on:

Item summary:

- | | | |
|--|--|--------------------------------------|
| ☒ Call for Hearing | ☐ Contract/Agreement/MOU - Contract # | |
| ☐ Resolution | ☐ Proclamation | ☐ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance | ☐ Other |

Documents exempt from public disclosure attached: ☐

Executive summary:

The Department of Community Development was informed that a residential property owned by Sara Lee Blake was zoned Public, which appeared to be an error on the County's zoning map and was the only map amendment proposed 2021. The parcel is an approximate 5 acre parcel developed with a single-family residence, located within a portion of the Northeast ¼ of the Northeast ¼ of Section 20, Township 30 N, Range 3 and is referenced as parcel number 033020-110200. The proposed Comprehensive Plan and Zoning Map Amendment would amend the 5 acre parcel of land presently zoned "Public" (P) to "Rural Neighborhood Conservation" (NC).

The Clallam County Planning Commission (PC) has completed their review and public hearing on the proposed amendment and recommends approval of the proposal. There were no public comments received regarding this proposal from adjacent landowners, agencies, or the general public. The PC completed their review and approved their final recommendation to forward the amendment to the Board of County Commissioners at their December 1, 2021 meeting. The PC's Letter of Transmittal with Findings of Facts is attached along with DCD Planning Staff Report dated November 24, 2021.

The Board of County Commissioners may now schedule a public hearing on the draft ordinance in order to approve the proposed Comprehensive Plan and Zoning Map Amendment (RE2021-00001). The draft ordinance with map is attached. It is requested that the Board hold a public hearing on February 15, 2022 at 10:30am during the regularly scheduled meeting.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐
None

- * Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

agenda
Revised: 3-04-2019

Questions? Call Loni Gores, Clerk of the Board, ext 2256

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)

Call for hearing to be held February 15, 2022 at 10:30am.

County Official signature & print name: Lori Kennedy for Mary Ellen Winborn
Lori Kennedy

Name of Employee/Stakeholder attending meeting: Donella Clark

Relevant Departments: DCD

Date submitted: 1/19/2022

-
- * Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

agenda
Revised: 3-04-2019

Questions? Call Loni Gores, Clerk of the Board, ext 2256

PUBLIC HEARING

Proposed Comprehensive Plan Map and Zoning Map amendment

NOTICE IS HEREBY GIVEN that the Clallam County Board of Commissioners will conduct a public hearing on Tuesday, February 15, 2022 at 10:30 a.m., or as soon thereafter as possible in the Commissioners' Meeting Room of the Clallam County Courthouse, 223 East 4th Street, Room 160, Port Angeles, Washington. The purpose of the public hearing is to receive public testimony on the proposed Comprehensive Plan Map, Title 31, and Zoning Map, Title 33, amendment changing the classification of the property referenced as Assessor's Tax Parcel Number 033020-110200 from "Public" (P) to "Rural Neighborhood Conservation" (NC).

SUMMARY OF PROPOSAL: A Comprehensive Plan Map and Zoning Map amendment is proposed on an approximate 5 acre parcel developed with a single-family residence, located within a portion of the Northeast ¼ of the Northeast ¼ of Section 20, Township 30 N, Range 3 and is referenced as parcel number 033020-110200. The proposed Comprehensive Plan and Zoning Map Amendment would amend the 5 acre parcel of land presently zoned "Public" (P) to "Rural Neighborhood Conservation" (NC).

HOW TO COMMENT: All persons wishing to comment are welcome to either submit their written comments before the hearing is commenced or present written and/or oral comments during the public hearing. Written comments should be sent to the Clallam County Board of Commissioners, 223 East 4th Street, Suite 4, Port Angeles, WA 98362-3015 or via email to agores@co.clallam.wa.us.

DOCUMENTS AND INFORMATION: The staff report and other information regarding the proposal is available for review at the Clallam County Department of Community Development located in the Clallam County Courthouse at 223 E. 4th Street, Port Angeles, WA and on the County's Online Permit System: http://websrv2.clallam.net/tm_bin/tmw_cmd.pl?tmw_cmd=StatusViewCase&shl_caseno=REZ2021-00001&projectcasetag=Y

In compliance with the Americans with Disabilities Act (ADA), appropriate aids and/or reasonable accommodations will be made available upon request. Requests must be received by the Commissioner's office (Phone: 360-417-2233; see address above) at least 7 days prior to the hearing. The facility is considered "barrier free" and accessible to those with physical disabilities.

Publish: Feb. 6 and Feb. 13

Bill: Dept. of Community Development

Loni Gores, Clerk of the Board

Ordinance _____

An ordinance amending Title 31, Comprehensive Plan Map, and Title 33, Zoning Map, of the
Clallam County Code (Application No. REZ20021-00001)

BE IT ORDAINED BY THE BOARD OF CLALLAM COUNTY COMMISSIONERS:

0.10 Property.

Title 31, Comprehensive Plan Map, and Title 33, Zoning Map of the Clallam County Code is hereby amended by changing the classification of the property referenced by Assessor's Tax Parcel Number 033020-110200 from "Public" (P) to "Rural Neighborhood Conservation" (NC). The property is an approximate 5 acres parcel within a portion of the Northeast ¼ of the Northeast ¼ of Section 20, Township 30 N, Range 3 and is described as Parcel C in the Statutory Warranty Deed recorded under Auditor File Number 2000-1055863. The subject property is shown on the map prepared by the Clallam County Department of Community Development that is attached to this Ordinance as Exhibit A.

0.20 Applicability.

The Board has determined that this amendment is in the best interest of the public health, safety, and welfare.

0.30 Effective Date.

This ordinance shall become effective on the date upon which the Board of County Commissioners takes legislative action to comply with the requirements of RCW 36.70A.130 for annual updates, or on March 1, 2022, whichever date comes first.

ADOPTED this _____ day of _____ 2022

BOARD OF CLALLAM COUNTY COMMISSIONERS

Chair

ATTEST:

Member

Loni Gores, Clerk of the Board

Member

Exhibit A

Amending Title 31, Comprehensive Plan Map, and Title 33, Zoning Map of the Clallam County Code (Application No. REZ2021-00001)

Pursuant to Ordinance ___, the property described below and shown on this map is hereby re-designated from Public (P) to Rural Neighborhood Conservation (NC). The property is legally described as “a portion of the Northeast ¼ of the Northeast ¼ of Section 20, Township 30 N, Range 3” and is referenced by Assessor’s Parcel Number 033020-110200.

ADOPTED this ___ day of ___ 2022

BOARD OF CLALLAM COUNTY
COMMISSIONERS

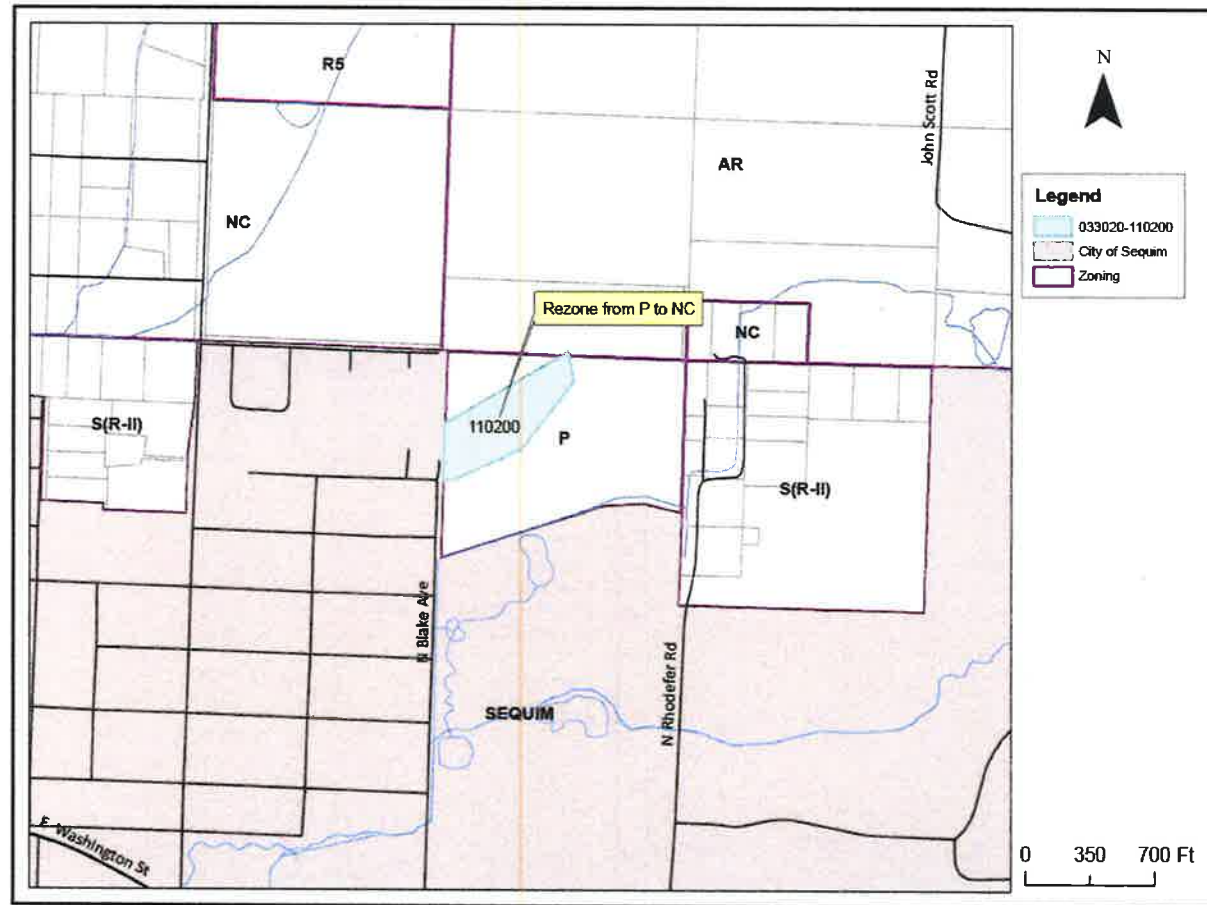
Chair

Member

Member

ATTEST:

Loni Gores, Clerk of the Board



LETTER OF TRANSMITTAL

To: Clallam County Board of Commissioners

From: Clallam County Planning Commission

Subject: Transmittal to BOCC: Findings and Conclusions regarding proposed Comprehensive Plan and Zoning Map Application REZ2021-00001 [Blake property]

Dear Commissioners:

The Clallam County Planning Commission has completed its review and public hearing on the proposed Type A Application to amend the Clallam County Comprehensive Plan and Zoning Map and recommends approval of the proposal. The Planning Commission completed its review and approved its final recommendations to forward to the BOCC at its meeting of December 1, 2021. As Chair of the Clallam County Planning Commission, having first received the authorization of the Commission, I am transmitting herewith the findings and recommendations of the Commission on this Comprehensive Plan and Zoning Map Amendment Application:

FINDINGS OF FACT:

1. The Planning Commission held a public hearing December 1, 2021, on Comprehensive Plan and Zoning Map Amendment Application No. REZ2021-00001 [Blake property], to change the Comprehensive Plan and Zoning Map designation of an approximate 5-acre parcel from Public (P) zone to Rural Neighborhood Conservation (NC) zone.
2. The property is located north of the City Limits of Sequim, at the end of N Blake Ave, north of Carrie Blake Park and adjacent to lands owned by the Washington State Department of Fish and Wildlife. The property is referenced as parcel number 033020-110200.
3. The property is developed with a single-family residence that was constructed in the 1950's. Much of the surrounding lands were owned by the Blake Family.
4. A portion of the original family ownership was transferred to the City of Sequim which is now known as Carrie Blake Park and some was sold to Washington State Department of Fish and Wildlife to preserve and enhance habitat in 2000.
5. The five acre parcel that contains the single-family residence was retained by Sara Blake, the current owner.
6. The subject property, as well as the adjacent WDFW property was previously zoned Rural Moderate (R2). When the R2 zone was invalidated in 2008, a sweeping rezone of the R2 zones resulted in the subject property being zoned "Public" per Ordinance 852 in July 21, 2009.
7. The required showing for comprehensive plan and zoning map amendments must demonstrate consistency with all of the criteria contained at CCC 33.35.090 in the Zoning Code, and at CCC 31.08.370 in the Comprehensive Plan.
8. The County Comprehensive Plan establishes goals and policies associated with Public Facilities and Rural lands within the Sequim-Dungeness Regional

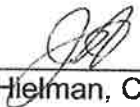
Planning Area, 31.03.110 Public Facilities and Service-Inventory and Analysis, 31.03.120 Public Facilities-Policies, 31.03.260 Rural Land-Inventory and Analysis, and 31.03.270 Rural Land-Policies. Rural lands are defined by what they are not, and the subject property is not designated for urban growth, it has not been designated by its resources, and it does not meet the criteria as a public facility.

9. The property is developed as a single-family residence owned by a private individual and does not meet the purpose of the "Public" zone outlined in CCC 33.07.050.
10. Many of the properties rezoned from the R2 zone are now zoned Rural Low (R5), CCC 33.10.020 or Rural Neighborhood Conservation (NC), CCC 33.10.015 in the surrounding area. Both R5 and NC zones are located in the vicinity of the subject property, with the nearest zone being the NC zone.
11. Under the proposed NC designation, single-family residences are allowed outright, and the proposed rezone would not result in a non-conforming parcel.
12. Any further division and development of the property under the resulting NC designation would be conditioned on the proposed project meeting all application regulations, including the County's Critical Areas code, Subdivisions Code, and Environmental Health Regulations, which should adequately protect most aspects of the public health, safety and welfare.
13. The use of the property has been a residential development since the 1950's. The property was rezoned to the current Public zone following a large rezone of lands throughout the County following the invalidation of the R2 zone. The land owner was unaware of the rezone to the Public zone until several years after the Ordinance 852 that changed the zone in 2009.
14. The property is currently developed with a single-family residence, with access to utilities. Approval of the rezone will better align with the residential use of the property.
15. Rezones must be evaluated with respect to its application to other similarly situated properties. Other rural residential parcels are designated R5 and NC, with the NC zone being the closest rural designation to the subject parcel.
16. Rezoning the subject parcel from the Public (P) zone to a rural residential designation would appear to correct an error that was made in 2009 when the property was rezoned from the invalidated R2 zone to its current designation, and would be consistent with the spirit and intent of the Comprehensive Plan.

Because of the above-described facts and findings, and attachments hereto, the Commission adopts and transmits the following conclusion to the Clallam County Board of Commissioners.

CONCLUSION: The required showing for map amendments to the comprehensive plan and zoning land use and zoning map designations does not meet all of the criteria contained at CCC 33.35.090 in the Zoning Code, and at CCC 31.08.370 in the Comprehensive Plan.

Now therefore in light of the above Findings of Fact, the Clallam County Planning Commission concludes that the proposed revisions to the Clallam County Comprehensive Plan and associated development and zoning regulations, and mapping changes, recommended for approval to the BOCC and as Chair of the Commission, has directed me as its duly authorized agent to transmit this recommendation to the BOCC on the above-inscribed date.



Jane Hielman, Chair

12/2/2021
Date



Date: November 24, 2021
To: Clallam County Planning Commission
From: DCD, Planning Division
Re: Rezone and Comprehensive Plan and Zoning Map Amendment
Application REZ2021-00001 – Sara Lee Blake

REQUEST

Sara Lee Blake informed the Department of Community Development her residential property was zoned Public, which appeared to be an error of the Zoning Map, and is requesting a Comprehensive Plan Land Use and Zoning Map amendment for the property 660 N Blake Ave, parcel number 033020-110200 (map 1) from Public (P) to Rural Neighborhood Conservation (NC).

The property is an approximate 5 acres developed with a single-family residence. The property is located north of Carrie Blake Park, and is adjacent to lands owned by the State Department of Fish and Wildlife to the north, east and south, and the City of Sequim city limits to the west.

APPLICATION SUMMARY

A. BACKGROUND

A.1 Ownership and History

The approximate 5 acre parcel is developed with a single-family residence that was constructed in the 1950's. This property and the surrounding lands were owned by the Blake Family. A large portion of the Blake Family land was transferred to the City of Sequim which is now known as Carrie Blake Park; in the year 2000, twenty-one acres were transferred by Elizabeth Blake to the Department of Fish and Wildlife (AFN2000-1055863) in order to preserve and enhance habitat and a wetland associated with Bell Creek. The five acre parcel that contains the single-family residence was maintained by Elizabeth and Sara Blake.

The WDFW property and Blake residence were previously zoned Rural Moderate (R2). The R2 zone was invalidated by the State in 2008 and a sweeping rezone of the R2 lands throughout the County was completed July 21, 2009 (Ordinance 852), at which time the two properties were rezoned Public. Because the invalidated zones affected many parcels within the County, individual notice was not sent to land owners whose properties were rezoned. The land owner of the residential property was unaware of the change to their zoning to the Public zone until several years after Ordinance 852 went into effect.

A.2 Existing Land Use/Land Cover

The property is a residential parcel which contains a single-family residence and outbuilding nestled against a hill. The parcel is partly treed and also contains an open field connected to the surrounding WDFW property.

A.3 Surrounding Land Use/Land Cover

The properties to the north and directly east and south are owned by WDFW, being preserved for habitat of both forest and field. To the east and west of these parcels, properties are located within the City of Sequim and are residentially developed. South of the WDFW property is also the city limits of Sequim and the location of the Carrie Blake Park.

A.4 Access

The subject property is accessed from Blake Avenue, a Sequim City road.

A.5 Utilities

Electricity and water are provided to the residence by the Clallam County PUD.

A.6 Critical Areas

The County Critical Areas Map indicates that the property contains landslide and erosion hazard associated with the hill on the property (CCC 27.12.410). The property is already developed with a single-family residence and the rezone will not affect the existing development.

A.7 SEPA

Clallam County Department of Community Development issued a Determination of Non-Significance on October 13, 2021 under SEPA rules (WAC 197-11-355) and the Clallam County Environmental Policy Ordinance (Chapter 27.01) for the proposed non-project proposal (attached).

B. MAP AMENDMENT CRITERIA OF APPROVAL

When considering an application for rezone, the Planning Commission and Board of County Commissioners are required to evaluate the amendment with regard to six criteria contained at CCC 33.35.090 in the Zoning Code, and at CCC 31.08.370 in the Comprehensive Plan. These six criteria, or "Required Showing for an Amendment," provide the scope of consideration that the Planning Commission and Board must respond to in order to determine if a rezone should be approved.

Criterion 1. The proposed amendment is consistent with the spirit and intent of the Clallam County Comprehensive Plan.

The goals and policies adopted by the Board of County Commissioners in the Clallam County Comprehensive Plan, the various Regional Plans, and the Clallam County Zoning Code provide the framework for land use decisions in Clallam County. Particularly relevant to this request are the goals and policies associated with Public Facilities and Rural Lands within the Sequim-Dungeness Regional Planning Area. Relevant provisions include 31.03.110 Public Facilities and Service-Inventory and Analysis, 31.03.120 Public Facilities-Policies, 31.03.260 Rural Land-Inventory and Analysis, and 31.03.270 Rural Land-Policies.

The proposed rezone is to change the residential parcel from a Public (P) zone to the Rural Neighborhood Conservation (NC) zone. The property, along with the adjacent property owned by WDFW, were zoned R2, which was invalidated during a lawsuit. It appears that this property was then incorrectly rezoned based on its location to lands owned by a public agency.

Development of the property contains a single-family home and does not meet the criteria of any of the categories for public facilities incorporated in the Comprehensive Plan. Rural lands are identified within the Comprehensive Plan by what they are not. This property is not designated for urban growth, it has not been designated by its resources, and would result in a five acre residential parcel following a rezone to the NC zone.

Conclusions

Based on the obvious error of zoning residential property as Public, correcting this error would align the existing development of the parcel to a better characterization established by the Comprehensive Plan in the Sequim-Dungeness Region.

Criterion 2. The proposed amendment is consistent with the spirit and intent of the Clallam County Zoning Code and with interlocal agreements, transportation, parks and recreation, capital facility, utility, watershed, and other applicable land use and environmental plans and policies adopted by the County.

The spirit and intent of the Clallam County Zoning Code is defined under the purpose statement of CCC 33.01.020. This section identifies a clear link between the Zoning Code and the Comprehensive Plan in that the Zoning Code is to "*direct the future growth and development of the County consistent with the Comprehensive Plan*"; and "*implement the goals and policies of the Comprehensive Plan in a manner which protects private property rights and in the least intrusive manner possible.*"

The stated purpose of the Public (P) zoning district is "to identify properties used for public purposes such as public buildings, schools, cemeteries, parks, playgrounds and recreational areas," CCC 33.07.050. The stated purpose of the Rural Neighborhood Conservation (NC) zone related to this proposal is "to maintain low density rural residential areas and associated uses consistent with the local character of the distinctive regions and neighborhoods found within the Rural Neighborhood Conservation (NC) zoning district. Lands within the NC zone, or vicinity of such areas, are generally characterized by an existing wide range and variety of rural residential lot sizes and densities and rural uses," CCC 33.10.015.

It is clear the designation of the private residential land does not meet the purpose of the Public zone; though surrounded by public lands owned by the City and WDFW, the parcel is not intended to be open to the public. The parcel also does not lie within the Urban Growth Area of Sequim, and therefore should be designated with a rural zone. Designation into a rural zone requires consideration of the zone being selected. The property was previously zoned Rural Moderate (R2), a zone that was invalidated in 2008 and required rezoning thousands of parcels across the entire County. Many of the properties were rezoned from R2 to Rural Low (R5) or Rural Neighborhood Conservation (NC). Both R5 and NC zones are located near the subject property, but the nearest rural zone to the subject property is the NC zone.

Under the proposed designation of NC, single-family residences are allowed outright, whereas the Public zone lists all uses as conditional. Base density of the NC zone is one dwelling per five acres, with a minimum lot size of one acre. The proposed rezone would not result in a non-conforming parcel, since the subject property is five acres in size.

Criterion 3. The proposed amendment will not be detrimental to the public health, safety and welfare.

If the proposed amendment were granted, any further division and development of the property under the resulting designation would be conditioned on the proposed projects meeting all

application regulations, including the County's Critical Areas code, Subdivisions Code, and Environmental Health Regulations, which should adequately protect most aspects of the public health, safety and welfare.

Criterion 4. The proposed amendment is necessary due to changed conditions or circumstances from the time the property was given its present designation which warrants consideration of a different land use [and zoning] designation.

The property was rezoned to the current Public zone following a large rezone of lands throughout the County following the invalidation of the R2 zone. It appears that the residential property was incorrectly rezoned as Public, merely because the property is surrounded by lands owned by a public agency. The use of the property has been a residential development since the 1950's. The land owner was unaware of the rezone to the Public zone until several years after the Ordinance 852 that changed the zone in 2009.

Criterion 5. The proposed amendment will not result in probable significant adverse impacts to the adequacy of public facilities and services including, but not limited to transportation, sewer, water, storm water, utilities, and parks required to meet urban or rural needs, and will not place uncompensated burdens upon existing and planned services.

The property is currently developed with a single-family residence, with access to utilities. Approval of the rezone will better align with the residential use of the property. Under the NC zone, the property would not qualify for further division, but even if it did would not create a significant burden to the public facilities in the area. The property is located near the City of Sequim, where residential densities occur at urban densities and are provided utilities.

Criterion 6. The cumulative effects of all proposed amendments have been assessed and determined to be consistent with the spirit and intent of the Clallam County Comprehensive Plan.

In taking action on an application for rezone and Comprehensive Plan amendment, the Board of County Commissioners makes policy decisions that not only directly impact the subject property owners, but directly and indirectly impact other property owners, both in the immediate area and throughout the County. Zoning designations control what uses are allowed or prohibited on a particular piece of property. While an applicant may have a specific use in mind that he or she is able to achieve through a change in zoning, the applicant is nevertheless under no obligation to limit land use activities to that original plan. The applicant would in fact be eligible for any of the land uses listed as Allowed in the underlying zoning district. For this reason, the applicant's stated intent on their application must not be the sole or primary criteria for a zoning change, and an evaluation of a rezone application must consider all possible uses allowed under the proposed zoning district.

Additionally, a decision on a rezone must be evaluated with respect to its application to other similarly situated properties. The subject property is not located within the Urban Growth Area like other residentially developed parcels in the area, therefore an urban zoning designation would not be appropriate. Other rural residential parcels are designated R5 and NC, with the NC zone being closest to the subject parcel. Rezoning the subject parcel from the Public (P) zone to a rural residential designation would appear to correct an error that was made in 2009 when the property was rezoned from the invalidated R2 zone to its current designation, and would be consistent with the spirit and intent of the Comprehensive Plan.

Summary

The Planning Commission must evaluate the amendment with regard to six criteria contained at CCC 33.35.090 in the Zoning Code, and at CCC 31.08.370 in the Comprehensive Plan. The property is a privately owned parcel that contains an existing single-family residence. The property is surrounded by a parcel owned by the Washington State Fish and Wildlife. Both of these properties were historically zoned Rural Moderate (R2), which was invalidated. The properties were rezoned Public (P) through Ordinance 852 in 2009.

Rezoning the property that is privately owned and contains an existing single-family residence from a public designation to a rural zoning designation would be better aligned with the current use of the property, and reflect that the property is not publically owned.

Staff Recommendation:

Based on the above analysis, staff finds that Rezone and Comprehensive Plan Map Amendment Application REZ2021-00001 is supported by existing policies and recommends approval of the request.

Maps

Map 1 – Vicinity Map

Map 2 - Aerial and Critical Area Map

Map 3 – Ordinance 852 Sequim-Dungeness Planning Region Map

Map 4 – Surrounding zoning designations

Relevant code citations, found at: <https://clallam.county.codes/>

Text of Zoning Code

[CCC 33.07.050, Public \(P\)](#)

[CCC 33.10.015, Rural Neighborhood Conservation \(NC\)](#)

Text of Comprehensive Plan

[CCC 31.02.260, Rural Growth](#)

[CCC 31.02.285, Public Utilities, Facilities, and Services](#)

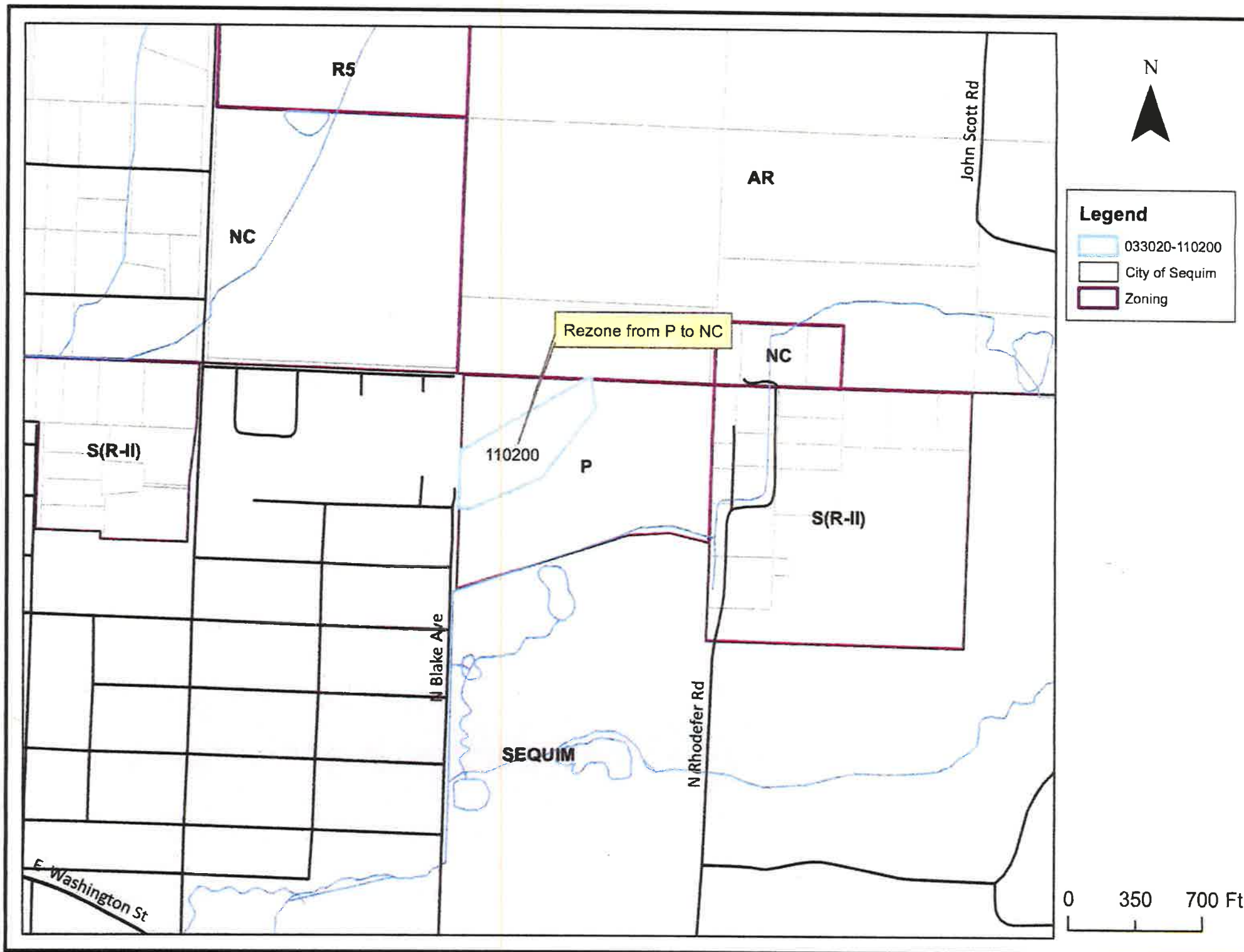
Text of Sequim-Dungeness Regional Plan

[CCC 31.03.110, Public Facilities and Services – Inventory and Analysis](#)

[CCC 31.03.120, Public Facilities and Services - Policies](#)

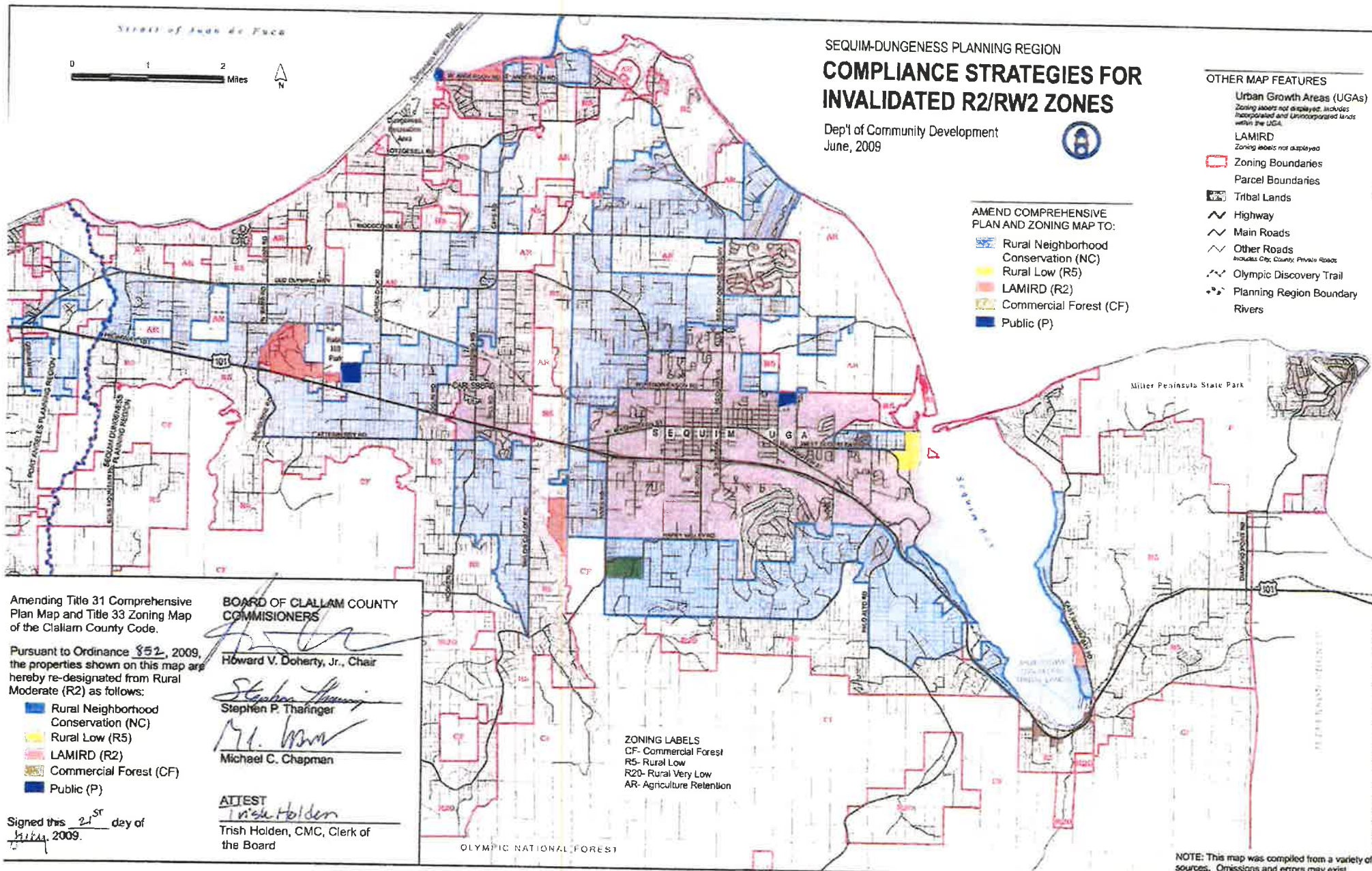
[CCC 31.03.260, Rural land – Inventory and Analysis](#)

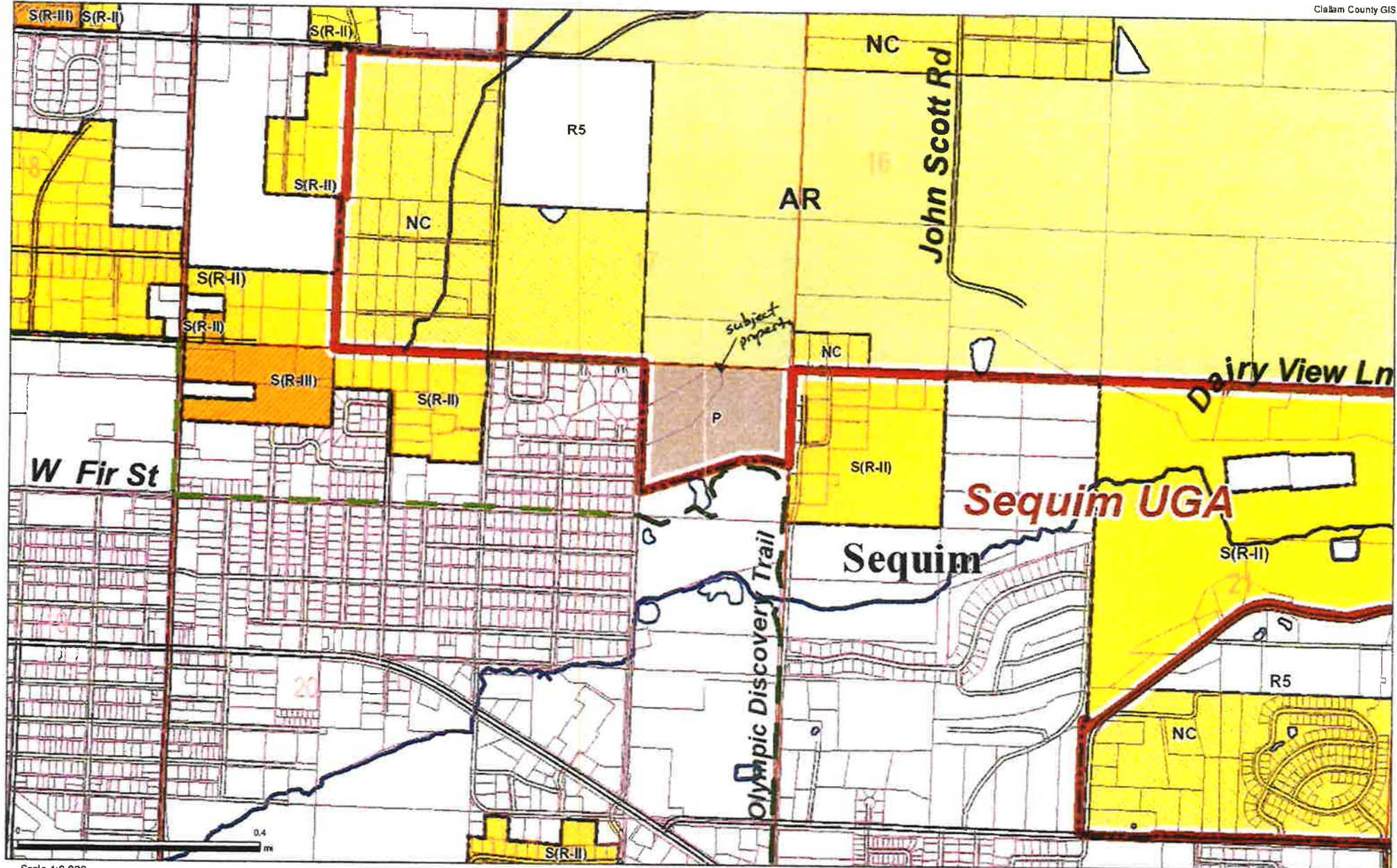
[CCC 31.03.270, Rural land – Policies](#)





Scale 1:2,257





Scale 1:9,028

Native Forest

September 30, 2021 Clallam County GIS



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

10
1/24/22

Department: BOCC

WORK SESSION ☒ Meeting Date: 1/24/22

REGULAR AGENDA ☐ Meeting Date:

Required originals approved and attached? ☐
Will be provided on:

Item summary:

- | | | |
|---|--|---|
| ☐ Call for Hearing | ☐ Contract/Agreement/MOU - Contract # | |
| ☐ Resolution | ☐ Proclamation | ☐ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance | ☒ Other – Review & next steps |

Documents exempt from public disclosure attached: ☐

Executive summary:

Review of Clallam EDC Annual Contract:
Clallam County contracts annually with the Clallam Economic Development Corporation (Clallam EDC) for economic development activity and support as our state-designated ADO. Today we will review the updated contract for 2022 and discuss plans for the year.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)
Review and next steps.

County Official signature & print name: Loni Gores Loni Gores, Clerk

Name of Employee/Stakeholder attending meeting: Board of Commissioners, Economic Development Council – Colleen McAleer

Relevant Departments: Board of Commissioners

Date submitted: January 5, 2022

* Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

Scope of work

Attachment A: Scope of Work: Activities & Deliverables

ACTIVITIES:

Required reporting by Associate Development Organizations (ADOs) on performance measures listed below represent two broad areas of work mandated by statute RCW 43.330.080

- Direct assistance, including business planning, to companies throughout the county who need support to continue their business, expand, or relocate to Washington from out of state, from other counties or other countries. Assistance must comply with business recruitment and retention protocols established in RCW 43.330.062.
- Support for regional economic research and regional planning efforts to implement target industry sector strategies and other economic development strategies, including cluster-based strategies. Research and planning efforts should support increased living standards and increased foreign direct investment and be aligned with the statewide economic development strategy. Regional associate development organizations retain their independence to address local concerns and goals.

DELIVERABLES:

1. The Clallam County Economic Development Council (EDC) 2022 Work Plan is outlined in Section A below.
2. The EDC and the CLALLAM COUNTY have agreed to the required performance measures that will be used by the EDC and the CLALLAM COUNTY to assess the EDC's performance. These performance measure targets are identified in Section B below. These performance measures are specific deliverables under this agreement.
3. The EDC shall collect data and shall provide quarterly reports to the BOARD OF COUNTY COMMISSIONERS (BOCC) on all required data in Table B below Performance Measures. These reports are an agreement deliverable.
4. Only those activities identified in Section B "Performance Measures" will be used by the EDC and CLALLAM COUNTY to assess achievement of "Performance Measure Targets".
5. Diversity, Equity and Inclusion (DEI) work is an integral part of the EDC's work. The EDC will use Census data to target DEI within Clallam County. The EDC will pursue partnerships with the four tribal governments to remove barriers to access opportunities and resources to ensure these residents have every opportunity to prosper. The EDC will use the state resiliency network which CIE is a part of and use their advisors who are fluent in Spanish or other languages as needed to work with local business owners.
6. Demographic Information for Business Ownership and Certifications – Using the online Interaction and Initiative forms or the Business Survey – The EDC will capture demographic and other relevant data from the businesses we serve in order to help us improve our efforts to remove systemic barriers which impact marginalized businesses and communities. These demographic reports are an agreement deliverable.
7. Quarterly Reports and quarterly invoices will be submitted to the Chair of the BOCC or his/her designee by the following dates:
 - a. April 15, 2022;
 - b. July 15, 2022;
 - c. October 15, 2022; and
 - d. January 15, 2023.

SECTION A – WORK PLAN FOR 2022

1. The EDC will provide direct assistance, including business planning, to companies throughout the county who need support to stay in business, expand, or relocate to Washington from other states, from other counties or other countries. Assistance complies with business recruitment and retention protocols established in RCW 43.330.062, and will include:
 - a. **Providing information to business owners on state and local permitting processes, utility barriers, tax issues and incentives, export assistance available, essential information to address business restrictions (such as COVID restrictions and zoning), and for operating, expanding, or locating a business in Clallam County.**
 - The EDC will lead a Choose Clallam First program using social media, newsletters, newspapers and radio to support local businesses.
 - The EDC will produce at least 2 videos supporting public messaging in response to COVID-19.
 - The EDC will readily distribute information to business owners using the "*Doing Business in Clallam County*" brochure the EDC produces that is regularly updated and distributed widely to county locations through Realtor® channels, partnered NGOs and county entry points such as Visitor Centers, Marinas, and airports. The EDC will also provide the community development departments of the cities and county. It will also appear on the EDC website at: www.clallam.org.
 - Other means of providing this information will include email, website, social media and newsletters. The EDC will present (with partners if possible) on Initiatives at each of the four chamber forums across Clallam County and with community organizations such as Rotary Clubs, Soroptimist, Kiwanis, etc.
 - The EDC will communicate with the local Realtor Associations to understand barriers for business growth which produce living wage jobs and desired development. The EDC will coordinate meetings and forums to connect decision-makers at the local level to ensure barriers are understood and addressed if possible.
 - The EDC will respond to requests for assistance which will include regulatory research and support, community forums, housing study, recruitment incentives research and negotiations, land use planning and code assistance, and referrals. The EDC will refer inquiries to appropriate partners across the county.
 - b. **Marketing CLALLAM COUNTY as an excellent location to expand or relocate a business and positioning Clallam County as a competitive place to grow business, which may include developing and executing regional plans to attract companies from out of the area:**
 - The EDC will work actively with local government staff to actively market, recruit, and support businesses in Clallam. This will include conferences that directly support of the county and cities primary industry sectors.
 - The EDC will respond to inquiries from businesses seeking to locate in our area.
 - The EDC will actively participate in recruitment of businesses in partnership with Dept of Commerce, Impact Washington, and local leaders.

Commented [CM1]: We hired Silas to get basic video information done – now it's just updating the videos.

- The EDC will continue to update and distribute the Emerald Coast Opportunity Zone prospectus to investors which highlights discrete investment opportunities of the region.
- The EDC will distribute existing Clallam County marketing videos and will produce up to two additional videos for targeted purposes.

c. Working with businesses to support site location and selection assistance:

- The EDC will review all site selection opportunities presented. The EDC will send the inquiry to appropriate partners if the area meets the minimum qualifications to assess interest.
- The EDC will assess zoning requirements and needs throughout the county and provide feedback to local governments.
- The EDC staff will support calls for assistance with site selection and facilitate research through pertinent parties such as PNNL, utility specialists, planners, and Realtors®. Additionally, the EDC will communicate with business owners regularly to support their needs and understand the economies within the county.
- The EDC will maintain the www.Emeraldfund.com site to provide updated Opportunity Zone coverage maps for Clallam County and connect investors to project managers.

d. Providing business retention and expansion services throughout the county. These support services include business outreach through multiple methods including in-person meetings (when allowed), surveys to identify and address challenges and opportunities faced by businesses.

- The EDC will work with partners to collect business data through surveys.
- The EDC will share information to existing Clallam businesses about:
 - 1) Grant opportunities for trade impacted businesses from the federal trade adjustment assistance program;
 - 2) Resources available for microenterprise development;
 - 3) Resources available on the revitalization of commercial districts;
 - 4) The opportunity to maintain jobs through shared work programs authorized under chapter 50.60 RCW;
 - 5) Resources for manufacturers available through Impact Washington;
 - 6) Strategic Reserve Fund applications as appropriate; and
 - 7) Opportunity Fund applications through local government as appropriate.
- The EDC will continue to partner with the WSBD, PTAC, each of the four Chambers, CIE, NODC, NPBA, Realtor Associations, Peninsula College, and PORT and city staffs to help serve the needs of businesses throughout the county.
- The EDC staff will assistance with research, site selection and workforce issues. We facilitate research through pertinent parties such as utility specialists, planners.

Commented [CM2]: We no longer have a SCORE counselor in Clallam County. At one point we had three.

e. Participating in economic development system-wide discussions regarding gaps in business start-up assistance in Washington;

- The EDC will participate in the semi-annual State Best Practices Conferences and will present information and programs to help other areas of the state understand barriers and practices that most readily overcome those barriers.

- The EDC will share its partnership and practices with the Center for Inclusive Entrepreneurship (CIE) which provides in-depth personal business advising and technical assistance to startup business owners.
- The EDC will assist interested buyers and existing small business owners to accommodate small business succession.
- The EDC will manage the Childcare Alliance to assess the need in Clallam County and identify and initiate innovative and collective solutions to make the Childcare industry more financially sustainable in 2022.

Commented [CM3]: We do not have funding to continue to pay a Community Organizer. We will accomplish this internally in 2022.

f. Providing or facilitating the provision of export (outside of county) assistance through workshops or one-on-one assistance.

- The EDC will provide resources and referrals by email, telephone, and in-person visits for those seeking export assistance. The Clallam EDC will work with experts at consulting firms and Northwest Trade Adjustment and Assistance Center (NWTAAAC) to help companies most effected by tariff adjustments and/or import barriers.

2. Support for regional economic research and regional planning efforts to implement target industry sector strategies and other economic development strategies, including cluster-based strategies. Research and planning efforts should support increased living standards and increased foreign direct investment and be aligned with the statewide economic development strategy. Regional associate development organizations retain their independence to address local concerns and goals. Activities include:

a. Participating with the State Board for Community and Technical Colleges, and Peninsula College, High School Career & Technical Programs and the Olympic Workforce Development Council.

- The EDC will continue its on-going partnership with Peninsula College (PC) in workforce education, outreach and economic development efforts throughout the County. The EDC will meet regularly with PC leadership. The PC president is an active member of the Clallam EDC Board of Directors.
- The EDC will serve as a Director on the Olympic Workforce Development Council.
- We The EDC will coordinate on WorkSource programs in an attempt to make them more effective for local small businesses
- EDC will help organize virtual job fairs in coordination with ESD and our local Chambers.

Commented [CM4]: Brandino has resigned from the Board. He was stretched too thin. He also resigned as a Sequim School District Board Member.

b. Participating in development of a countywide economic development plan in conjunction with other governmental jurisdictions and institutions.

- The EDC, in coordination with our county, cities and special district partners and non-profits such as NPBA, Realtor Associations, PABA, NODC, West End Business and Professional Association, United Way and our four county chambers, will collaborate on economic initiatives, including inputs to the annual review of the CEDS document for Clallam and Jefferson Counties.
- The EDC will participate in the County's Affordable Housing Task Force and provide extensive analysis on the affordable housing projects. The EDC will pursue

Commented [CM5]: Do I have to? ugh

developers of multi-family projects to build affordable housing, workforce housing and market-rate housing.

c. Champion and provide administrative support to the North Olympic Legislative Alliance (NOLA).

- The EDC will host Josh Weiss on Coffee with Colleen on a monthly basis through the 2022 legislative Session.
- The EDC will support surveys to identify priorities for NOLA.

SECTION B: 2022 PERFORMANCE MEASURES

1. RECRUITMENT& MARKETING ACTIVITIES

Recruitment & Marketing — Business attraction (recruitment and marketing) is a means of contributing to the economic vitality of the community to enhance and diversify the local tax base, to increase the number of jobs available to residents in the community, and to improve the local quality of life. For communities to maintain and boost their economic vitality, they must persuade businesses or investors to locate, expand or remain in the area rather than in a competing location. Economic development marketing and attraction is not just selling business sites or attracting businesses, it is a means of promoting the community as a viable location for economic activity. Marketing techniques to reach targeted audience and attract potential investors could include advertising; public (e.g., press kits, public official speeches, news releases, public relations); promotional materials (e.g., trade exhibits, economic development newsletters, slide and video presentations, brochures, fact books, websites); direct mail; personal selling (e.g., trade fairs, trade shows, business envoys, events); email (e.g., electronic newsletters, event invitations, announcements, links to your website for prospects); social media.

RECRUITMENT & MARKETING ACTIVITY	Performance Measure Targets – 2022
Number of first-time businesses contacts initiated, site selector contacts initiated, and trade shows attended suitable for location in Clallam County.	12

2. BUSINESS RETENTION & EXPANSION ACTIVITIES:

Retention & Expansion — Businesses retention and expansion (BRE) is the core program of any economic development plan. These programs are designed to 1) retain or keep existing businesses in the community; and 2) aid to businesses to expand. Retention and expansion programs can be implemented at the local, regional and state levels in a variety of ways.

BUSINESS RETENTION & EXPANSION ACTIVITIES (BRE):	Performance Measure Targets – 2022
Number of outreach interactions initiated with existing businesses such as phone calls, site visits, or surveys This includes unique businesses which request assistance that the EDC supports in Clallam County.	72

3. START-UPS

Start-ups: Small and emerging businesses generate wealth and provide significant source of employment in today's high technology global economy. They stimulate job creations, develop crucial innovations in both products and services, and diversify the economic base. It is critical that communities' economic development strategies dedicate resources to developing and promoting new business start-ups and establishing effective support systems so these new businesses can grow successfully. A community that meets the needs of its entrepreneurs increases its chances of job growth within small businesses, and those gains translate into a more vibrant community.

Commented [CM6]: Aligning this with the new Commerce Contract and their definition of metrics.

START-UPS	Performance Measure Targets – 2022
Support to number of start-up businesses in Clallam County.	24

3. EXPORT ASSISTANCE

Export Assistance Exporting is vital to the Washington State economy and with the global economy many businesses are now able to more readily access foreign markets. Whether a business is looking to expand into trade or increase their exports and sales overseas, there are many resources available to assist them in their efforts.

EXPORT ASSISTANCE	Performance Measure Targets – 2022
Number of activities focused on Export Assistance and training opportunities specifically geared toward Export and Foreign Trade.	6

4. TRAINING

Training. This can include small business and leadership training in addition to most other training geared toward helping businesses to grow or expand their business.

TRAINING	Performance Measure Targets – 2022
Number of training opportunities the EDC provides within Clallam County, either directly and/or leveraging resources through other organizations.	12

Prior year contact



PERSONAL SERVICES AGREEMENT

Contract Number: 19941.21.003

THIS AGREEMENT is entered into between CLALLAM COUNTY, a political subdivision of the State of Washington, (hereinafter called "County" or "Clallam County") and

Name: Clallam County Economic Development Corporation

Address: P.O. Box 1085
Port Angeles, WA 98362

Phone N°: 360.457.7793

(hereinafter called "Contractor").

This Agreement is comprised of:

- ☒ Attachment A – Scope of Work
- ☒ Attachment B – Compensation
- ☒ Attachment C – General Conditions
- ☒ Attachment D – Special Terms and Conditions
- ☐ Attachment E – (specify)

copies of which are attached hereto and incorporated herein by this reference as if fully set forth.

The term of this Agreement shall commence on the first day of January 2021 and shall, unless terminated as provided elsewhere in the Agreement, terminate on the thirty-first day of December 2021.

IN WITNESS WHEREOF, the parties have executed this Agreement on this day of , 2021.

CONTRACTOR:

BOARD OF CLALLAM COUNTY COMMISSIONERS

Coleen McAleer, Executive Director

Mark Ozias, Chair

Date: _____

ATTEST:

Loni Gores, Clerk of the Board

THIS CONTRACT HAS BEEN APPROVED AS TO
FORM BY THE CLALLAM COUNTY PROSECUTING
ATTORNEY

Originals: BOCC
Vendor
Initiating Department

SCOPE OF WORK

The Contractor is a non-profit educational and research corporation of the State of Washington and the County has need of research and education with regard to its operations.

The County performs various services, including land-use planning and road maintenance and construction, and is interested and concerned with the present and future utilization of these services and the economic stability and well-being of the County.

The County needs development and implementation of an overall economic development plan.

PERFORMANCE BY THE CONTRACTOR

Activities:

Required reporting by associate development organizations on performance measures listed below represent two broad areas of work mandated by statute **RCW 43.330.080**.

- Direct assistance, including business planning, to companies throughout the county who need support to stay in business, expand, or relocate to Washington from out of state or other countries. Assistance must comply with business recruitment and retention protocols established in RCW 43.330.062.
- Support for regional economic research and regional planning efforts to implement target industry sector strategies and other economic development strategies, including cluster-based strategies. Research and planning efforts should support increased living standards and increased foreign direct investment and be aligned with the statewide economic development strategy. Regional associate development organizations retain their independence to address local concerns and goals.

Deliverables:

1. The **Clallam County EDC 2021 Work Plan** is outlined in Section A below.
2. The Clallam County EDC and CLALLAM COUNTY have negotiated the required performance measures that will be used by the EDC and CLALLAM COUNTY to assess the EDC performance. These performance measure targets are identified in Section B below. These performance measures are specific deliverables under this agreement.
3. The Clallam County EDC shall collect data and shall provide quarterly reports to CLALLAM COUNTY on all required data in Table B below Performance Measures. These reports are an agreement deliverable.
4. Only those activities identified in Section B "Performance Measures" will be used by the Clallam County EDC and CLALLAM COUNTY to assess achievement of "Performance Measure Targets".
5. Quarterly Reports and quarterly invoices will be submitted to Commissioner Mark Ozias at mozias@co.clallam.wa.us by the following dates:
 - a. April 15, 2021,
 - b. July 15, 2021, and
 - c. October 15, 2021.

Section A – Work Plan for 2021

1. The Clallam County EDC (EDC) will provide direct assistance, including business planning, to companies throughout the county who need support to stay in business, expand, or relocate to Washington from other counties or out of state or other countries. Assistance complies with business recruitment and retention protocols established in **RCW 43.330.062**, and will include:

- a. Providing information and assistance to business owners on state and local permitting processes, tax issues, export assistance, and other essential information to respond to COVID-19 business restrictions, and for operating, expanding, or locating a business in Clallam County.
- The EDC will lead a Choose Clallam First program using social media, newsletters, newspapers and radio to support local businesses. The EDC will produce at least 6 videos supporting public messaging in response to COVID-19.
 - Other means of providing this information will include email, website, social media and newsletters. We will present (with partners if possible) at each of the four chamber forums across Clallam County and with community organizations such as Rotary Clubs, Soroptimist, Kiwanis, etc.
 - The EDC will readily distribute information to business owners using the "Doing Business in Clallam County" brochure the EDC produced that is regularly updated and distributed widely to county locations through Realtor® channels, our partner NGOs and city/county office locations. It also appears on our website – www.clallam.org.
 - We will communicate with the local Realtor Associations to understand barriers for business growth and development. We will coordinate meetings and forums to connect decision-makers at the local level to ensure barriers are understood and addressed if possible.
 - The EDC will respond to requests for assistance which will include regulatory research and support, community forums, housing study, recruitment incentives research and negotiations, land use planning and code assistance, and referrals. We will refer inquiries to appropriate partners across the county.
 - We will work with the Childcare Alliance partners (YMCA of the North Olympic Peninsula, Preventions Works!, Boys & Girls Club, Peninsula College, Shore Aquatic Center, and Concerned Citizens of Forks) to identify existing and startup businesses to provide grants to fund education requirements for in-home childcare providers to incentivize and accelerate more childcare services in the county.
- b. Marketing CLALLAM COUNTY as an excellent location to expand or relocate a business and positioning Clallam as a competitive place to grow business, which may include developing and executing regional plans to attract companies from out of the area:
- The EDC will work actively with the Port of Port Angeles' team to actively market, recruit, and support businesses in Clallam. This will include General Aviation conferences, Maritime conferences and Timber conferences.
 - Equally, the EDC will respond to regular inquiries from businesses seeking to locate in our area.
 - We will actively participate in recruitment of businesses in partnership with Dept of Commerce, Impact Washington, and local leaders.
 - We will continue to update and distribute the Emerald Coast Opportunity Zone prospectus to investors. It highlights the needs and opportunities of the region.
- c. Working with businesses on site location and selection assistance:
- The EDC will review all site selection opportunities presented. The EDC will send the inquiry to appropriate City or County partners if the area meets the minimum qualifications to assess interest.
 - EDC staff regularly receives calls for assistance with site selection and facilitates research through pertinent parties such as utility specialists, planners, and Realtors®. Additionally, EDC communicates with businesses almost daily to support their needs and understand the economies within the county.
 - The EDC created the www.Emeraldfund.org site that has Opportunity Zone coverage maps in Clallam County.
 - As background, the Executive Director of the EDC is a Certified Commercial Investment Manager (CCIM) and a former commercial real estate broker in Clallam County for nine years prior to becoming the Director of Real Estate and Business Development for the Port of Port Angeles from 2011-2014. Her background, knowledge and ability to refer to

professionals and work closely with the County's Director of Community Development and City officials will be thoroughly addressed. She trains her staff on the process.

- d. Providing business retention and expansion services throughout the county. Such services include business outreach through multiple methods including in-person meetings (when allowed), surveys to identify and address challenges and opportunities faced by businesses. Information shared will address topics such as:
 - The EDC will share information to existing Clallam businesses about:
 - Grant opportunities for trade impacted businesses from the federal trade adjustment assistance program;
 - Resources available for microenterprise development;
 - Resources available on the revitalization of commercial districts;
 - The opportunity to maintain jobs through shared work programs authorized under chapter 50.60 RCW;
 - Resources for manufacturers available through Impact Washington;
 - Strategic Reserve Fund applications as appropriate; and
 - Opportunity Fund applications through local government as appropriate.
 - The EDC will continue to partner with the WSBDC, Score, each of the four Chambers, CIE, NODC, NPBA, Realtor Associations, Peninsula College, PUD, city and county staff to help serve the needs of businesses throughout the county.
 - The EDC staff will take calls for assistance with research, site selection and workforce issues. We facilitate research through pertinent parties such as utility specialists, planners, and Realtors.
 - The EDC will work with partners to collect business data through surveys.
 - e. Participating in economic development system-wide discussions regarding gaps in business start-up assistance in Washington;
 - The EDC will participate in the semi-annual State Best Practices Conferences and will present information and programs to help other areas of the state understand barriers and practices that most readily overcome those barriers.
 - Specifically, we will share our partnership and practices of actively coordinating with Rick Dickinson and Micah Jonet at the Center for Inclusive Entrepreneurship (CIE) which provides in-depth personal business advising and technical assistance to startup business owners. We provide in-kind support, office furniture and supplies to support the nascent non-profit up and office at the Port of Port Angeles.
 - We will make introductions to interested buyers and existing small business owners to accommodate small business succession.
 - We will manage the Childcare Alliance Community Organizer to assess the need in Clallam County and identify and initiate innovative and collective solutions to make the Childcare industry more financially sustainable in 2021.
 - f. Providing or facilitating the provision of export (outside of county) assistance through workshops or one-on-one assistance;
 - The EDC will provide resources and referrals by email, telephone, and in-person visits for those seeking export assistance. The Clallam EDC is working with experts at consulting firms and NWTAAAC to help those companies most effected by the recent tariffs.
2. Support for regional economic research and regional planning efforts to implement target industry sector strategies and other economic development strategies, including cluster-based strategies. Research and planning efforts should support increased living standards and increased foreign direct investment and be aligned with the statewide economic development strategy. Regional associate development organizations retain their independence to address local concerns and goals. Activities include:

- a. Participating with the State Board for Community and Technical Colleges, and Peninsula College, High School Career & Technical Programs and the Olympic Workforce Development Council.
 - The EDC is in a direct and on-going partnership with Peninsula College (PC) in workforce education, outreach and economic development efforts throughout the County. We meet regularly and the PC president is an active member of the Clallam EDC Board of Directors.
 - The EDC will serve as a Director on the Olympic Workforce Development Council.
 - The Supervisor of the local WorkSource is an active member of the Clallam EDC Board of Directors. We coordinate extensively about programs and how to make them more effective locally.
 - Clallam EDC helps to organize virtual job fairs in coordination with ESD and our local Chambers.
 - b. Participating in development of a countywide economic development plan in conjunction with other governmental jurisdictions and institutions.
 - The Clallam EDC, in coordination with our county, cities and special district partners and non-profits such as NPBA, Realtor Associations, PABA, NODC, West End Business and Professional Association, United Way and our four county chambers, will collaborate on economic initiatives, including an update of our regional CEDS document for Clallam and Jefferson Counties.
 - The EDC Board created the Business Recovery Committee which plans to write a draft CEDS document for submission to the North Olympic Development Council which serves as the Economic Development District for Clallam and Jefferson Counties.
 - The Clallam EDC is providing Administration and project management support for the Countywide Childcare Alliance grant program. The final report will be submitted to Department of Commerce in July 2021.
 - The EDC will participate in the County's Affordable Housing Task Force and provides extensive analysis on the affordable housing projects.
 - c. Champion and provide administrative support to the North Olympic Legislative Alliance (NOLA).
 - The EDC will contract with Josh Weiss of Gordon Thomas Honeywell to advocate for NOLA's priorities at the state level.
 - The EDC will host Josh Weiss on Coffee with Colleen on a monthly basis through the 2021 legislative Session.
 - The EDC will support surveys for input to NOLA.
3. Administration of the Clallam County Opportunity Fund:
- The Contractor shall serve as application administrator for the Clallam County Opportunity fund providing the primary location for general information, inquires, and coordination relating to funding applications. The Contractor will screen inquires to evaluate the applicant's ability to meet funding requirements and shall promote the fund as a community economic development tool. The Contractor will provide materials describing the Opportunity Fund and general application process and assist applicants in the creation of project specifics and in the administration of formal applications.
4. The Contractor shall maintain records and report to the County as follows:
- a. The Contractor shall maintain accounts and records that accurately reflect the revenues and costs for the Contractor's activities under this Contract. These financial records, and all records related to the performance of this contract, shall be available for County inspection.
 - b. The Contractor shall use its best efforts to economize on overhead expenses to the maximum extent feasible in providing the services to be performed pursuant to this contract.

Section B: 2021 Performance Measures

The CLALLAM COUNTY jurisdiction for the purposes of this contract is defined as the Urban Growth Area of the City as well as areas with economic interests impacting the West End of the Olympic Peninsula.

1. RECRUITMENT& MARKETING ACTIVITIES

Recruitment & Marketing — Business attraction (recruitment and marketing) is a means of contributing to the economic vitality of the community to enhance and diversify the local tax base, to increase the number of jobs available to residents in the community, and to improve the local quality of life. For communities to maintain and boost their economic vitality, they must persuade businesses or investors to locate, expand or remain in the area rather than in a competing location. Economic development marketing and attraction is not just selling business sites or attracting businesses, it is a means of promoting the community as a viable location for economic activity. Marketing techniques to reach targeted audience and attract potential investors include advertising (e.g., electronic media, broadcasts (radio, television commercials, online advertising)); publicity (e.g., press kits, public official speeches, news releases, public relations); promotional materials (e.g., trade exhibits, economic development newsletters, slide and video presentations, brochures, fact books, websites); personal selling (e.g., trade fairs, trade shows, business envoys, events); email (e.g., electronic newsletters, event invitations, announcements, links to your website for prospects); social media (e.g., Facebook, Instagram, LinkedIn)

Recruitment & Marketing Activity Performance Measure Targets – 2021

of first-time businesses contacts initiated outside of the county, site selector contacts initiated, and trade shows attended suitable for location in CLALLAM COUNTY jurisdiction: **12**

2. BUSINESS RETENTION & EXPANSION ACTIVITIES:

Retention & Expansion — Businesses retention and expansion (BRE) is the core program of any economic development plan. These programs are designed to 1) retain or keep existing businesses in the community; and 2) aid to businesses to expand. Retention and expansion programs can be implemented at the local, regional and state levels in a variety of ways.

Business Retention & Expansion Activities (BRE) Performance Measure Targets – 2021

of outreach interactions initiated with existing businesses such as phone calls, site visits, or surveys in CLALLAM COUNTY jurisdiction: **36**

of follow-up interactions initiated with existing businesses in CLALLAM COUNTY jurisdiction. **12**

3. BUSINESS ASSISTANCE

Business Assistance (including start-ups). Respond to inquiries and support business needs with connecting directly or referring partners. Small and emerging businesses generate wealth and provide a significant source of employment in today's high technology global economy. They stimulate job creations, develop crucial innovations in both products and services, and diversify the economic base. It is critical that communities' economic development strategies dedicate resources to developing and promoting new business start-ups and establishing effective support systems so these new businesses can grow successfully. A community that meets the needs of its entrepreneurs increases its chances of job growth within small businesses, and those gains translate into a more vibrant community.

Business Assistance Performance Measure Targets – 2021

Support to number of businesses requesting assistance in CLALLAM COUNTY jurisdiction: **24**
of follow-up interactions with businesses in CLALLAM COUNTY jurisdiction. **24**

4. READINESS & CAPACITY BUILDING

Readiness & Capacity Building The purpose of readiness and capacity building is to raise the living standards and to improve the quality of life for all citizens in a community. It seeks to build

initiatives around shared values, opportunities, problems, threats and concerns. Leaders work to transform their communities for the better and inspire others to do the same. It is an educational process that helps citizens to understand the economic, social, political, environmental and psychological aspects of various solutions.

Readiness & Capacity Building: Performance Measure Targets – 2021

of engagements with other organization and local governments to increase community assets/capacity which supports CLALLAM COUNTY jurisdiction: **48**

Definition: This counts meetings, events, and contacts with other groups and individuals where the purpose is to increase the community's ability to grow and prosper economically.

of engagements led or co-sponsored by Clallam EDC which supports CLALLAM COUNTY jurisdiction: **12**

Definition: This includes fairs, parades, global entrepreneur week, business plan competitions, farmer's markets, seminars, and other structured activities involving the community in which the ADO is involved in planning, organizing sponsoring or co-sponsoring.

COMPENSATION

1. ☒ **a. FIXED FEE FOR SERVICE:** For services rendered, the County shall pay to the Contractor a fixed fee of ONE HUNDRED THOUSAND DOLLARS (\$100,000) per calendar year for the completed work set forth in Attachment A. Payments for completed tasks shall be made no more frequently than ☒ monthly invoiced.

Each request for payment shall be supported by an invoice specifying the tasks completed up to the request for payment and the payment amount requested. In no event shall payment be sought in an amount which represents a percentage of the fee greater than the percentage of completed tasks.

OR

☐ **b. HOURLY RATES:** For services rendered, the County shall compensate the Contractor at the following hourly rates:

Name/Position

Hourly Rate

Payments for completed tasks shall be made no more frequently than ☐ monthly; ☐ quarterly; ☐ semi-annually;
☐ annually; ☐ at completion of project; ☐ other (specify) _____.

Each request for payment shall be supported by an invoice specifying: the name/position of the Contractor's employee if two or more are identified above; number of hours worked; completed tasks for which compensation is sought; estimated percentage of task completion; payment amount requested; other (specify) _____.

In no event shall Contractor be compensated in excess of _____ DOLLARS
(\$ _____) for the completed work set forth in Attachment "A."

2. AND

☒ **a.** The compensation set forth herein includes, without limitation: labor, materials, equipment, travel, telephone, computer, copiers and the like.

OR

☐ **b.** The County shall reimburse the Contractor for actual expenses incurred for travel, telephone, copiers and computer. Reimbursement for airfare, mileage, meals and/or accommodations shall be at the same rate as that applicable to county employees traveling on county business.

OR

☐ **c.** Other (specify): _____

GENERAL CONDITIONS

1. Scope of Contractor's Services. The Contractor agrees to provide to the County services and any materials set forth in the project narrative identified as Attachment A during the agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.
2. Accounting and Payment for Contractor Services. Payment to the Contractor for services rendered under this Agreement shall be as set forth in Attachment B. Unless specifically stated in Attachment B, the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract.

The County shall compensate the Contractor through the County voucher system for the Contractor's service pursuant to the fee schedule set forth in Attachment B.

3. Delegation and Subcontracting. Contractor's services are deemed personal and no portion of this contract may be delegated or subcontracted to any other individual, firm or entity without the express and prior written approval of the County Project Manager.
4. Independent Contractor. The Contractor's services shall be furnished by the Contractor as an independent contractor and nothing herein contained shall be construed to create a relationship of employer/employee or master/servant.

The Contractor acknowledges that the entire compensation for this Agreement is specified in Attachment B and the Contractor is not entitled to any county benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental or other insurance benefits, or any other rights or privileges afforded to Clallam County employees. The Contractor represents that it maintains a separate place of business, serves clients other than the County, will report all income and expense accrued under this contract with the Internal Revenue Service on a business tax schedule, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.

In the event that either the state or federal government determines that an employer/employee or master/servant relationship exists rather than an independent contractor relationship such that Clallam County is deemed responsible for federal withholding, social security contributions, workers compensation and the like, the Contractor agrees to reimburse Clallam County for any payments made or required to be made by Clallam County. Should any payments be due to the Contractor pursuant to this Agreement, the Contractor agrees that reimbursement may be made by deducting from such future payments a pro rata share of the amount to be reimbursed.

Notwithstanding any determination by the state or federal government that an employer/employee or master/servant relationship exists, the Contractor, its officers, employees and agents, shall not be entitled to any benefits which Clallam County provides to its employees.

5. No Guarantee of Employment. The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.
6. Regulations and Requirements. This Agreement shall be subject to all federal, state and local laws, rules, and regulations.
7. Right to Review. This contract is subject to review by any federal or state auditor. The County shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the County Project Manager. Such review may occur with or without notice, and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and

its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for three (3) years after contract termination, and shall make them available for such review, within Clallam County, State of Washington, upon request, during reasonable business hours.

8. Modifications. Either party may request changes in the Agreement. Any and all agreed modifications shall be in writing, signed by each of the parties.
9. Termination for Default. If the Contractor defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Contractor in the U.S. Mail, postage prepaid, terminate the contract, and at the County's option, obtain performance of the work elsewhere. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor agrees to bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

10. Termination for Public Convenience. The County may terminate the contract in whole or in part whenever the County determines, in its sole discretion that such termination is in the interests of the County. Whenever the contract is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this contract by the County at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the County.
11. Termination Due to Insufficient Funds. If sufficient funds for payment under this contract are not appropriated or allocated or are withdrawn, reduced, or otherwise limited, the County may terminate this contract upon five (5) days written notice to the Contractor. No penalty or expense shall accrue to the County in the event this provision applies.
12. Termination Procedure. The following provisions apply in the event that this Agreement is terminated:
 - (a) The Contractor shall cease to perform any services required hereunder as of the effective date of termination and shall comply with all reasonable instructions contained in the notice of termination, if any.
 - (b) The Contractor shall provide the County with an accounting of authorized services provided through the effective date of termination.
 - (c) If the Agreement has been terminated for default, the County may withhold a sum from the final payment to the Contractor that the County determines necessary to protect itself against loss or liability.
13. Defense and Indemnity Agreement. The Contractor agrees to defend, indemnify and save harmless the County, its appointed and elected officers, agents and employees, from and against all loss or expense, including but not limited to claims, demands, actions, judgments, settlements, attorneys' fees and costs by reason of any and all claims and demands upon the County, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time

resulting therefrom, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Contractor, his/her subcontractors, its successor or assigns, or its or their agent, servants, or employees, the County, its appointed or elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the County, its appointed or elected officials or employees. It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein.

14. Industrial Insurance Waiver. With respect to the performance of this Agreement and as to claims against the County, its appointed and elected officers, agents and employees, the Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, as now or hereafter amended, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this Agreement extend to any claim brought by or on behalf of any employee of the Contractor. Along with the other provisions of this Agreement, this waiver is mutually negotiated by the parties to this Agreement.
15. Venue and Choice of Law. In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action shall be in the courts of the State of Washington in and for the County of Clallam. This Agreement shall be governed by the law of the State of Washington.
16. Withholding Payment. In the event the County Project Manager determines that the Contractor has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the County may withhold from amounts otherwise due and payable to Contractor the amount determined by the County as necessary to cure the default, until the County Project Manager determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Contractor to termination or damages, provided that the County promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than ten (10) days after it determines to withhold amounts otherwise due. A determination of the County Project Manager set forth in a notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provision of the Disputes clause of this Agreement. The County may act in accordance with any determination of the County Project Manager which has become conclusive under this clause, without prejudice to any other remedy under the Agreement, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount paid or incurred from amounts due or to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to the Contractor by reason of good faith withholding by the County under this clause.
17. Rights and Remedies. The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available bylaw.
18. Contractor Commitments, Warranties and Representations. Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for damages to the County. A commitment includes, but is not limited to any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.
19. Patent/Copyright Infringement. Contractor will defend, indemnify and save harmless County, its appointed and elected officers, agents and employees from and against all loss or expense, including but not limited to claims, demands, actions, judgments, settlements, attorneys' fees and costs by reason of any and all claims and demands upon the County, its elected or appointed officials or

employees for damages because of the Contractor's alleged infringement on any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County, its appointed and elected officers, agents and employees in any action. Such defense and payments are conditioned upon the following:

- (a) That Contractor shall be notified promptly in writing by County of any notice of such claim.
- (b) Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the County.

20. Disputes:

(a) General. Differences between the Contractor and the County, arising under and by virtue of the contract documents shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. The records, orders, rulings, instructions, and decision of the County Project Manager shall be final and conclusive thirty (30) days from the date of mailing unless the Contractor mails or otherwise furnishes to the County Administrator a written notice of appeal. The notice of appeal shall include facts, law, and argument as to why the conclusions of the County Project Manager are in error.

In connection with any appeal under this clause, the Contractor and County shall have the opportunity to submit written materials and argument and to offer documentary evidence in support of the appeal. Oral argument and live testimony will not be permitted. The decision of the County Administrator for the determination of such appeals shall be final and conclusive. Reviews of the appellate determination shall be brought in the Superior Court of Clallam County within fifteen (15) days of mailing of the written appellate determination. Pending final decision of the dispute, the Contractor shall proceed diligently with the performance of this Agreement and in accordance with the decision rendered.

(b) Notice of Potential Claims. The Contractor shall not be entitled to additional compensation or to extension of time for (1) any act or failure to act by the County Project Manager or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

(c) Detailed Claim. The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

21. Ownership of Items Produced. All writings, programs, data, art work, music, maps, charts, tables, illustrations, records or other written, graphic, analog or digital materials prepared by the Contractor and/or its consultants or subcontractors, in connection with the performance of this Agreement shall be the sole and absolute property of the County and constitute "work made for hire" as that phrase is used in federal and/or state intellectual property laws and Contractor and/or its agents shall have no ownership or use rights in the work.

22. Recovery of Payments to Contractor. The right of the Contractor to retain monies paid to it is contingent upon satisfactory performance of this Agreement, including the satisfactory completion of the project described in the Scope of Work (Attachment A). In the event that the Contractor fails, for any reason, to perform obligations required of it by this Agreement, the Contractor may, at the County Project Manager's sole discretion, be required to repay to the County all monies disbursed to the Contractor for those parts of the project that are rendered worthless in the opinion of the County Project Manager by such failure to perform.

Interest shall accrue at the rate of 12 percent (12%) per annum from the time the County Project Manager demands repayment of funds.

23. Project Approval. The extent and character of all work and services to be performed under this Agreement by the Contractor shall be subject to the review and approval of the County Project Manager. For purposes of this Agreement, the County Project Manager is:

Name: Debi Cook

Title: Financial Systems Administrator/Budget Director

Address: 223 East 4th Street, Suite 4, Port Angeles, WA 98362

Telephone: 360.417.2382

E-mail: dcook@co.clallam.wa.us

Fax: 360.417.2493

In the event there is a dispute with regard to the extent and character of the work to be done, the determination of the County Project Manager as to the extent and character of the work to be done shall govern subject to the Contractor's right to appeal that decision as provided herein.

24. Non-Discrimination. The Contractor shall not discriminate against any person on the basis of race, creed, political ideology, color, national origin, sex, marital status, sexual orientation, age, or the presence of any sensory, mental or physical handicap.
25. Subcontractors. In the event that the Contractor employs the use of any subcontractors, the contract between the Contractor and the subcontractor shall provide that the subcontractor is bound by the terms of this Agreement between the County and the Contractor. The Contractor shall insure that in all subcontracts entered into, Clallam County is named as an express third-party beneficiary of such contracts with full rights as such.
26. Third Party Beneficiaries. This agreement is intended for the benefit of the County and Contractor and not for the benefit of any third parties.
27. Standard of Care. The Contractor shall perform its duties hereunder in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession as Contractor currently practicing under similar circumstances. The Contractor shall, without additional compensation, correct those services not meeting such a standard.
28. Time is of the Essence. Time is of the essence in the performance of this contract unless a more specific time period is set forth in either the Special Terms and Conditions or Scope of Work.
29. Notice. Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, any notices shall be given by the Contractor to the County Project Manager. Notice to the Contractor for all purposes under this Agreement shall be given to the person executing the Agreement on behalf of the Contractor at the address identified on the signature page.

30. Severability. If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.
31. Precedence. In the event of inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:
 - (a) Applicable federal, state and local statutes, ordinances and regulations;
 - (b) Scope of Work (Attachment A) and Compensation (Attachment B);
 - (c) Special Terms and Conditions (Attachment D); and
 - (d) General Conditions (Attachment C).
32. Waiver. Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.
33. Attorney Fees. In the event that litigation must be brought to enforce the terms of this agreement, the prevailing party shall be entitled to be paid reasonable attorney fees.
34. Construction. This agreement has been mutually reviewed and negotiated by the parties and should be given a fair and reasonable interpretation and should not be construed less favorably against either party.
35. Survival. Without being exclusive, Paragraphs 4, 7, 13-19, 21-22 and 31-35 of these General Conditions shall survive any termination, expiration or determination of invalidity of this Agreement in whole or in part. Any other Paragraphs of this Agreement which, by their sense and context, are intended to survive shall also survive.
36. Entire Agreement. This written contract represents the entire Agreement between the parties and supersedes any prior statements, discussions or understandings between the parties except as provided herein.

SPECIAL TERMS AND CONDITIONS

☒ 1. Reporting. The Contractor shall submit written progress reports to the County Project Manager as set forth below:

- ☐ With each request for payment.
- ☐ Monthly.
- ☒ Quarterly.
- ☐ Semi-annually.
- ☐ Annually.
- ☐ Project completion.
- ☐ Other (specify):

Progress reports shall include, at a minimum, the following:

Reports shall include any problems, delays or adverse conditions which will materially affect the Contractor's ability to meet project objectives or time schedules together with a statement of action taken or proposed to resolve the situation. Reports shall also include recommendations for changes to the Scope of Work, if any. Payments may be withheld if reports are not submitted.

☒ 2. Insurance. The Contractor shall maintain in full force and effect during the term of this Agreement, and until final acceptance of the work, public liability and property damage insurance with companies or through sources approved by the state insurance commissioner pursuant to RCW Title 48, as now or hereafter amended. The County, its appointed and elected officials, agents and employees, shall be specifically named as additional insureds in a policy with the same company which insures the Contractor or by endorsement to an existing policy or with a separate carrier approved pursuant to RCW Title 48, as now or hereafter amended, and the following coverages shall be provided:

- ☒ **COMPREHENSIVE GENERAL LIABILITY:**
 - Bodily injury, including death. \$1,000,000 per occurrence
 - Property damage \$1,000,000 per occurrence
- ☐ **ERRORS AND OMISSIONS or PROFESSIONAL LIABILITY with an Extended Reporting Period**
 - Endorsement (two year tail). \$ per occurrence
- ☐ **WORKERS COMPENSATION:** Statutory amount
- ☐ **AUTOMOBILE: coverage on owned, non-owned, rented and hired vehicles**
 - Bodily injury, liability, including death \$ per occurrence
 - Property damage liability \$ per occurrence

If the Errors and Omissions or Professional Liability insurance obtained is an occurrence policy as opposed to a claims-made policy, the Extended Reporting Period Endorsement is not required.

Any such insurance carried by the Contractor shall be primary over any insurance carried by Clallam County and the Contractor shall ensure that such insurance is primary. The County shall have no obligation to report occurrences unless a claim or lawsuit is filed with it and the County has no obligation to pay any insurance premiums.

Evidence of primary insurance coverage shall be submitted to the County Project Manager within twenty (20) days of the execution of the Agreement. The Agreement shall be void ab initio if the proof of coverage is not timely supplied.

The coverage limits identified herein shall not limit the potential liability of the Contractor and the Contractor's duty to defend, indemnify and hold harmless shall apply to any liability beyond the scope of insurance coverage.

☐ 3. Liquidated Damages. For delays in timely completion of the work to be done or missed milestones of the work in progress, the Contractor shall be assessed _____ Dollars (\$) per day as liquidated damages and not as a penalty because the County finds it impractical to calculate the actual cost of delays. Liquidated damages will not be assessed for any days for which an extension of time has been granted. No deduction or payment of liquidated damages will, in any degree, release the Contractor from further obligations and liabilities to complete the entire project.

☐ 4. Other (specify):.



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

11
1/24/22

Department: BOCC/Auditor

WORK SESSION ☒ Meeting Date: January 24, 2022

REGULAR AGENDA ☒ Meeting Date: February 1, 2022

Required originals approved and attached? ☒
Will be provided on:

Item summary:

- | | |
|--|--|
| ☒ Call for Hearing | ☐ Contract/Agreement/MOU - Contract # |
| ☐ Resolution | ☐ Proclamation ☐ Budget Item |
| ☒ Draft Ordinance | ☐ Final Ordinance ☐ Other |

Documents exempt from public disclosure attached: ☐

Executive summary: The Franchise agreement with Maple View Farms originally authorized in 2001 for a twenty (20) year term allowing the location of a waste transmission line over county property. It is recommended that this agreement be renewed for five (5) years at this time to allow BOCC and other involved departments to review the franchise process in the future. After hearings in November 2021, this renewal agreement was revised per request to eliminate bond requirement. Fee structure remained the same to keep consistent with other franchises.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?) It is recommended that the Board consider signing a call for public hearing for the proposed draft ordinance.

County Official signature & print name: Angi Klahn

A handwritten signature in black ink, appearing to read "Angi Klahn", written over a horizontal line.

Name of Employee/Stakeholder attending meeting: Mark Lane, Dee Boughton

Relevant Departments: BOCC, Auditor, Prosecutor

Date submitted: 1/13/2022

* Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting - Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

PUBLIC HEARING
Proposed Clallam County Ordinance
Titled Farm Waste Line Facility Franchise

NOTICE: The Clallam County Board of Commissioners will conduct a public hearing on Tuesday, February 15, 2022 at 10:30 a.m., or as soon thereafter. The public hearing is to consider the Ordinance listed above. The proposed Ordinance is available on the County website <http://www.clallam.net/bocc/drafts.html>

****ATTENTION****

In response to the current pandemic, to promote social distancing, and in compliance with Governor's Proclamation and the recommendation of the Clallam County Health Officer, the Board of Commissioners meetings will be virtual only. The Board of Commissioners strongly encourages public comments to be submitted in writing.

This meeting can be viewed on a live stream at this link: <http://www.clallam.net/features/meetings.html>

If you would like to participate in the meeting via Zoom audio only, call 253-215-8782 and use meeting ID: 875 561 7844 and passcode: 12345

If you would like to participate in the meeting via Zoom video conference, visit <https://zoom.us/j/8755617844> and use meeting ID: 875 561 7844 and passcode: 12345

Public comment and questions can be directed to the Clerk of the Board at 360-417-2256 or agores@co.clallam.wa.us.

In compliance with the Americans with Disabilities Act, reasonable accommodations are available upon request.

PROPONENT: Clallam County Board of Commissioners
223 East 4th Street, Suite 4, Port Angeles, WA 98362-3015
Telephone: 360.417.2256

FORMAL IDENTIFICATION: Ordinance Adopting Code Chapter Titled Farm Waste Line Facility Franchise.

SECTION-BY-SECTION SUMMARY OF PROPOSED CHANGES:

Adoption of Clallam County Code Chapter Title Farm Waste Line Facility Franchise.

The Ordinance will grant a franchise for the term of five (5) years to Maple View Farms to construct, extend, connect, repair, maintain, operate and remove manure line facilities along the county roads within Clallam County.

Publish: February 4, 2022
Bill: Board of Commissioners

Loni Gores, CMC, Clerk of the Board

ORDINANCE NO., _____ 2022

An ordinance granting to MAPLE VIEW FARM a franchise for use of county roads.

Farm Waste Line Facility Franchise

Sections:

010	Application for Franchise
020	Hearing on Franchise
030	Grant of Franchise
040	Reservation of Rights
050	Record of Franchise
060	Severability
070	Effective Date

010 Application for Franchise. An application for a waste transmission line facilities franchise to allow the location of certain utilities within certain county properties has been signed by Ben Smith, Managing Partner of Maple View Farm, dated _____. The approved application is attached hereto as Exhibit A and is by this reference expressly incorporated herein.

020 Hearing on Franchise. The Board of Clallam County Commissioners (Board) has conducted a public hearing in regard to the request for franchise. Public notice of the hearing was given by posting notices in three public places in Port Angeles, the county seat of Clallam County, at least fifteen days before the date fixed for the hearing and by publishing a like notice two times in the official newspaper of the county not less than five days before the date fixed for the hearing. The notice stated the name(s) of the applicant; a description of the county property by reference to section, township, and range; and the time and place fixed for the hearing.

030 Grant of Franchise. The Board deems it to be in the public interest to grant the franchise as described in the attached Exhibit A.

040 Reservation of Rights. The franchise granted by this ordinance shall be subject to the power of eminent domain and the right of the Board or the people acting for themselves through the initiative or referendum to repeal, amend, or modify the franchise in the interest of the public.

050 Record of Franchise. This chapter shall be recorded with the County Auditor.

060 Severability. If any section, subsection, paragraph, sentence, clause or phrase of the chapter is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this chapter, it being hereby expressly declared that this chapter and each section, subsection, paragraph, sentence, clause, and phrase thereof would have been adopted irrespective of the fact that any one (1) or more other sections, subsections, paragraphs, sentences, clauses, or phrases be declared invalid or unconstitutional.

070 Effective Date. This chapter shall take effect ten (10) days after adoption.

PASSED AND ADOPTED this _____ day of _____, 2022

BOARD OF CLALLAM COUNTY COMMISSIONERS

Mark Ozias, Chair

Randy Johnson

William Peach

ATTEST:

Loni Gores
Clerk of the Board

UTILITIES FRANCHISE

Granted by Clallam County Board of Commissioners to

MAPLE VIEW FARM

This franchise to construct, extend, connect, repair, maintain, operate and remove manure line facilities along, the county roads within Clallam County ("County") is granted to Maple View Farm ("Grantee") upon the following express terms and conditions:

1. DEFINITIONS: The term "county roads" or "roads" as used herein shall include, but not be limited to, county road, avenues, alleys, streets, boulevards, public ways, public rights-of-way, viaducts, and bridges. Specifically, the road included in this franchise is the west side of Schmuck Road, Road #54070 from milepost 0.36 to milepost 1.18 The geographic location is in Sections 16 and 21, Township 30 North, Range 3 West, W.M.
2. LOSS OF JURISDICTION: Whenever any of the roads as designated in this franchise shall fall outside the County's authority by reason of change in political jurisdiction such as by subsequent incorporation or annexation, then all the rights and privileges herein granted shall terminate in respect to said roads; but this franchise shall continue in force and effect in respect to all roads not so removed from County authority.
3. POWERS: The Grantee shall have the right and authority to enter over, under, along, across, and upon the above-mentioned roads for the purpose of construction, extension; connection, repair, maintenance, operation, and removal of facilities as authorized herein in conformity with such county, state, and federal codes, regulations and standards, as now enacted or hereafter amended, governing such facilities.
4. TERM: The franchise granted by this ordinance shall last for a term of Five (5) years from the date of this grant unless terminated for reasons of material noncompliance with the terms of this franchise, by either party upon 180 days written notice to the non-terminating party. Said notice of termination shall be deemed complete on the third day following mailing to, by certified mail, return receipt requested, or upon personal service at, the non-terminating party's principal place of business.
5. PERMITS: Before any work is done by the Grantee under this franchise, it shall first file with the Clallam County Road Engineer (hereinafter the Engineer) an application for a permit to do such work, accompanied by design drawings in triplicate showing the position, location, and type of facilities sought to be constructed, extended, connected, repaired, maintained, operated or removed, showing the relative positions to existing roads and property lines. Such prints shall be submitted on 24-inch by 36-inch or smaller paper (but not smaller than 8-1/2"x11"). Such drawings shall be drawn to scale 1 inch = 50 feet (unless otherwise approved). Such drawings shall give an accurate graphic representation of local improvements including, but not limited to, sidewalks, roadways, property lines, turnouts, parking strips, telephone lines, electric lines, poles, conduits, culverts, ditches, drainage facilities, sewer lines, water lines, as may exist over, under, along, and upon the

roads sought to be occupied and immediately adjacent thereto and said locations shall be drawn in such a manner that identification in the field is possible. Such drawings shall indicate the nature of the materials being installed (e.g.: concrete, PVC, HDPE, asbestos cement, copper, steel, treated wood, etc.). Such drawings shall also show the location by cross sections of the utility to be installed by the Grantee.

The Engineer shall either approve and issue the permit, approve subject to conditions, or reject the application. If the application is rejected, the Engineer shall provide the Grantee, in written form, with an explanation of the reasons that the application was rejected.

Permits shall not be required for work performed by Grantee's personnel, contractors, and equipment relating to the following, provided that no obstruction, improvement, or construction is located so as to constitute a hazard to motor or pedestrian traffic:

- a. Tree trimming and brushing, unless the vegetation in need of trimming or brushing is the subject of a "no trim" agreement between Clallam County and the property owner, his heirs, successors, or assigns, where the vegetation is located. The Grantee shall contact the County Engineer prior to trimming or brushing to ascertain whether or not a tree trimming agreement is in effect.;
- b. Maintenance repairs where no damage to the road or its appurtenances will occur;
- c. Installation of customer service laterals from existing lines where no damage to the road or its appurtenances will occur;
- d. Emergency work provided that Grantee shall notify the Engineer of the nature and scope of said emergency work as soon thereafter as possible but in no event later than forty-eight (48) hours after commencement of said emergency work and shall provide the Engineer, if requested to do so, with as-built drawings which are consistent with the requirements for permit drawings hereunder.

6. **COMPLIANCE WITH LAW AND STANDARDS:** The Grantee shall construct, extend, connect, repair, maintain, operate, and remove its facilities at its own risk. The Engineer may inspect said construction, extension, repair, maintenance, or removal to determine whether the construction, extension, repair, maintenance, or removal materially or adversely impacts the county road. Approval by the Engineer of the construction, extension, repair, maintenance, or removal shall not be construed as an approval of the nature, extent, quality, or workmanship of the Grantee's work and shall be construed to mean nothing other than that the Grantee's work does not materially adversely impact the physical characteristics of the county road. The location of all the Grantee's facilities, their depth below or height above the surface of the ground or grade of any road, and their lateral location in relation to the road centerline shall be in compliance with all county, state, and federal codes, regulations, and standards, including WAC 136-40. All underground facilities shall be installed with a locate wire of 10-gauge stranded copper wire with 600 volt insulation; Essex, or approved equal. Where conflicts occur between the aforesaid codes, regulations, and standards vs. the terms of this franchise, the stricter of the two shall apply. The Grantee shall at all times insure

its construction, extension, connection, repair, maintenance, operation, and removal of its facilities does not diminish the safety of the public using, or in proximity to, county roads.

7. **RECORDS:** Grantee shall at all times keep at its principal place of business full and complete plans, maps, and records showing the location and details of all franchise facilities located over, under, along, across, or upon the roads. Grantee shall make copies of the maps, plans, and records available, free of charge, to the County at any time upon request. Such maps shall be drawn in the same manner as design drawings as set forth in Section 5 of this franchise, showing the location of all franchise facilities installed over, under, along, across, or upon the roads within the limits of Clallam County. One complete set of said maps, plans, and records shall be provided on reproduction quality mylar or, alternatively, up to four sets shall be provided on paper. Maps, plans, and records may be provided in electronic form, instead of mylar or paper, if approved by the County.

In addition to the above described plans, maps, and records the Grantee shall maintain a paper or mylar map at a scale of 1 inch = 2000 feet (or other scale approved by the County) showing all county roads within the bounds of this franchise and showing where Grantee's facilities are located in respect to said roads. An up to date copy of this map shall be provided, free of charge, annually to the County.

8. **RESTORATIONS AND MAINTENANCE:** The Grantee shall leave all roads in as good and safe condition in all respects as they were before the commencement of such work by the Grantee, its officers, agents, contractors, or employees, or in such condition as meets with the approval of the Engineer.

In case of any damage to said roads or their appurtenances, including, but not limited to, turnouts, gutters, curbs, ditches, wood or concrete walks, drain pipes, culverts, catch basins, manholes, hand or guard rails, retaining walls, bridges, trestles, wharves or landings, or to the property of third parties, resulting from any work performed or failed to be performed by the Grantee, the Grantee agrees to immediately repair said damage at its own cost and expense to the satisfaction of the Engineer. Clallam County may at any time, do, order, and have done any and all work considered necessary to restore to a good and safe condition any such roads or appurtenances left by the Grantee, its officers, agents, contractors, or employees in a condition different from that which existed prior to the work and the Grantee, upon demand, shall pay to the County all costs of such construction or repair and of doing such work; provided, that Clallam County shall have first made written demand upon the Grantee to perform the work necessary to return the road or appurtenances to the condition which they existed prior to the work by the Grantee, and the Grantee shall have failed, for a period of forty-eight (48) hours after receipt of such written demand, to commence the work necessary to return the road or appurtenance to its pre-existing condition. Provided further, that in the event it is reasonably determined by Clallam County that an emergency exists, which requires immediate restoration, then the County may perform such work and the Grantee shall pay all reasonable costs thereof.

The grantee shall trim brush, grass, trees, and all other vegetative matter from within the county right of way within a 10-foot radius of all aboveground appurtenances so as to aid in visual location of the utilities by county personnel. Trimming shall be performed as necessary to keep vegetative growth shorter than the appurtenance. Herbicides and other chemical agents shall not be used.

9. **HOLD HARMLESS :** The Grantee shall defend and indemnify Clallam County, its officers, agents, and employees, and any and all other public agencies and their members, officers, agents, and employees, against any and all claims, demands, suits, actions, damages, expenses and costs, including a reasonable attorney fee, for injury to or death of any person or any damage to any property caused by the fault of the Grantee, as defined in R.C.W. 4.22.015, as now enacted or hereafter amended, its officers, agents, contractors, or employees, by any manner whatsoever, in the construction, extension, connection, repair, maintenance, operation, or removal of its facilities, or arising out of the exercise of any right or privilege under this franchise.

The Engineer shall notify Grantee, in writing, as soon as practicable after the presentation of any claims, demands, suits, actions, damages, expenses or costs (collectively "claims") made or accrued against the County on account of any fault on the part of Grantee. Failure by the Engineer to notify Grantee properly in accordance with the foregoing of any such claims against the County shall not release Grantee from its obligation to defend or indemnify the County unless Grantee can establish that it has been materially prejudiced by such failure.

Approval by the county pursuant to Section 5 of this franchise shall be no defense for avoidance of this covenant.

10. **CONCURRENT POWERS:** The construction, extension, connection, repair, maintenance, operation, or removal of the Grantee's facilities shall not preclude Clallam County, its officers, agents, contractors, or employees from blasting, grading, or doing other necessary road work contiguous to the Grantee's facilities, provided that the Grantee shall have advance notice of said blasting, excavating, or embanking in order that the Grantee may protect its facilities.

If, at any time, Clallam County, deems it advisable to improve any of its roads by, including, but not limited to, grading, regrading, paving, altering, repairing, realigning, widening, or draining, the Grantee, upon advance notice by Clallam County, shall, at its own expense, except as detailed below, promptly so raise, lower, or move its facilities to allow Clallam County to complete its road improvements and to conform to such improved roads and the County shall in no way be held liable for any damages to Grantee that may occur by reason of the County's improvements or by the exercise of any rights so reserved in this section or grant, except as a result of negligence or fault on the part of the County. Said advance notice shall indicate the date by which the Grantee is required to raise, lower, or move its facilities and said notice will be given to the Grantee in advance of said date by a length of time consistent with the urgency of the situation (less time for emergencies and more time for scheduled projects). Clallam County will strive for as much advance notice as is practical so as to allow time for designing, bidding, and completing the work. Failure of the Grantee to raise, lower or move its facilities by the date set forth in the written notice shall entitle Clallam County to liquidated damages in the amount of Two Hundred Fifty Dollars (\$250.00) per day for each day of non-compliance. Said dollar amount will increase in accordance with Section 18, Inflation Adjustments.

The Grantee shall raise, lower, or move its facilities at the County's expense if the Grantee shall have prior easement or right-of-use rights, or as otherwise agreed to between the parties.

11. FRANCHISE NOT EXCLUSIVE: This grant or privilege shall not be deemed or held to be an exclusive franchise. It shall in no manner prohibit Clallam County from granting other franchises of a like nature for other public or private purposes over, under, along, or upon any of the county roads and shall in no way prevent or prohibit Clallam County from using any of said roads or affect its jurisdiction over them or any part of them, with full power to make all necessary changes, relocation, repairs, maintenance, etc., as it deems fit.
12. ASSIGNMENT: Except for assignment or hypothecation for security purposes, Grantee shall not have the right to assign the franchise or otherwise transfer it in any manner whatsoever, or sell, lease, license, or permit others to use or transfer in any manner whatsoever any interest in all or any part of its facilities that are installed or operated hereunder, except on prior written approval of the Board of Clallam County Commissioners, which consent shall not be unreasonably withheld.
13. FORFEITURE: The franchise may be forfeited, at the option of the County, upon failure or violation by Grantee to observe the material terms and conditions set forth herein. Forfeiture may be exercised only following written notice to Grantee of failure to observe the terms and conditions hereof, detailing the breach of this franchise with specificity, followed by Grantee's failure or refusal to eliminate or correct such failure or to commence correction of such within 120 days. In the event of any failure or violation, the County may bring suit in the manner provided by law for the forfeiture of the franchise without the necessity of resorting to procedures in quo warranto, and the exercise of such remedy of forfeiture shall not preclude exercise of any other right or remedy given to the County by law, whether exercised concurrently or subsequently.
14. ABANDONMENT: Grantee may at any time abandon the rights and authority granted hereunder, provided that six (6) months' prior written notice of intention to abandon is given to the Board of County Commissioners and provided further that all roads occupied by Grantee's facilities are restored to that condition existing immediately before such facilities were removed.
15. AMENDMENTS: Clallam County reserves for itself the right at any time upon forty-eight (48) hours' notice to the Grantee to change, amend, modify, or amplify any of the provisions or conditions herein enumerated to conform to any local, state, or federal law or regulation or recognized engineering practice relating to the public welfare, health, safety, or highway design as may hereinafter be adopted or recognized.
16. MONUMENT REFERENCE: Before any work is performed under this franchise, the Grantee shall reference all monuments and markers of every nature relating to subdivision plats, highways, and all other surveys that are affected by such work. The reference points shall be so located that they will not be disturbed during the Grantee's operations under this franchise. The method of referencing these monuments or other points to be referenced shall be approved by the Engineer before placement. The replacement of all such monuments or markers disturbed during the Grantee's operation shall be made as expeditiously as conditions permit and as directed by the Engineer. The cost of monuments or other markers lost, destroyed, or disturbed and the expense of replacement of approved monuments shall be borne by the Grantee. Said reference and replacement of monuments shall be performed by a surveyor licensed by the State of Washington or such other person authorized by state law to prepare and file a survey.

17. REMOVAL: Except as otherwise provided herein, within six (6) months after the use of any facilities has been permanently discontinued or this franchise expires or is otherwise terminated, Grantee shall forthwith remove its facilities from the roads. Grantee shall restore such roads to that condition existing immediately before such facilities were removed; provided that such property shall not be removed if the Engineer shall reasonably determine that such removal will cause unreasonable damage to such roads and provided further, that should the Engineer request that any facilities be allowed to remain in place for the use of the County or other franchise(e), then such facilities shall not be removed, and title thereto shall be transferred to County at no cost to the County. The Engineer may, at his discretion, permit facilities to be abandoned in place, provided that Grantee provide the Engineer with a detailed description of the facilities being abandoned (type of material, condition, size, extent, etc.), and provided such facilities are not considered hazardous, problematic, or otherwise undesirable, and further provided that Grantee shall submit to the Engineer an instrument transferring to the County ownership of such facilities. Said instrument shall certify that the utilities being abandoned are disconnected from service and are inactive. In the event that the Grantee does not forthwith remove its facilities as required herein, Clallam County reserves the right to effect such removal and assess all reasonable costs associated therewith against the Grantee. Upon presentation of an invoice, the Grantee shall pay the amounts stated therein to Clallam County.
18. INFLATION ADJUSTMENTS: The dollar amounts fixed under this franchise in Section 10, Concurrent Powers, shall be increased annually on the anniversary date of this franchise by Three and One-Half percent (3.5%),

INFLATION ADJUSTMENTS: The dollar amounts fixed under this franchise in the second paragraph of Section 24, Compensation, shall be increased annually on the anniversary date of this franchise by Three and One-Half percent (3.5%).

19. INSURANCE: Grantee shall maintain in full force and effect during the term of this franchise public liability and property damage insurance in the following amounts:

Bodily injury, including death
\$1,000,000 per person
\$2,000,000 per occurrence

Property damage
\$1,000,000 per occurrence

Clallam County, its officers, and employees shall be named as additional insureds and a certificate of insurance establishing coverages, limits of coverage and insureds shall be provided to Clallam County within thirty (30) days after the date the franchise is passed and adopted by the Clallam County Commissioners. Failure to provide a certificate of insurance to Clallam County or to maintain insurance as required herein shall constitute failure of consideration and this franchise shall be void and a nullity provided that Clallam County shall have first given written notice to Grantee of its failure to provide insurance, and Grantee shall not, within ten working days of the receipt of such notice, have corrected the deficiency. No termination or change in the coverage provided herein shall be effective without 30 days prior notice to the county and the certificate shall provide for said notice to the County.

20. SEVERABILITY: If any article, section, sentence, clause, or phrase of this ordinance is for any reason held illegal, invalid, or unconstitutional, such invalidity shall not affect the validity of the franchise or any of the remaining portions. The invalidity of any portion of this franchise shall not abate, reduce, or otherwise affect any consideration or other obligation required of Grantee.
21. ADDITIONAL POWERS: This franchise shall be subject to the power of eminent domain and the right of the Board of Clallam County Commissioners or the people acting for themselves through the initiative or referendum to repeal, amend, or modify the franchise in the interests of the public.
22. ENFORCEMENT: In the event that Clallam County seeks judicial enforcement of any term of this agreement, the Grantee shall reimburse Clallam County for all disbursements and costs incurred, including a reasonable attorney's fee, if Clallam County prevails and expert witness fees.
23. COMPENSATION: In consideration for the granting of this franchise, Grantee shall pay Clallam County for the actual costs incurred by the County in the processing and administration of this franchise. An accounting of actual costs will be sent to Grantee within 30 days of the completion and approval of the work. Payment to cover actual costs shall be paid by Grantee within 30 days of billing by Clallam County.

In additional consideration for the granting of this franchise the Grantee shall pay Clallam County the sum of Nine hundred ninety-four dollars and eighty-six cents (\$994.86) per year each and every year that this franchise is in effect. Said compensation shall be paid within 30 days of the granting of this franchise and annually within 30 days of each anniversary date thereof. Said dollar amount will increase in accordance with Section 18, Inflation Adjustments. '

24. CONTACTS/NOTICES: Any notices required to be given under this franchise shall be given by certified mail, return receipt requested, to the designated contact. The following identified persons shall be the designated contact persons for administration of this franchise:

FOR GRANTEE: Contact Name: Ben Smith

Mailing Address Maple View Farm
373 Schmuck Road
Sequim, WA 98382

Billing Address Maple View Farm
373 Schmuck Road
Sequim, WA 98382

Phone Number (360)683-3465

FOR COUNTY

Clallam County Franchise Department-BOCC
Clallam County Courthouse
223 East 4th Street, Suite 4
Port Angeles, WA 98362

Phone Number - (360) 417-2233

Notice of any changes in the contact person, address, or telephone number for the Grantee shall be communicated to the County, in writing, within 3 business days.

25. EFFECTIVE DATE CLAUSE: This franchise shall become effective upon adoption of the ordinance granting it, which is ten days following signature of such ordinance.
26. ACCEPTANCE AND APPLICATION: The undersigned hereby accepts all the rights and privileges of this franchise, if approved by the Board of Clallam County Commissioners, subject to all the terms, conditions, stipulations, and obligations contained herein. The undersigned hereby applies for this franchise.

COMPANY NAME MAPLE VIEW FARM LLC

BY (SIGNATURE) Bennett L. Smith 12-24-2021
Date

(PRINT) BENNETT L. SMITH

TITLE OWNER-MEMBER

State of Washington
County of Clallam

I certify that I know or have satisfactory evidence
that Bennett L. Smith

is the person who appeared before me, and said
person acknowledged that (he/she) was
authorized to execute the instrument and
acknowledged it as the

OFFICER of
(type of authority, e.g. (officer, president, trustee, etc))

MAPLE VIEW FARM LLC.
(name of company or party on behalf of whom instrument was executed)

to be the free and voluntary act of such party for
the uses and purposes mentioned in the
instrument.



Dated: 12/29/2021

Signature: Sharon M Bill

Title: Notary

Residing at: Port Ludlow

My appointment ends: 03/19/2025

PASSED AND ADOPTED BY:

BOARD OF CLALLAM COUNTY COMMISSIONERS

Mark Ozias, Chair

Randy Johnson

William Peach

Date: _____

ATTEST:

Loni Gores
Clerk of the Board

Approved as to Form:

Deputy Prosecuting Attorney
Clallam County



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

12
1/24/22

Department: BOCC

WORK SESSION ☒ Meeting Date: 1-24- 22

REGULAR AGENDA ☐ Meeting Date:

Item summary:

- | | |
|---|--|
| ☐ Call for Hearing | ☐ Contract/Agreement/MOU - Contract # |
| ☐ Resolution | ☐ Proclamation ☐ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance ☒ Other Discussion and next steps |

Executive summary:

Charter Update Working Group:

The Commissioners wish to form a working group to help identify and prioritize a series of potential updates to our County Charter to put before voters for their consideration. The purpose of today's discussion will be to identify potential working group members and to establish a process and timeline for moving forward. It is anticipated that once the Commissioners agree upon a list of areas in which to propose updated and/or new language, which currently includes:

- Role of County Administrator
- Role of Chief Financial Officer
- Code Enforcement
- Budgeting Process
- Affordable Housing
- Forestry Management
- Adherence to Personnel Policies by Elected Officials

The working group will convene and begin to draft updated and/or new language in each of these target areas. The working group will engage other county officials and/or the public as appropriate and communicate regularly with the entire Board at work sessions to ensure maximum opportunity for input and feedback.

Ultimately it is anticipated that the Commissioners will agree upon one or more updates in the areas listed above, or as this list may be amended, and begin to work through the formal process of submitting them to the Auditor for inclusion on the November 2022 ballot.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)
Discussion and next steps.

County Official signature & print name: Loni Gores Loni Gores, Clerk

Name of Employee/Stakeholder attending meeting: Board of Commissioners

Relevant Departments: All Departments

Date submitted: January 10, 2022

- * Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting - Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

County Charter updates 01-24-22
Revised: 3-04-2019

Questions? Call Loni Gores, Clerk of the Board, ext 2256



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

13
1/24/22

Department: BOCC

WORK SESSION ☒ **Meeting Date:** 1-24-22

REGULAR AGENDA ☒ **Meeting Date:** 2-1-22

Required originals approved and attached? ☐
Will be provided on:

Item summary:

- | | |
|--|--|
| ☒ Call for Hearing | ☐ Contract/Agreement/MOU - Contract # |
| ☒ Resolution | ☐ Proclamation ☐ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance ☐ Other |

Executive summary:

Beginning in 2022, SHB 1016 makes Juneteenth (June 19) a new paid state holiday, commemorating the abolishment of slavery and the day that the knowledge of freedom reached the last remaining enslaved people in 1865. Because the effective date of the bill is not until July 2021, and because June 19 falls on a Sunday next year, the new state holiday will be observed for the first time on Monday, June 20, 2022. Local governments are not required to follow the state legal holiday schedule, but many do.

BOCC will review and hold a hearing to approve a Resolution amending Policy 225 – Employee Benefits to adopt Juneteenth (June 19) as a standard county holiday. Whenever a standard holiday falls on a Sunday, the succeeding Monday shall be observed as the holiday; and whenever a holiday falls on a Saturday, the preceding Friday shall be observed as the holiday.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐
None.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)

BOCC will review and hold a hearing to approve a Resolution amending Policy 225 – Employee Benefits to adopt Juneteenth (June 19) as a standard county holiday.

County Official signature & print name: Loni Gores Loni Gores, Clerk

Name of Employee/Stakeholder attending meeting: Board of Commissioners and Human Resources

Relevant Departments: All Departments

Date submitted: January 10, 2022

* Work Session Meeting - Submit 1 single sided/not stapled copy

Policy 225 Employee Benefits Juneteenth Holiday 2-1-22

** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

Revised: 3-04-2019

Questions? Call Loni Gores, Clerk of the Board, ext 2256

PUBLIC HEARING

Amending Clallam County Policy 225 Employee Benefits

NOTICE: The Clallam County Board of Commissioners will conduct a public hearing on Tuesday, February 15, 2022 at 10:30 a.m., or as soon thereafter. The public hearing is to consider the Policy listed above. The proposed Policy is available on the County website <http://www.clallam.net/bocc/drafts.html>

****ATTENTION****

In response to the current pandemic, to promote social distancing, and in compliance with Governor's Proclamation and the recommendation of the Clallam County Health Officer, the Board of Commissioners meetings will be virtual only. The Board of Commissioners strongly encourages public comments to be submitted in writing.

This meeting can be viewed on a live stream at this link: <http://www.clallam.net/features/meetings.html>

If you would like to participate in the meeting via Zoom audio only, call 253-215-8782 and use meeting ID: 875 561 7844 and passcode: 12345

If you would like to participate in the meeting via Zoom video conference, visit <https://zoom.us/j/8755617844> and use meeting ID: 875 561 7844 and passcode: 12345

Public comment and questions can be directed to the Clerk of the Board at 360-417-2256 or agores@co.clallam.wa.us.

The public hearing is to consider the Policy listed above. The proposed Policy is available on the County website <http://www.clallam.net/bocc/drafts.html>

In compliance with the Americans with Disabilities Act, reasonable accommodations are available upon request.

PROPONENT: Clallam County Board of Commissioners
223 East 4th Street, Suite 4, Port Angeles, WA 98362-3015
Telephone: 360.417.2256

FORMAL IDENTIFICATION: Policy 225 – Employee Benefits

SECTION-BY-SECTION SUMMARY OF PROPOSED CHANGES:

Section .2 – Holidays

2.1 Standard County Holidays

(Adding) Juneteenth Day – June 19

Publish: February 4, 2022
Bill: Board of Commissioners

Loni Gores, CMC, Clerk of the Board



RESOLUTION _____, 2022

ADOPTING AMENDMENTS TO
POLICY 225 EMPLOYEE BENEFITS

THE BOARD OF CLALLAM COUNTY COMMISSIONERS finds as follows:

1. Formal policies and procedures were developed and implemented in 2004 to ensure accountability in government and consistency of process.
2. Periodic updates are required as government rules and regulations change as well as current practices.
3. The proposed amendments to the policy were posted on the Intranet to allow staff time to review and comment. Prosecuting Attorney's Office reviewed the policy amendments.
4. A public hearing was held February 15, 2022 to solicit testimony.

NOW, THEREFORE, BE IT RESOLVED by the Board of Clallam County Commissioners in consideration of the above findings of fact:

1. The amendments to Policy 225 – Employee Benefits are adopted for inclusion in the Clallam County Administrative Policy Manual.

PASSED AND ADOPTED this 15th day of February, 2022

BOARD OF CLALLAM COUNTY COMMISSIONERS

Mark Ozias, Chair

ATTEST:

Randy Johnson

Loni Gores, CMC, Clerk of the Board

Bill Peach

EMPLOYEE BENEFITS

.1 POLICY

Fringe benefits are granted to regular employees as a part of total compensation. Eligible full-time employees shall accrue benefits based on the established hours for the workweek. Eligible part-time employees accrue benefits based on a percentage of a full time 40-hour position. Appointed Department Heads accrue benefits as specified in the individual employment agreement between the Department Head and the Board of County Commissioners. The Court Reporter, an exempt employee under the RCW and the charter, shall not accrue holiday, vacation, or sick leave benefits under this policy. For all other charter exempt, non-represented, and other employees unless otherwise specified by contract, the following benefits, rules, and procedures apply:

.2 HOLIDAYS

2.1 Standard County Holidays

The following days shall be recognized as the Standard County Holidays:

New Year's Day	January 1
Martin Luther King, Jr. Day	Third Monday in January
Presidents' Day	Third Monday in February
Memorial Day	Last Monday in May
~~Juneteenth Day~~	~~June 19~~
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Day following Thanksgiving	Friday following Thanksgiving
Christmas Day	December 25

Whenever a standard holiday falls on a Sunday, the succeeding Monday shall be observed as the holiday; and whenever a holiday falls on a Saturday, the preceding Friday shall be observed as the holiday.

2.2 Standard Floating Holidays

Unless otherwise provided by contract, benefited employees shall receive four (4) standard floating holidays earned on 1 January of each year (or after 180 days of employment for new employees). Use of floating holidays is selected by mutual agreement of the employee and supervisor.

14
1/24/22



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

Department: BOCC

WORK SESSION ☒ Meeting Date: 1-24-22

REGULAR AGENDA ☐ Meeting Date:

Required originals approved and attached? ☐
Will be provided on:

Item summary:

- | | |
|---|---|
| ☐ Call for Hearing | ☐ Contract/Agreement/MOU - Contract # |
| ☐ Resolution | ☐ Proclamation ☐ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance ☒ Other – discuss and next steps |

Documents exempt from public disclosure attached: ☐

Executive summary:

Due to the 1406 revenue and often funding for "Affordable Housing" there could be a committee of knowledgeable members to recommend allocations. This subject has not been discussed by the Commission specifically as to the need for a committee, and if a committee, its diversity of membership.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐
None

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)
Discussion and next steps.

County Official signature & print name: Loni Gores Loni Gores, Clerk

Name of Employee/Stakeholder attending meeting: Board of Commissioners

Relevant Departments: Board of Commissioners

Date submitted: January 19, 2022

* Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

15
1/24/22

Department: BOCC

WORK SESSION ☒ Meeting Date: 1-24-22

REGULAR AGENDA ☐ Meeting Date:

Required originals approved and attached? ☐
Will be provided on:

Item summary:

- | | | |
|---|--|--|
| ☐ Call for Hearing | ☐ Contract/Agreement/MOU - Contract # | |
| ☐ Resolution | ☐ Proclamation | ☐ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance | ☒ Other – discuss and finalize |

Documents exempt from public disclosure attached: ☐

Executive summary:

Review and finalize list of topics to discuss with Representative Kilmer at joint meeting on Tuesday, January 25, 2022 at 11:00 a.m.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐
None

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)

Discuss and finalize list of topics for joint meeting with Representative Kilmer.

County Official signature & print name: Loni Gores Loni Gores, Clerk

Name of Employee/Stakeholder attending meeting: Board of Commissioners

Relevant Departments: Board of Commissioners

Date submitted: January 19, 2022

* Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

joint meeting topics Kilmer 1-25-22
Revised: 3-04-2019

MEMORANDUM

Loni Gores
CLERK OF THE BOARD

January 24, 2022



Topics for joint meeting with Representative Kilmer and BOCC to be held Tuesday, January 25 at 11 am:

- Infrastructure Investment and Jobs Act – Opportunities for Clallam County
- Highway 112
- Relief Act Funds that support transportation – 605 American Relief Act – Commerce has not released guidance on how to use the funds.
- Status on Forest Service Road 29 and National Forest maintenance funding
- Funding coming from the Federal Government for childcare



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

14
1/24/22

Department: BOCC

WORK SESSION ☒ Meeting Date: 1/24/22

REGULAR AGENDA ☒ Meeting Date: 2/1/22

Item summary:

- | | | |
|--|--|--------------------------------------|
| ☐ Call for Hearing | ☐ Contract/Agreement/MOU - Contract # | |
| ☒ Resolution | ☐ Proclamation | ☐ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance | ☐ Other |

Documents exempt from public disclosure attached: ☐

Executive summary:

A vacancy exists on the Homelessness Task Force due to a resignation.

Washington State Department of Social and Health Services forwarded their recommendation to fill the Department of Social and Health Services representative position.

Jenny Oppelt – Health and Human Services Deputy Director recommends the appointment of Jeannie Dickinson to the Homelessness Task Force.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

None

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)
Approve and sign a resolution to appoint.

County Official signature & print name: Loni Gores Loni Gores, Clerk

Name of Employee/Stakeholder attending meeting: Board of Commissioners, Health and Human Resources Department

Relevant Departments: Board of Commissioners, Health and Human Services Department

Date submitted: 1-14-22

* Work Session Meeting - Submit 1 single sided/not stapled copy

** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)



RESOLUTION _____, 2022

APPOINTING A MEMBER TO THE HOMELESSNESS TASK FORCE

THE BOARD OF CLALLAM COUNTY COMMISSIONERS finds as follows:

1. A vacancy exists on the Homelessness Task Force due to a resignation.
2. Washington State Department of Social and Health Services forwarded their recommendation to fill the Department of Social and Health Services representative position.
3. The Health and Human Services Department Deputy Director endorses the appointment of Jeannie Dickinson to the Homelessness Task Force.

NOW, THEREFORE, BE IT RESOLVED by the Board of Clallam County Commissioners, in consideration of the above findings of fact:

1. **Jeannie Dickinson** is appointed as the Department of Social and Health Services representative for a term expiring December 31, 2023.

PASSED AND ADOPTED this 1st day of February, 2022

BOARD OF CLALLAM COUNTY COMMISSIONERS

Mark Ozias, Chair

Randy Johnson

ATTEST:

Loni Gores, CMC, Clerk of the Board

Bill Peach

c: A22.50
Appointee(s)
HHS



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

17
1/24/22

Department: BOCC

WORK SESSION ☒ Meeting Date: 1/24/22

REGULAR AGENDA ☒ Meeting Date: 2/1/22

Item summary:

- | | | |
|--|--|--------------------------------------|
| ☐ Call for Hearing | ☐ Contract/Agreement/MOU - Contract # | |
| ☒ Resolution | ☐ Proclamation | ☐ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance | ☐ Other |

Documents exempt from public disclosure attached: ☐

Executive summary:

A vacancy exists on the Boundary Review Board due to a resignation.

The City of Sequim was contact for their recommendation for a representative to fill the remaining term.

The City of Sequim recommends the appointment of Brandon Janisse to the Clallam County Boundary Review Board.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

None

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)
Approve and sign a resolution to appoint.

County Official signature & print name: Loni Gores Loni Gores, Clerk

Name of Employee/Stakeholder attending meeting: Board of Commissioners

Relevant Departments: Board of Commissioners

Date submitted: 1-13-22

* Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting - Submit 1 single sided/not stapled copy and originals (1 or 3 copies)



RESOLUTION _____, 2022

APPOINTING A CITIES APPOINTEE REPRESENTATIVE
TO THE BOUNDARY REVIEW BOARD

THE BOARD OF CLALLAM COUNTY COMMISSIONERS finds as follows:

1. A vacancy exists on the Boundary Review Board due to a resignation from the Cities Appointee representative position.
2. A notice of vacancy was issued to the press in October 2021 to solicit applications. The City of Sequim was contacted for their recommendation for a representative to fill the remaining term.
3. The City of Sequim recommends the appointment of Brandon Janisse to the Clallam County Boundary Review Board.

NOW, THEREFORE, BE IT RESOLVED by the Board of Clallam County Commissioners, in consideration of the above findings of fact:

1. **Brandon Janisse** is appointed to the Cities Appointee representative position on the Boundary Review Board for a term ending December 31, 2023.

PASSED AND ADOPTED this 1st day of February 2022

BOARD OF CLALLAM COUNTY COMMISSIONERS

Mark Ozias, Chair

ATTEST:

Randy Johnson

Loni Gores, Clerk of the Board

Bill Peach



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

18
1/24/22

Department: BOCC

WORK SESSION ☒ Meeting Date: 1/24/22

REGULAR AGENDA ☒ Meeting Date: 2/1/22

Item summary:

- | | | |
|--|--|--------------------------------------|
| ☐ Call for Hearing | ☐ Contract/Agreement/MOU - Contract # | |
| ☒ Resolution | ☐ Proclamation | ☐ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance | ☐ Other |

Documents exempt from public disclosure attached: ☐

Executive summary:

A vacancy exists on the Solid Waste Advisory Committee due to a resignation.

City of Sequim forwarded their recommendation to fill the City of Sequim representative position.

Public Works recommends the appointment of Rachel Anderson to the Solid Waste Advisory Committee.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

None

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)
Approve and sign a resolution to appoint.

County Official signature & print name: Loni Gores Loni Gores, Clerk

Name of Employee/Stakeholder attending meeting: Board of Commissioners, Public Works

Relevant Departments: Board of Commissioners, Public Works

Date submitted: 1-14-22

* Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting - Submit 1 single sided/not stapled copy and originals (1 or 3 copies)



RESOLUTION _____, 2022

APPOINTING A MEMBER TO THE SOLID WASTE ADVISORY COMMITTEE

THE BOARD OF CLALLAM COUNTY COMMISSIONERS finds as follows:

1. A vacancy exists on the Solid Waste Advisory Committee due to the resignation of the City of Sequim representative position.
2. The City of Sequim notified the Board of Commissioners of the appointment of their new representative.
3. Joe Donisi Acting County Road Engineer – Public Works approves of the appointment of Rachel Anderson as the City of Sequim representative.

NOW, THEREFORE, BE IT RESOLVED by the Clallam County Board of Commissioners, in consideration of the above findings of fact:

1. **Rachel Anderson** is appointed to serve as the City of Sequim representative for a standing term.

PASSED AND ADOPTED this 1st day of February 2022

BOARD OF CLALLAM COUNTY COMMISSIONERS

Mark Ozias, Chair

Randy Johnson

ATTEST:

Loni Gores, CMC, Clerk of the Board

Bill Peach

A22.177
Appointee
Public Works