



Lake Whatcom Water & Sewer District Board Meeting Access Information

Next Meeting:

Wed November 8, 2023
6:30 pm - 8:00 pm

Join the meeting from your computer, tablet smartphone: <https://meet.goto.com/lwwsd/boardmeeting>
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Call: [+1 \(224\) 501-3412](tel:+12245013412) Access Code: 596-307-141 Press *6 to mute/unmute your microphone

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ATTENDING A MEETING

How to Participate

MEETINGS ARE HYBRID

Our meetings are held in a hybrid format. You may attend in person at our administrative office or virtually through the GoTo platform.



COMMUNICATING WITH US



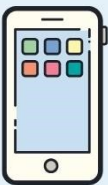
If you wish to make a public comment, you may submit it in written form via email or the contact form on our website, or utilize the public comment periods during the District's regular meetings.

ATTENDING ANONYMOUSLY

If you wish to observe a meeting, but do not plan to actively participate, you may attend anonymously. Turn off your mic & camera, and change display name to "Observation Only."



ACCESS INFORMATION



We use GoTo for virtual access to our meetings. Download the app, sign in through your browser, or use a phone to call in for audio-only participation. Access information for specific meetings is in the meeting packet.

QUESTIONS?

If you have questions about attending an upcoming meeting, please contact Administrative Assistant Rachael Hope at rachael.hope@lwwsd.org or 360-734-9224.



Public Comment Periods

Lake Whatcom Water & Sewer District's Board of Commissioners values feedback, questions, and concerns from our constituents. The public comment period is....



Regular Meetings of the Board of Commissioners are held on the second Wednesday of each month at 6:30 pm and the last Wednesday of each month at 8:00 am.



LAKE WHATCOM WATER AND SEWER DISTRICT

1220 Lakeway Drive
Bellingham, WA 98229

REGULAR MEETING OF THE BOARD OF COMMISSIONERS

AGENDA

November 8, 2023


6:30 p.m. – Regular Session

1. CALL TO ORDER
2. ROLL CALL
3. PUBLIC COMMENT OPPORTUNITY
At this time, members of the public may address the Board of Commissioners. Please state your name and address prior to making comments, and limit your comments to three minutes. For the sake of time, each public comment period will be limited to 45 minutes.
4. ADDITIONS, DELETIONS, OR CHANGES TO THE AGENDA
5. CONSENT AGENDA
6. SPECIFIC ITEMS OF BUSINESS
 - A. Hazard Mitigation Grant Agreement with the Washington State Military Department for Receipt of Phase I Funding from the Federal Emergency Management Agency
7. OTHER BUSINESS
8. STAFF REPORTS
 - A. General Manager
9. PUBLIC COMMENT OPPORTUNITY
10. EXECUTIVE SESSION
Executive Session per RCW 42.30.110(1)(g): To review the performance of a public employee (General Manager performance evaluation) – 30 minutes
11. ADJOURNMENT



**AGENDA
BILL
Item 5**

Consent Agenda

DATE SUBMITTED:	November 1, 2023	MEETING DATE:	November 8, 2023
TO: BOARD OF COMMISSIONERS	FROM: Rachael Hope		
GENERAL MANAGER APPROVAL			
ATTACHED DOCUMENTS	1. See below		
TYPE OF ACTION REQUESTED	RESOLUTION <input type="checkbox"/>	FORMAL ACTION/ MOTION <input checked="" type="checkbox"/>	INFORMATIONAL /OTHER <input type="checkbox"/>

****TO BE UPDATED 11.08.2023****

BACKGROUND / EXPLANATION OF IMPACT

- Minutes for the 10.11.2023 Regular Board Meeting
- Minutes for the 10.25.2023 Regular Board Meeting
- Payroll for Pay Period #22 (10.14.2023 through 10.27.2023) totaling \$46,701.69
- Benefits for Pay Period #22 totaling \$52,789.95
- Accounts Payable Vouchers total to be added

FISCAL IMPACT

Fiscal impact is as indicated in the payroll/benefits/accounts payable quantities defined above. All costs are within the Board-approved 2023 Budget.

RECOMMENDED BOARD ACTION

Staff recommends the Board approve the Consent Agenda.

PROPOSED MOTION

A recommended motion is:

"I move to approve the Consent Agenda as presented."



LAKE WHATCOM WATER AND SEWER DISTRICT

1220 Lakeway Drive
Bellingham, WA 98229

REGULAR SESSION OF THE BOARD OF COMMISSIONERS Minutes

October 11, 2023

Board President Todd Citron called the Regular Session to order at 6:30 p.m.

Attendees: Commissioner Todd Citron (v) General Manager Justin Clary
Commissioner John Carter (v) Engineering Manager Greg Nicoll
Commissioner Jeff Knakal Finance Manager Jenny Signs
Commissioner David Holland Operations & Maintenance Manager Jason Dahlstrom
Recording Secretary Rachael Hope District Legal Counsel Bob Carmichael

Excused Absences: Commissioner Bruce Ford

Also in attendance was a representative of Rawl's Tree Service (v-observation only). Attendees noted with (v) attended the meeting virtually.

Consent Agenda

Action Taken

Knakal moved, Holland seconded, approval of:

- **Minutes for the 9.27.2023 Regular Board Meeting**
- **Payroll for Pay Period #20 (09.16.2023 through 09.29.2023) totaling \$43,076.57**
- **Benefits for Pay Period #20 totaling \$49,220.17**
- **Accounts Payable Vouchers totaling \$794,455.60**

Motion passed.

Amendment No. 1 to the 2023-24 Budget

Lake Whatcom Water and Sewer District's Administrative Code requires development of an operating and capital improvement budget for both the water and sewer systems, which forecasts revenues and expenditures for the budget period. The District works in a collaborative effort to develop a budget with pay-as-you-go financing to the best extent practicable. However, as situations arise, it is necessary and best practice to perform budget amendments to ensure the District is operating within an approved budget. This helps create transparency and control over the budget and cash flow analysis for the District.

Signs presented the Board with Amendment 1 to the 2023-2024 Budget, which was adopted at the December 6, 2022 regular board meeting. Highlighted adjustments include award of a Public Works Board Loan for the Division 7 Reservoir Replacement Project, transfers between funds, increases due to consulting costs and recruitment for the Engineering Manager position, and various licensing and software update needs. Discussion followed.

Action Taken

Holland moved, Knakal seconded, to approve Amendment No. 1 to the 2023 -2024 Biennial Budget as presented. Motion passed.

Lake Whatcom Boulevard Sewer Interceptor Cure-In-Place-Pipe Project Public Works Contract

Closeout

Clary recalled that this project is the third of a series of projects to systematically rehabilitate degraded gravity pipe segments along the Lake Whatcom Boulevard Sewer Interceptor to improve flow capacity. The 2023 scope of work included rehabilitation of approximately 1,070 feet of 14-inch diameter sanitary sewer pipe, traffic control, and sewage bypass pumping. The District awarded the construction contract to Insituform Technologies, LLC on April 12, 2023. The contractor completed all work and contract requirements, therefore staff recommended accepting the project as complete and closing out the public works contract.

Action Taken

Carter moved, Knakal seconded, to accept the 2023 Lake Whatcom Boulevard Sewer Interceptor Cure-In-Place Pipe Project public works contract performed by Insituform Technologies, LLC as complete and authorize staff to close out the public work contract. Motion passed.

Division 7 Reservoir Replacement Project Tree Falling Public Works Contract Award

Clary explained that the District is nearing finalization of the construction bid package associated with replacement of the existing Division 7 water reservoir with two new reservoirs (anticipated for construction to beginning spring/summer 2024). The new reservoirs will be constructed on an undeveloped, forested ridge immediately upslope of the existing reservoir. With the project site located within the Lake Whatcom Watershed, land disturbing activities are prohibited until June 1, 2024. However, with receipt of federal grant funding through FEMA, the project must also comply with the federal Migratory Birds Act, which prohibits the falling of mature trees located within the project footprint from February-June (potential migratory bird nesting habitat). To take full advantage of the limited (four month) land disturbance window, the 58 trees located within the project footprint require falling prior to February (but will not be removed until after June 1 due to anticipated land disturbance).

The District published an advertisement for bids in the Bellingham Herald on September 3, 2023. Two bids were received, one from Rawls Tree Service LLC and the other from Clearwater Excavation LLC. Both total bids were \$24,000. Per Paragraph 0.13.G of Section 00200, Advertisement for Bids, of the bid package: *In the event of a tie low Bid between responsive and responsible Bidders, the Contract will be awarded by random method. The random method will be performed at a District public meeting, where a District commissioner will pull a winner from a hat containing the names of tie Bidders.* Discussion followed, including random selection by Commissioner Knakal of bidder Rawls Tree Service.

Action Taken

Knakal moved, Holland seconded, to award the Division 7 Reservoir Replacement Project Tree Falling public works contract to Rawls Tree Service LLC for a total contract price of \$26,064.00, including 8.6% sales tax, and authorize the general manager to execute the contract. Motion passed.

Disposal of Surplus Items

Dahlstrom presented the Board with a list of miscellaneous surplus items the District no longer needs for disposal. Discussion followed.

Action Taken

Carter moved, Knakal seconded, to declare the property defined in the list dated October 3, 2023, as surplus and authorize staff to dispose of each item in a manner that is most beneficial to the District and consistent with state law. Motion passed.

Manager's Report

Clary updated the Board on several topics, including a welcome to Engineering Manager/District Engineer Greg Nicoll, recognized and congratulated Dahlstrom who, as part of his professional development plan, applied for and was accepted to AWP Emerging Leaders Academy. Clary also offered thanks to Commissioners Knakal and Citron for participation in an October 10 meeting with Bellingham Mayor Seth Fleetwood. Discussion followed.

Executive Session Per RCW 42.30.110(1)(g): To review the performance of a public employee

Citron recessed the Regular Session to Executive Session at 7:12 p.m. It was estimated that the Executive Session would take about 30 minutes and end at 7:42 p.m. The purpose of the Executive Session was to review the performance of a public employee (General Manager performance evaluation). No action was taken, and Citron recessed the Executive Session and reconvened the Regular Meeting at 7:30 p.m.

With no further business, Citron adjourned the Regular Session at 7:30 p.m.

Board President, Todd Citron

Attest: _____
Recording Secretary, Rachael Hope

Minutes approved by motion at ☐ Regular ☐ Special Board Meeting on _____
Date Minutes Approved



LAKE WHATCOM WATER AND SEWER DISTRICT

1220 Lakeway Drive
Bellingham, WA 98229

REGULAR SESSION OF THE BOARD OF COMMISSIONERS

Minutes

October 25, 2023

Board President Todd Citron called the Regular Session to order at 8:00 a.m.

Attendees: Commissioner Todd Citron (v) General Manager Justin Clary (v)
Commissioner Bruce Ford Engineering Manager Greg Nicoll
Commissioner Jeff Knakal (v) Recording Secretary Rachael Hope
Commissioner David Holland (v)

Excused: Commissioner John Carter

No public were in attendance. Attendees noted with (v) attended the meeting virtually.

Consent Agenda

Action Taken

Ford moved, Holland seconded, approval of:

- Payroll for Pay Period #21 (09.30.2023 through 10.13.2023) totaling \$47,765.73
- Benefits for Pay Period #21 totaling \$50,671.50
- Payroll Taxes for 3rd Quarter 2023 totaling \$11,672.69
- Accounts Payable Vouchers totaling \$586,083.52

Motion passed.

General Manager's Report

Clary updated the Board on several topics, including providing a quarterly status report of the District's 6 Year Strategic Plan, a recent meeting with The Firs leadership, and the District's recent wet weather preparedness meeting and tabletop exercise.

Engineering Department Report

New District Engineer Greg Nicoll highlighted several projects, including the Euclid Sewer Pump Station Improvements, which is now fully operable, and the Division 7 Reservoir Replacement Project. Discussion followed.

Finance Department Report

The Finance Department report was included in the meeting packet.

Operations & Maintenance Department Report

The Operations Department report was included in the meeting packet.

Executive Session Per RCW 42.30.110(1)(g): To review the performance of a public employee

Citron recessed the Regular Session to Executive Session at 8:17 a.m. It was estimated that the Executive Session would take about 30 minutes and end at 8:47 a.m. The purpose of the Executive Session was to review the performance of a public employee (General Manager performance evaluation). Citron recessed the Executive Session and reconvened the Regular Meeting at 8:54 a.m. No action was taken.

With no further business, Citron adjourned the Regular Session at 8:54 a.m.

Board President, Todd Citron

Attest: _____
Recording Secretary, Rachael Hope

Minutes approved by motion at ☐ Regular ☐ Special Board Meeting on _____
Date Minutes Approved

CHECK REGISTER

PAYROLL

Lake Whatcom W-S District

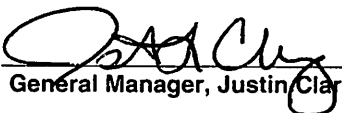
Time: 11:13:21 Date: 10/30/2023

11/02/2023 To: 11/02/2023

Page: 1

Trans	Date	Type	Acct #	Chk #	Claimant	Amount	Memo
3268	11/02/2023	Payroll	5	EFT		3,624.32	10/14/2023 - 10/27/2023 PR 22
3269	11/02/2023	Payroll	5	EFT		3,836.46	10/14/2023 - 10/27/2023 PR 22
3270	11/02/2023	Payroll	5	EFT		3,156.76	10/14/2023 - 10/27/2023 PR 22
3271	11/02/2023	Payroll	5	EFT		1,757.81	10/14/2023 - 10/27/2023 PR 22
3273	11/02/2023	Payroll	5	EFT		1,937.53	10/14/2023 - 10/27/2023 PR 22
3274	11/02/2023	Payroll	5	EFT		3,065.87	10/14/2023 - 10/27/2023 PR 22
3275	11/02/2023	Payroll	5	EFT		2,385.02	10/14/2023 - 10/27/2023 PR 22
3276	11/02/2023	Payroll	5	EFT		3,318.74	10/14/2023 - 10/27/2023 PR 22
3277	11/02/2023	Payroll	5	EFT		2,622.71	10/14/2023 - 10/27/2023 PR 22
3278	11/02/2023	Payroll	5	EFT		2,528.75	10/14/2023 - 10/27/2023 PR 22
3279	11/02/2023	Payroll	5	EFT		4,012.59	10/14/2023 - 10/27/2023 PR 22
3280	11/02/2023	Payroll	5	EFT		1,360.01	10/14/2023 - 10/27/2023 PR 22
3281	11/02/2023	Payroll	5	EFT		1,731.98	10/14/2023 - 10/27/2023 PR 22
3282	11/02/2023	Payroll	5	EFT		3,337.92	10/14/2023 - 10/27/2023 PR 22
3283	11/02/2023	Payroll	5	EFT		2,108.97	10/14/2023 - 10/27/2023 PR 22
3284	11/02/2023	Payroll	5	EFT		2,675.71	10/14/2023 - 10/27/2023 PR 22
3267	11/02/2023	Payroll	5	14657		1,768.70	10/14/2023 - 10/27/2023 PR 22
3272	11/02/2023	Payroll	5	14658		1,471.84	10/14/2023 - 10/27/2023 PR 22
401 Water Fund						11,845.00	
402 Sewer Fund						34,856.69	
						46,701.69	Payroll: 46,701.69

I do hereby certify, under penalty of perjury, that the above is an unpaid, just, and due obligation as described herein, and that I am authorized to certify this claim.

Sign  Date 10/30/2023
General Manager, Justin Clary

Board Authorization - The duly elected board for this district has reviewed the claims listed and approved the payment by motion at the meeting listed below:

Board President, Todd Citron

Attest : _____
Recording Secretary, Rachael Hope

Approved by motion at _____ Regular _____ Special Board Meeting on _____
Date Approved

CHECK REGISTER

Lake Whatcom W-S District

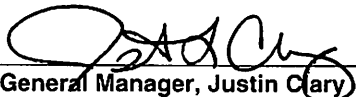
Time: 11:22:59 Date: 10/30/2023

11/02/2023 To: 11/02/2023

Page: 1

Trans	Date	Type	Acct #	Chk #	Claimant	Amount	Memo
3285	11/02/2023	Payroll	5	EFT	DEPARTMENT OF RETIREMENT SYSTEMS	4,308.50	Pay Cycle(s) 11/02/2023 To 11/02/2023 - DCP
3286	11/02/2023	Payroll	5	EFT	UNITED STATES TREASURY	17,639.81	941 Deposit for Pay Cycle(s) 11/02/2023 - 11/02/2023
3287	11/02/2023	Payroll	5	EFT	WA ST PUBLIC EMP RET PLAN 2	8,585.11	Pay Cycle(s) 11/02/2023 To 11/02/2023 - PERS 2
3288	11/02/2023	Payroll	5	EFT	WA ST PUBLIC EMP RET PLAN 3	3,218.36	Pay Cycle(s) 11/02/2023 To 11/02/2023 - PERS 3
3289	11/02/2023	Payroll	5	EFT	WA ST SUPPORT ENFORCEMENT REGISTRY	814.47	Pay Cycle(s) 11/02/2023 To 11/02/2023 - SUP ENF
3290	11/02/2023	Payroll	5	14659	AFLAC	354.85	Pay Cycle(s) 11/02/2023 To 11/02/2023 - AFLAC PRE-TAX; Pay Cycle(s) 11/02/2023 To 11/02/2023 - AFLAC POST-TAX
3291	11/02/2023	Payroll	5	14660	AFSCME LOCAL	356.18	Pay Cycle(s) 11/02/2023 To 11/02/2023 - UNION DUES; Pay Cycle(s) 11/02/2023 To 11/02/2023 - UNION FUND
3292	11/02/2023	Payroll	5	14661	HRA VEBA TRUST (PAYEE)	590.00	Pay Cycle(s) 11/02/2023 To 11/02/2023 - VEBA
3293	11/02/2023	Payroll	5	14662	WA ST HEALTH CARE AUTHORITY	16,922.67	Pay Cycle(s) 11/02/2023 To 11/02/2023 - PEBB MEDICAL; Pay Cycle(s) 11/02/2023 To 11/02/2023 - PEBB ADD LTD; Pay Cycle(s) 11/02/2023 To 11/02/2023 - PEBB SMK Surcharge; Pay Cycle(s) 11/02/2023 To 11/02
401 Water Fund						38,580.00	
402 Sewer Fund						14,209.95	
						52,789.95	Payroll: 52,789.95

I do hereby certify, under penalty of perjury, that the above is an unpaid, just, and due obligation as described herein, and that I am authorized to certify this claim.

Sign  Date 10/30/2023
General Manager, Justin Cary

Board Authorization - The duly elected board for this district has reviewed the claims listed and approved the payment by motion at the meeting listed below:

Board President, Todd Citron


Attest : _____
Recording Secretary, Rachael Hope

Approved by motion at _____ Regular _____ Special Board Meeting on _____
Date Approved



**AGENDA
BILL
Item 6.A**

**Hazard Mitigation Grant
Agreement for FEMA Funding
Supporting the Division 7
Reservoir Replacement Project**

DATE SUBMITTED:	October 31, 2023	MEETING DATE:	November 8, 2023
TO: BOARD OF COMMISSIONERS	FROM: Justin Clary, General Manager		
GENERAL MANAGER APPROVAL			
ATTACHED DOCUMENTS	1. Hazard Mitigation Grant Agreement with Washington State Military Department		
TYPE OF ACTION REQUESTED	RESOLUTION <input type="checkbox"/>	FORMAL ACTION/ MOTION <input checked="" type="checkbox"/>	INFORMATIONAL /OTHER <input type="checkbox"/>

BACKGROUND / EXPLANATION OF IMPACT

A structural analysis of the Lake Whatcom Water and Sewer District Division 7 Water Reservoir found significant deficiencies in its ability to meet existing earthquake code requirements (BHC report, December 2016). The 2017 Water System Plan also analyzed the capacity of the Division 7 reservoir and found it to be significantly oversized. Technical memoranda prepared by Wilson Engineering LLC (dated February 8, 2018 and December 28, 2020) provided alternatives analyses that investigated several options associated with future use of the reservoir or replacement. The recommended alternative replaces the existing welded steel 1-million gallon Division 7 reservoir with two smaller concrete 185,000 gallon reservoirs.

In 2018, the District submitted a FEMA Hazard Mitigation Grant application to replace the Division 7 Reservoir with two new reservoirs constructed to meet seismic standards, and to implement ShakeAlert (earthquake early warning system) on the new reservoirs. The grant application was developed in conjunction with Washington State Emergency Management Division (WA-EMD) of the Washington State Military Department and the Federal Emergency Management Agency (FEMA) as a hazard mitigation project. The cost sharing is as follows: FEMA 75% (\$1,710,750), WA-EMD 12.5% (\$285,125), and Lake Whatcom Water and Sewer District 12.5% (\$285,125).

The project has been split into two phases: Phase I – Design/Permitting and Phase II – Construction. Phase I is nearing completion to enable Phase II (construction) during the summer of 2024. The Board authorized execution of a grant agreement (D22-018) for Phase I work during a regularly scheduled meeting on February 9, 2022. WA-EMD has recently revised its standard grant agreement necessitating replacement of the existing agreement with a new agreement. The attached agreement (D24-016) provides for continued receipt of Phase I funding, which is administered through the Washington State Military Department (\$393,709.75 in federal funding with a District match of \$56,244.25).

Also of note, the general manager received a message from WA-EMD on Friday, October 27, indicating that FEMA has obligated Phase II funding. It is WA-EMD's intent to develop an amendment to Grant No. D24-016 in the near future to accommodate Phase II funding (\$1.6 million).

FISCAL IMPACT

The Water Utility System Reinvestment Plan defined within the 2023-24 Budget accommodates the required federal match.

APPLICABLE EFFECTIVE UTILITY MANAGEMENT ATTRIBUTE(S)

Infrastructure Strategy and Performance
Community Sustainability

RECOMMENDED BOARD ACTION

Staff recommends that the Board authorize the General Manager to execute the Hazard Mitigation Grant Agreement with the Washington Military Department.

PROPOSED MOTION

Recommended motion is:

"I move to authorize the general manager to execute the Hazard Mitigation Grant Agreement No. D24-016 with the Washington State Military Department to enable receipt of federal funds supporting the Division 7 Reservoir Replacement Project as presented."

Washington State Military Department

HAZARD MITIGATION GRANT AGREEMENT FACE SHEET

1. Subrecipient Name and Address: Lake Whatcom Water & Sewer District 1220 Lakeway Drive Bellingham, WA 98229		2. Total Grant Amount: \$449,954.00 State: \$56,244.25 Federal: \$337,465.50 Local: \$56,244.25 SubMC: \$0.00		3. Grant Number: D24-016 <i>Replaces contract D22-018</i>	
4. Subrecipient Contact, phone/email: Rich Munson, 360-734-9224 rich.munson@lwwsd.org		5. Grant Start Date: December 7, 2021		6. Grant End Date: March 15, 2024	
7. Department Program Manager, phone/email: Tim Cook, (253) 512-7072 tim.cook@mil.wa.gov		8. Unique Entity ID (UEI): X3UWVU38UAJ8		9. UBI # (state revenue): 600-151-207	
10. Funding Authority: Washington State Military Department (the "DEPARTMENT"), and Federal Emergency Management Agency (FEMA)					
11. Federal Funding Identification #: DR-4309-WA 4309-18-R		12. Federal Award Date December 7, 2021		13. Assistance Listing # & Title: 97.039 (HMGP)	
14. Program Index # & OBJ/SUB-OBJ: Fed: 774P7, State: 772N7 / NZ			15. TIN or SSN: 20-4196340		
16. Service Districts: (BY LEGISLATIVE DISTRICT): 40th (BY CONGRESSIONAL DISTRICT): 2nd		17. Service Area by County(ies): Whatcom County		18. Women/Minority-Owned, State Certified?: <input checked="" type="checkbox"/> N/A <input type="checkbox"/> NO <input type="checkbox"/> YES, OMWBE # _____	
19. Contract Classification: <input type="checkbox"/> Personal Services <input type="checkbox"/> Client Services <input checked="" type="checkbox"/> Public/Local Gov't <input type="checkbox"/> Research/Development <input type="checkbox"/> A/E <input type="checkbox"/> Other _____			20. Contract Type (check all that apply): <input type="checkbox"/> Contract <input checked="" type="checkbox"/> Grant <input checked="" type="checkbox"/> Agreement <input type="checkbox"/> Intergovernmental (RCW 39.34) <input type="checkbox"/> Interagency		
21. Contractor Selection Process: <input checked="" type="checkbox"/> "To all who apply & qualify" <input type="checkbox"/> Competitive Bidding <input type="checkbox"/> Sole Source <input type="checkbox"/> A/E RCW <input type="checkbox"/> N/A <input type="checkbox"/> Filed w/OFM? <input type="checkbox"/> Advertised? <input type="checkbox"/> YES <input type="checkbox"/> NO _____			22. Contractor Type (check all that apply) <input type="checkbox"/> Private Organization/Individual <input type="checkbox"/> For-Profit <input checked="" type="checkbox"/> Public Organization/Jurisdiction <input checked="" type="checkbox"/> Non-Profit <input type="checkbox"/> VENDOR <input checked="" type="checkbox"/> SUBRECIPIENT <input checked="" type="checkbox"/> OTHER		
23. PURPOSE/DESCRIPTION: FEMA's Hazard Mitigation Grant Program provides grants for mitigation planning and cost-effective mitigation actions after a Presidential disaster declaration to reduce the risk of loss of life and property damage in future disasters. Title: Division 7 Water Reservoir Seismic Retrofit. The purpose of this Agreement is to provide funds to the SUBRECIPIENT for the herein proposed project as noted in Statement of Work and/or Description of the Project (Attachment 3), Project Development Schedule (Attachment 4), Project Budget (Attachment 5), and the FEMA approved project application, each of which are incorporated herein by this reference. The DEPARTMENT is the Recipient and Pass-through Entity of the <u>4309-18-R Division 7 Water Reservoir Seismic Retrofit</u> and FEMA State Agreement, which are incorporated by reference, and makes 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 and made a part hereof, and have executed this Agreement as of the date below. This Agreement Face Sheet; Special Terms & Conditions (Attachment 1); General Terms and Conditions (Attachment 2); Statement of Work and/or Description of Project (Attachment 3); Project Development Schedule (Attachment 4); Project Budget (Attachment 5); and all other documents, exhibits and attachments 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.					
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: <div style="display: flex; justify-content: space-between;"><div>1. Applicable Federal and State Statutes and Regulations 2. DHS/FEMA Award and program documents 3. Work Plan, Schedule, and Budget</div><div>4. Special Terms and Conditions 5. General Terms and Conditions, and, 6. Other provisions of the Agreement incorporated by reference</div></div>					
WHEREAS the parties hereto have executed this Agreement on the day and year last specified below.					
FOR THE DEPARTMENT:			FOR THE SUBRECIPIENT:		
_____ Signature Regan Anne Hesse, Chief Financial Officer Washington State Military Department			_____ Signature Justin Clary, General Manager Lake Whatcom Water & Sewer District		
_____ Date			_____ Date		
BOILERPLATE APPROVED AS TO FORM: <u>Dierk Meierbachtol</u> <u>4/4/2023</u> Assistant Attorney General			APPROVED AS TO FORM: _____ Date		

**Washington State Military Department
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		MILITARY DEPARTMENT	
Name	Rich Munson	Name	Tim Cook
Title	Eng. Tech. / Safety Officer	Title	State Hazard Mitigation Officer
E-Mail	Rich.Munson@lwwsd.org	E-Mail	Tim.Cook@mil.wa.gov
Phone	360-734-9224	Phone	253-512-7072
Name	Justin Clary	Name	Matthew Lebens
Title	General Manager	Title	HMA Program Supervisor
E-Mail	Justin.Clary@lwwsd.org	E-Mail	Matthew.Lebens@mil.wa.gov
Phone	360-734-9224	Phone	253-512-7042
Name	Jennifer Signs	Name	Jennifer Wamboldt
Title	Finance Manager/Treasure	Title	HMA Program Coordinator
E-Mail	Jenny.Signs@lwwsd.org	E-Mail	Jennifer.Wamboldt@mil.wa.gov
Phone	360-734-9224	Phone	253-512-7042

ARTICLE II ADMINISTRATIVE 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 HMGP program including, but not limited to, all criteria, restrictions, and requirements of the Presidential Disaster Declaration, the federal regulations commonly applicable to FEMA grants, and the FEMA Award Letter and its attachments, all of which are incorporated herein by reference.

The SUBRECIPIENT acknowledges that since this Agreement involves federal award funding, the period of performance described herein 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 HAZARD MITIGATION GRANTS:

The following requirements apply to all DHS/FEMA Hazard Mitigation Grants administered by the DEPARTMENT.

1. SUBAWARDS & CONTRACTS BY SUBRECIPIENTS

- a. The SUBRECIPIENT must make a case-by-case determination whether each agreement it makes for the disbursement of HMGP 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 HMGP 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 **4309-18-R**, including, but not limited to, all criteria, restrictions, and requirements of the Presidential Disaster Declaration HMGP document, the Manual, the DHS Award Letter for the Grant, and the federal regulations commonly applicable to DHS/FEMA grants.

- iii. The SUBRECIPIENT shall be responsible to the DEPARTMENT for ensuring that all HMGP 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 2 of this Agreement.

2. PROJECT FUNDING

The DEPARTMENT will administer 4309-18-R and will pass through the federal match and commit the available state match. The SUBRECIPIENT will commit the required local match.

- a. The total cost of the project for the purposes of this Agreement is **\$449,954.00** dollars; PROVIDED that, if the total cost of the project when completed, or when this Agreement is terminated, is actually less than above, the actual cost shall be substituted herein.
- b. The value of the contributions by the SUBRECIPIENT to the project shall be **\$56,244.25** dollars, or 12.5 percent, at minimum, of the total project cost. The SUBRECIPIENT's contributions may be cash or in-kind, must be from a non-federal source, must be reasonable, allowable and allocable, and must comply with all Federal requirements and regulations.
- c. When the DEPARTMENT enters into an agreement with the Federal Emergency Management Agency (FEMA) to contribute federal funds to this project, that federal contribution will be **\$337,465.50** dollars, or 75 percent of the total project cost, whichever is less.
- d. The value of the contributions by the DEPARTMENT to the project shall be **\$56,244.25** dollars, or 12.5 percent, at minimum, of the total project cost and is contingent on legislative approval of DEPARTMENT funding pursuant to the prerequisites provided in subsection g. The DEPARTMENT's contributions must be from a non-federal source and must comply with all Federal requirements and regulations.
- e. The Federal Emergency Management Agency (FEMA) has contributed federal funds for SUBRECIPIENT Management Costs (SubMC). SubMC includes costs for administering the grant and indirect costs. This federal contribution is in addition to the federal award for project costs and is suitable for 100% reimbursement for eligible expenses. The maximum amount available for SubMC is **\$0.00** dollars, limited to 5% of the eligible project expenditures for administrative, indirect, or overhead costs, whichever is less.
- f. The DEPARTMENT shall not be obligated to pay any amount beyond that set out in Subsections c, d, and e above, unless that additional amount has been approved in advance by both the DEPARTMENT and SUBRECIPIENT and is incorporated by written amendment into this Agreement.
- g. The Washington State Legislature may authorize the DEPARTMENT to provide a match to the SUBRECIPIENT's non-federal share of eligible projects. Provision of a match by the DEPARTMENT, if authorized by the Washington State Legislature, shall not require amendment of this Agreement. If DEPARTMENT match funds are committed to the non-federal share by the DEPARTMENT pursuant to legislative authorization, the DEPARTMENT will formally notify the SUBRECIPIENT of the match in writing which will include information identifying any related reduction in the SUBRECIPIENT's percentage commitment.
- h. A written amendment will be required if the SUBRECIPIENT expects cumulative transfers between project budgets, as identified in the Project budget (Attachment 5) and the Statement of Work and/or description of Project (Attachment 3), to exceed 10% of the Grant Agreement Amount. Any changes to project budgets other than in compliance with this paragraph will not be reimbursed.

3. GRANT AGREEMENT PERIOD

Activities payable under this Agreement and to be performed by the SUBRECIPIENT under this Agreement shall only be those after the obligation of federal funds on **December 7, 2021**, and shall terminate on **March 15, 2024**. This period shall be referred to herein as the Grant Agreement Period and/or Period of Performance, unless expressly stated otherwise. Costs incurred during the Grant Agreement Period shall include pre-award costs authorized in writing by FEMA as well as eligible costs incurred after the effective date of the Grant Agreement Period and before termination.

- a. The SUBRECIPIENT shall complete the project as described in the FEMA approved project application 4309-18-R, incorporated in and made a part of this Agreement by reference, and as described in Attachments 3, 4, and 5. In the event of extenuating circumstances, the SUBRECIPIENT may request, in writing, that the DEPARTMENT extend the deadline for Grant Agreement completion.
- b. The Grant Agreement Period shall only be extended by (1) written notification of FEMA approval of the Grant Agreement Period followed by execution of a mutually agreed written amendment, or (2) written notification from the DEPARTMENT to the SUBRECIPIENT addressing extensions of the DEPARTMENT'S underlying federal grant performance period or to provide additional time for completion of the SUBRECIPIENT's project(s).
- c. No expenditure made, or obligation incurred, before or after the Grant Agreement Period shall be eligible, in whole or in part, for grant funds with the exception of pre-award costs authorized in writing by FEMA. In addition to any remedy the DEPARTMENT may have under this Agreement, the amounts set out in Article II, section A.2 **Project Funding**, above, may be reduced to exclude any such expenditure from participation.
- d. Failure to complete the project in a timely manner, as outlined in Attachment 4, is a material breach of this Agreement for which the DEPARTMENT is entitled to termination or suspension under Attachment 2, section A.37.

4. REIMBURSEMENT AND BUDGET REQUIREMENTS

The DEPARTMENT, using mitigation funds from PL 93-288, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and the State of Washington, for the HMGP program, shall issue payments to the SUBRECIPIENT as follows:

- a. All payment requests shall be made to the SUBRECIPIENT upon submission and approval of eligible, reimbursable work completed and billed on an A-19, form, State of Washington Invoice Voucher Distribution. Approval is subject to receipt of acceptable documentation by the DEPARTMENT, to include, but not limited to, copies of receipts for all goods and services purchased, copies of invoices from contractors and subcontractors for work completed, and copies of timesheets for staff involved with the project, sign-in/sign-out sheets for donated personnel and/or volunteer time spent on the project, and documentation to support other in-kind contributions.
- b. The DEPARTMENT reserves the right to withhold disbursement of up to 10 percent of the total project cost to the SUBRECIPIENT until the project has been completed and given final approval by the DEPARTMENT.
- c. Final Payment: Final payment of any remaining, or withheld, funds will be made within 60 days after submission by the SUBRECIPIENT of the final report, final A-19, Voucher Distribution, and completion of all final inspections by the DEPARTMENT.

Final payment by the DEPARTMENT also may be conditioned upon a financial review, if determined necessary by the DEPARTMENT. Adjustments to the final payment may be made following any audits conducted by the DEPARTMENT, Washington State Auditor's Office, the United States Inspector General, or their authorized representatives.
- d. Within the total Grant Amount of this Agreement, budget categories will be reimbursed on an actual cost basis unless otherwise provided in this Agreement.

- e. 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 Amount of this Agreement.
- f. For travel costs, 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 <http://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's Key Personnel.
- g. 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 local, state, or federal auditors.
- h. The SUBRECIPIENT will submit reimbursement requests to the DEPARTMENT by submitting a properly completed State A-19 Invoice Form, Interagency Electronic Funds Transfer, or Agency/Business invoice with support documentation detailing the expenditures for which reimbursement is sought. Reimbursement requests must be submitted by email to both the DEPARTMENT's Hazard Mitigation Program Coordinator and the Program Manager no later than the due dates listed within the Grant Timeline (Attachment 4), but not more frequently than monthly.
- i. 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 45 days after the Grant Agreement End Date, except as otherwise authorized by written amendment of this Agreement and issued by the DEPARTMENT.
- j. If applicable, 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.
- k. Failure to timely submit complete reports and reimbursement requests as required by this Agreement (including but not limited to those reports in the Project Development Schedule Attachment 4) will prohibit the SUBRECIPIENT from being reimbursed until such complete reports and reimbursement requests are submitted and the DEPARTMENT has had reasonable time to conduct its review. Final reimbursement requests will not be approved for payment until the SUBRECIPIENT is current with all reporting requirements contained in this Agreement.
- l. 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 the reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

5. REPORTING REQUIREMENTS

In addition to the reports as may be required elsewhere in this Agreement, the SUBRECIPIENT shall promptly prepare and submit the following reports to the DEPARTMENT's Key Personnel:

- a. Quarterly progress reports, no later than the 15th day following the end of the fiscal quarter, indicating the status of the project, to include a brief narrative on progress during the quarter. The report shall identify the costs incurred to date, the percentage of work completed, the anticipated completion date of the project, and whether cost under runs or over runs are expected. In addition, the SUBRECIPIENT should note any challenges or issues associated with the project. Failure to submit a complete quarterly report within 15 days following the end of the quarter will result in suspension of all payments to the SUBRECIPIENT until a complete quarterly report is received by the DEPARTMENT.

- b. A final report when the project is completed, prematurely terminated, or project assistance is terminated. The report shall include a final accounting of all expenditures and a description of work accomplished. If the project is not completed, the report shall contain an estimate of the percentage of completion, and shall indicate the degree of usefulness of the completed project. The report shall account for all expenditures not previously reported and shall include a summary for the entire project.
- c. The SUBRECIPIENT shall submit a quarterly progress report describing current activities as outlined in the Timeline.
- d. The SUBRECIPIENT shall submit a Final Report with final reimbursement no later than 45 days after Agreement End Date.
- e. 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.

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 2, A.11.**
- b. For all contracts expected to exceed \$250,000, the DEPARTMENT may request pre-procurement documents, such as request for proposals, invitations for bids and independent cost estimates. This request may apply to any non-federal entity to which the SUBRECIPIENT makes a subaward, at which point the SUBRECIPIENT will be responsible for reviewing and approving procurement requests of any non-federal entity to which the SUBRECIPIENT makes an award.
- c. For all sole source contracts expected to exceed the micro-purchase threshold per 2 CFR 200.1, the SUBRECIPIENT must submit justification to the DEPARTMENT for review and approval. This requirement must be passed on to any non-federal entity to which the SUBRECIPIENT makes a subaward, at which point the SUBRECIPIENT will be responsible for reviewing and approving sole source justifications to any non-federal entity to which the SUBRECIPIENT makes an award.

7. TIME EXTENSIONS

A time extension request for Agreement completion must be submitted by the SUBRECIPIENT to the DEPARTMENT no later than 60 days before the end of the Period of Performance. A time extension request must be in writing and identify the project, the reason the project will not be completed within the approved Period of Performance, a current status of the completion of the work, a detailed timeline for completion of the remaining elements, and an anticipated completion date for the completion of the remaining work. Failure to timely submit a complete time extension request may result in denial of the time extension and loss of funding for the project.

8. SUBRECIPIENT MONITORING

- a. The DEPARTMENT will monitor the activities of the SUBRECIPIENT from award to closeout. The goal of the DEPARTMENT'S monitoring activities 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 "2 CFR Part 200 Subpart F Audit Certification Form" located at <http://mil.wa.gov/emergency-management-division/grants/requiredgrantforms> along with the signed Agreement. The SUBRECIPIENT shall complete and return the form to the DEPARTMENT each fiscal year

thereafter until the Agreement is closed. The form is incorporated by reference herein and made a part of this 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-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, funded events, and equipment demonstrations; and
 - 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 and in 2 CFR Part 200, for any non-federal entity to which the SUBRECIPIENT makes a subaward as a pass-through entity under this Agreement.
- e. Compliance will be monitored throughout the performance period to assess risk. Concerns will be addressed through a Corrective Action Plan.

9. CLOSE-OUT

To initiate close-out, the SUBRECIPIENT is required to certify in writing the date completed and total amount expended on the project on FINAL PROJECT REPORT form to the DEPARTMENT. After receipt of the FINAL PROJECT REPORT form, the DEPARTMENT will conduct a site inspection and review supporting documentation for compliance with the requirements of the Agreement.

Prior to project close-out, the SUBRECIPIENT shall provide the DEPARTMENT with acceptable documentation supporting compliance with the Agreement. General documentation supporting compliance with the Agreement typically includes, but is not limited to, the following:

- a. Photographs of the structures or properties involved in the project **prior** to project implementation **and after** project implementation.
- b. Digital geospatial coordinates (latitude and longitude) for each structure with an accuracy of ± 20 meters (64) feet.
- c. Certificate of occupancy or equivalent documentation from the appropriate regulatory authority for each structure to certify it is code-compliant.
- d. Certification that the SUBRECIPIENT has met the environmental and historic preservation conditions of the grant award as described in this Agreement.
- e. Copies of all compliance and consultation documentation required by the grant award as described in the Agreement (e.g., coastal zone management consistency determination from Department of Ecology).
- f. Copies of all documentation related to inspection for and removal and disposal of asbestos and other hazardous materials from each property.

Specific additional documentation requirements for projects to acquire properties for open space include, but are not limited to, the following:

- a. Signed Statement of Voluntary Participation from the owner of each acquired property.
- b. Documentation of dates of acquisition and structure demolition or removal from property for each property.
- c. Copy of recorded open space deed restrictions for each acquired property.
- d. Copy of the AW-501 form filed with the NFIP for each acquired repetitive loss property.

- e. Documentation of consultation with the Army Corps of Engineers and Washington State Department of Transportation regarding future use of each property.

Specific additional documentation requirements for projects to elevate structures above the base flood elevation include, but are not limited to, the following:

- a. Photographs of the structures prior to elevation, and front, rear and side photos post-elevation.
- b. Copies of the pre-project elevation certificate for each structure, or documentation of methodology used to calculate the first-floor elevations.
- c. Copies of the post-project elevation certificate for each structure.
- d. Copies of the certificate of occupancy for each elevated structure to certify that it is code compliant.
- e. Certification by an engineer, floodplain manager or other senior official of the SUBRECIPIENT that each completed structural elevation is in compliance with local ordinances and NFIP regulations and technical bulletins.
- f. Copy of the AW-501 form filed with the NFIP for each elevated repetitive loss property.
- g. Copies of proof of flood insurance for each elevated structure.
- h. Copies of the recorded deed restriction related to maintenance of flood insurance for each property within the Special Flood Hazard Area.

The DEPARTMENT will consult with the SUBRECIPIENT regarding other documentation requirements of the Agreement throughout the Period of Performance.

The SUBRECIPIENT is required to retain all documentation which adequately identifies the source and application of all mitigation grant funds for six years following the closure of this grant. For all funds received, source documentation includes adequate accounting of actual costs and recoveries incurred.

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

All SUBRECIPIENTS 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 <http://www.lep.gov>.

11. 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>, which is incorporated into and made a part of this Agreement.

- b. Projects that have historical impactors 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.

12. ADDITIONAL SPECIAL CONDITIONS

a. Construction Documents, Contracts, Change Orders

- i. Construction Document Approval: Upon request, the SUBRECIPIENT agrees to submit one copy of all construction plans and specifications to the DEPARTMENT prior to solicitation of bids. This request is to ensure bid set consistency with the subgrant's approved scope of work.
- ii. The SUBRECIPIENT shall use a competitive procurement process in the procurement and award of any contracts with contractors or sub-contractors that are entered into under the original contract award. Copies of all bids and contracts awarded shall be submitted to the DEPARTMENT upon request. Where all bids are substantially in excess of project estimates, the DEPARTMENT may, by notice in writing, suspend the project for determination of appropriate action, which may include termination of the Agreement.
- iii. Construction Change Order: All change orders must be in writing and shall be submitted to the DEPARTMENT. The SUBRECIPIENT shall pay any increase in the cost of the project as the result of a change order, unless the DEPARTMENT has agreed to the change with a written amendment to this Agreement.

13. EQUIPMENT AND TRACKABLE ASSETS MANAGEMENT

- a. If applicable, 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 requirements, when procuring any equipment or trackable assets under this Agreement, 2 CFR 200.313 for management of equipment, and 2 CFR 200 to include but not limited to:
 - i. Upon successful completion of the terms of this Agreement, all equipment and trackable assets 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 or other means of legal transfer of ownership is in place.
 - ii. All equipment, and trackable assets as applicable, purchased under this Agreement will be recorded and maintained in the SUBRECIPIENT's inventory system.
 - iii. Inventory records shall include:

- A. Description of the property
 - B. Manufacturer's serial number, or other identification number
 - C. Funding source for the property, including the Federal Award Identification Number (FAIN) (Face Sheet, Box 11)
 - D. Assistance Listings Number (formerly CFDA Number) (Face Sheet, Box 13)
 - E. Who holds the title
 - F. Acquisition date
 - G. Cost of the property and the percentage of federal participation in the cost
 - H. Location, use, and condition of the property at the date the information was reported
 - I. Disposition data including the date of disposal and sale price of the property.
- iv. The SUBRECIPIENT shall take a physical inventory of the equipment, and trackable assets 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 trackable assets including all questions of liability. The SUBRECIPIENT shall develop appropriate maintenance schedules and procedures to ensure the equipment and trackable assets 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 trackable assets 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 Trackable assets: If there is a residual inventory of unused trackable assets exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the trackable assets are not needed for any other federal award, the SUBRECIPIENT must retain the trackable assets 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. 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.
 - d. If funding is allocated to emergency communications, the SUBRECIPIENT must ensure that all projects comply with SAFECOM Guidance on Emergency Communications Grants, located at <https://www.cisa.gov/safecom/funding>, ensuring the investments are compatible, interoperable, resilient, and support national goals and objectives for improving emergency communications.
 - e. Effective August 13, 2020, FEMA recipients and SUBRECIPIENT, 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 subsections 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.

The SUBRECIPIENT must pass through equipment and trackable assets 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.

B. DHS FFY23 STANDARD TERMS AND CONDITIONS

As a SUBRECIPIENT of HMGP funding, the SUBRECIPIENT shall comply with all applicable FEMA/DHS terms and conditions of the FEMA Award Letter and its associated documents for DHS, which are incorporated in and made a part of this Agreement.

**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 following 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 pass-through entity making a subaward to a SUBRECIPIENT under this Agreement.
- c. "**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 200.93 for all other purposes.
- d. "**Monitoring Activities**" means all administrative, construction, financial, or other review activities that are conducted to ensure compliance with all state and federal laws, rules, regulations, authorities and policies.
- e. "**Project**" means those actions funded through the Hazard Mitigation Assistance Grant Program and described in approved Project Worksheets. Projects may include one or more of the following: reimbursement of costs for emergency response, debris removal and/or repair or restoration of damaged public facilities. A project may be a small, large, improved, or alternate project.

A.2 ADVANCE PAYMENTS

The DEPARTMENT shall make no payments in advance or in anticipation of goods or services to be provided under this Agreement, except as required under 2 CFR 200.305 for federal grants. SUBRECIPIENT shall not invoice the DEPARTMENT in advance of delivery and invoicing of such goods or services, except as authorized under 2 CFR 200.305.

Pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C §5121-5207), Advance Payment process, FEMA may process a SUBRECIPIENT project worksheet which is provided to the state of Washington for direct disbursement to SUBRECIPIENT Pursuant to these provisions and RCW 43.88.160(5), these grant funds are not subject to the advance payments prohibition and will be disbursed immediately to SUBRECIPIENT as grants authorized by law with subsequent authentication and certification of expenditures.

A.3 AMENDMENTS AND MODIFICATIONS

The SUBRECIPIENT or the DEPARTMENT may request, in writing, an amendment or modification of this Agreement. Modifications may be requested for Grant Agreement end date, budget or scope change. 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.

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 APPLICATION REPRESENTATION-MISREPRESENTATION, INACCURACY AND BREACH

The DEPARTMENT relies upon the SUBRECIPIENT's application in making its determinations as to eligibility for, selection for, and scope of funding grants. Any misrepresentation, error or inaccuracy in any part of the application may be deemed a breach of this Agreement.

A.6 ASSURANCES

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. In addition, as a SUBRECIPIENT of FEMA funding, the SUBRECIPIENT shall comply with all applicable DHS terms and conditions as specified in B.3. Statement of Assurances of the Hazard Mitigation Assistance Program and Policy Guide dated March 23, 2023.

A.7 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 <http://mil.wa.gov/emergency-management-division/grants/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 sub-contractors or sub-recipients 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 sub-awards to sub-recipients for any amount. With respect to covered transactions, the SUBRECIPIENT may comply with this provision by obtaining a certification statement from the potential sub-contractor or sub-recipient or by checking the System for Award Management (<http://www.sam.gov>) 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>).

A.8 CERTIFICATION REGARDING RESTRICTIONS ON LOBBYING

As required by 44 CFR Part 18, the SUBRECIPIENT hereby certifies that to the best of their 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 sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into, and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352.

A.9 COMPLIANCE WITH APPLICABLE STATUTES, RULES AND DEPARTMENT POLICIES

The SUBRECIPIENT and all its contractors 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, Equal Employment Opportunity, as amended by Executive Order 11375 of October 13, 1967, as supplemented by Department of Labor regulations (41 CFR chapter 60); Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29

CFR Part 3); Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5); Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, Environmental Protection Agency regulations (40 CFR part 15); Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5); Energy Policy and Conservation Act (PL 94-163, 89 Stat. 871, 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), Title 44 of the Federal Regulations, 2 CFR Part 3002, 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.

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.

In the event of the SUBRECIPIENT's or its contractor's noncompliance or refusal to comply with any applicable law, regulation, executive order, OMB Circular or policy, 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 to comply with applicable laws, regulations, executive orders, OMB Circulars or policies.

A.10 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 such 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 subcontracts, a provision prohibiting such interest pursuant to this provision.

A.11 CONTRACTING & PROCUREMENT

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

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

1. Contracts for more than the simplified acquisition threshold, 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 governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
 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 200.322, 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 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. The DEPARTMENT reserves the right to review the SUBRECIPIENT 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 200.318 through 2 CFR 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.
17. All sub-contracting agreements entered into pursuant to this Agreement shall incorporate this Agreement by reference.

A.12 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.13 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.14 DUPLICATION OF BENEFITS

The SUBRECIPIENT agrees that the funds for which federal or state assistance is requested does not, or will not, duplicate benefits or funds received for the same loss from any other source. The SUBRECIPIENT will pursue, and require sub-recipients to pursue, full payment of eligible insurance benefits for properties or any other losses covered in a project under this Agreement. The SUBRECIPIENT will repay the DEPARTMENT any funds provided under this grant agreement that are

duplicated by other benefits, funds, or insurance proceeds. The SUBRECIPIENT will also seek recovery against any party or parties whose negligence or other intentional or tortious conduct may have caused or contributed to the expenditures for which these grants funds are provided. The SUBRECIPIENT will repay the DEPARTMENT any funds recovered by settlement, judgment or other court order in an action to recover funds provided by this grant. The SUBRECIPIENT shall notify the DEPARTMENT as early as possible and work in conjunction with the DEPARTMENT and FEMA to ensure appropriate apportionment of any duplicated or recovered payment.

A.15 HAZARDOUS SUBSTANCES

The SUBRECIPIENT shall inspect and investigate the proposed development/construction site for the presence of hazardous substances. The SUBRECIPIENT shall fully disclose to the DEPARTMENT the results of its inspection and investigation and all other knowledge the SUBRECIPIENT has as to the presence of any hazardous substances at the proposed development/construction project site. The SUBRECIPIENT will be responsible for any associated clean-up costs. "Hazardous Substance" is defined in RCW 70A.305.020.

A.16 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 sub-contractors, 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 SUBRECIPIENT's agents or employees.

Insofar as the funding source, the DEPARTMENT of Homeland Security (DHS)/Federal Emergency Management Agency (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.17 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 and the Authorized Signature of the assigned SUBRECIPIENT Agent or Alternate for the SUBRECIPIENT Agent, 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. Further, only the Authorized Signature representative or Alternate for the SUBRECIPIENT shall have authority to sign reimbursement requests, certification of project completion, time extension requests, amendment and modification requests, requests for changes to project status, and other requests, certifications and documents authorized by or required under this Agreement.

A.18 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 scope of work and budget or unilaterally terminate or suspend 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.19 NONASSIGNABILITY

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

A.20 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.21 NOTICES

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

A.22 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.23 OWNERSHIP OF PROJECT/CAPITAL FACILITIES

The DEPARTMENT makes no claim to any capital facilities or real property improved or constructed with funds under this Agreement, and by this grant of funds does not and will not acquire any ownership interest or title to such property of the SUBRECIPIENT. The SUBRECIPIENT shall assume all liabilities arising from the ownership and operation of the project and agrees to hold the DEPARTMENT and 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.24 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.25 PRIVACY

Personal information collected, used or acquired in connection with this Agreement shall be used solely for the purposes of this Agreement. SUBRECIPIENT and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the DEPARTMENT or as provided by law or court order. SUBRECIPIENT agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

The DEPARTMENT reserves the right to monitor, audit, or investigate the use of personal information collected, used or acquired by the SUBRECIPIENT through this Agreement. The monitoring, auditing or investigating may include but is not limited to "salting" by the DEPARTMENT. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

Any breach of this provision may result in termination of the Agreement and the demand for return of all personal information. The SUBRECIPIENT agrees to indemnify and hold harmless the DEPARTMENT for any damages related to the SUBRECIPIENT's unauthorized use, loss or disclosure of personal information.

For purposes of this provision, personal information includes, but is not limited to, information identifiable to an individual that relates to a natural person's health, finances, education, business, use or receipt of governmental services, or other activities, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and other identifying numbers.

A.26 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.27 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.

The SUBRECIPIENT shall include language which acknowledges the funding contribution of the DEPARTMENT and FEMA to this project in any release or other publication developed or modified for, or referring to, the project.

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

A.28 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.

A.29 RECORDS AND REPORTS

- 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) year must be followed.

A.30 RECOVERY OF FUNDS

Any person who intentionally causes a condition for which funds are provided under this Agreement shall be liable for the costs incurred by the state and federal governments in responding to such disaster. In addition to its own duty to recover duplicated funds or funds expended due to the intentional or negligent actions of others. SUBRECIPIENT will cooperate in a reasonable manner with the DEPARTMENT and the United States in efforts to recover expenditures under this Grant Agreement.

A.31 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 grant 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 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.32 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.33 SINGLE AUDIT ACT REQUIREMENTS (including all AMENDMENTS)

Non-federal entities as subrecipients 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 non-profit 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 Subpart F.

The SUBRECIPIENT shall maintain auditable records and accounts so as to facilitate the audit requirement and shall ensure that any SUBRECIPIENTS or contractors 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.

Once the single audit has been completed and includes and audit findings, the SUBRECIPIENT must send a full copy of the audit to the DEPARTMENT and its corrective action plan no later than nine (9) months after the end of the SUBRECIPIENT's fiscal year(s) to:

Contracts.Office@mil.wa.gov

Subject: Lake Whatcom Water & Sewer District, Single Audit and Corrective Action Plan

OR

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

If Contractor claims it is exempt from the audit requirements of 2 CFR Part 200 Subpart F, the SUBRECIPIENT must send a letter identifying this Agreement and explaining the criteria for exemption no later than nine (9) months after the end of the SUBRECIPIENT's fiscal year(s) to the address listed above.

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.

The SUBRECIPIENT shall include the above audit requirements in any subawards.

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.34 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 or of the State of Washington 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.35 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.36 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's 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 by providing ten (10) calendar days written notice, beginning on the second day after e-mailing to the SUBRECIPIENT. 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.37 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.38 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 the 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, and 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 sub-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 sub-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 sub-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.39 UTILIZATION OF MINORITY AND WOMEN BUSINESS ENTERPRISES (MWBE)

The SUBRECIPIENT shall comply with 2 CFR §200.321 and will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible and will take all necessary affirmative steps to utilize business firms that are certified as minority-owned and/or women-owned in carrying out the purposes of this Agreement. The following steps are required by the SUBRECIPIENT if any contracts with contractors or sub-contractors are entered into under the original contract award:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

The SUBRECIPIENT may also set utilization standards, based upon local conditions or may utilize the State of Washington MWBE goals, as identified in. WAC 326-30-041.

A.40 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.41 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.

STATEMENT OF WORK AND/OR DESCRIPTION OF PROJECT

SUBRECIPIENT: Lake Whatcom Water & Sewer District
 PROJECT TITLE: Division 7 Water Reservoir Seismic Retrofit

The purpose of this project is for Lake Whatcom Water & Sewer District:

Phase 1: Only performing preliminary and final design, permitting, and required actions to complete those elements.

Phase 2: once awarded and contracted / amended under a separate agreement, will include construction of the two reservoirs and all appurtenances, inspections, and project closeout.

The entire project, phase 1 and 2, involves LWWS performing seismic upgrades to its water system by upgrading their Division 7 water reservoir by construction of the two smaller reservoirs of comparable total volume.

LWWS has already installed the ShakeAlert – Earthquake Early Warning System.

A specific and more detailed scope of work is found in the FEMA approved Project Application 4309-18-R, which is incorporated herein by reference.

Lake Whatcom Water & Sewer District Agrees To:

1. Comply with the terms of this Agreement and all Attachments, including but not limited to, accomplish tasks and conditions outlined in the Statement of Work And/Or Description of Project (Attachment 3), comply with the Project Development Schedule-Attachment 4, and comply with the Project Budget (Attachment 5).
2. Submit quarterly reports that cover the previous three months no later than the 15th of the following month (or the next work day) in January, April, July and October until all requirements are fulfilled. Quarterly reports are required regardless of the level of work completed during the reporting period. Quarterly reports must include sufficient narrative to determine the degree to which the project has been implemented, the estimated time for completion, and significant developments such as delays or adverse conditions that might raise costs or delay completion, as well as favorable conditions allowing lower costs or earlier completion. Failure of the SUBRECIPIENT to submit a complete quarterly report within 15 days following the end of the quarter will result in suspension of all payments until a complete quarterly report is received by the DEPARTMENT. SUBRECIPIENT is required to return all final closeout documentation to the DEPARTMENT within 45 days following the Period of Performance End Date determined by FEMA's Notice of Award. The DEPARTMENT reserves the right to withhold the final reimbursement request until final closeout documentation is submitted by the SUBRECIPIENT to the satisfaction of the DEPARTMENT. No final reimbursements shall be paid if submitted more than 60 days after the Period of Performance End Date.
3. Submit pen-and-ink signed, approved invoice vouchers (state form A-19) for eligible, reimbursable work completed, no more frequently than monthly and no less frequently than quarterly. Each billing must identify the task(s) completed and any other funding identification pertinent to the task(s), including match. Supporting documentation is required for all costs, to include tracking of staff time spent on the project through timesheets or other documentation approved by the DEPARTMENT; dated invoices from all contractors and subcontractors for work completed; dated invoices for goods and services purchased; and documentation tracking in-kind contributions of personnel, equipment and supplies, if used on the project. Project costs must be tracked and reported by approved budget cost categories as found in Project Budget, Attachment 5. Documentation of expenditures by approved budget cost categories should be made on a separate spreadsheet or table and included with each A-19, along with documentation to substantiate all project costs.
4. Return by DEPARTMENT staff of invoices to the SUBRECIPIENT if the SUBRECIPIENT is unable to provide sufficient documentation to staff within 15 calendar days of the staff's written request for additional documentation to support the reimbursement request.
5. Submit a signed final project report before final reimbursement is made by the DEPARTMENT.
6. **PROGRAMMATIC, ENVIRONMENTAL AND HISTORIC PRESERVATION CONDITIONS**

In completing this project, the SUBRECIPIENT must adhere to the following programmatic, environmental and historic preservation conditions:

- a. Scope of Work Change: Requests for changes to the Scope of Work after grant award are permissible as long as they do not change the nature or total project cost of the activity, properties identified in the application, the feasibility and effectiveness of the project, or reduce the Benefit Cost Ratio below 1.0.

Requests must be supported by adequate justification, including a description of the proposed change; a written explanation of the reason or reasons for the change; an outline of remaining funds available to support the change; and a full description of the work necessary to complete the activity.

A proposed change to the approved Scope of Work (as presented in the FEMA approved project application) must be submitted to the DEPARTMENT and FEMA in advance of implementation for re-evaluation for compliance with National Environmental Policy Act (NEPA) and other Laws and Executive Orders. Prior approval for a change to the approved Scope of Work must be obtained from the DEPARTMENT and FEMA before the change is implemented. Failure to obtain prior approval for a revised Scope of Work could result in ineligibility of resulting costs.

- b. Comply with all applicable federal, state and local laws and regulations. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize federal funding provided by this Agreement.
- c. Ensure that all completed work is in compliance with applicable state and local buildings codes and flood damage prevention legislation.
- d. Monitor site work during ground-disturbing activities for evidence of potential archaeological resources that are uncovered. SUBRECIPIENT must halt the project in the event historically or archaeologically significant materials or sites (or evidence thereof) are discovered. By way of example, such evidence may include, but is not limited to, artifacts such as arrowheads, bone fragments, pottery shards, and features such as fire pits or structural elements. All reasonable measures must be taken to avoid or minimize harm to such resources until such time as the SUBRECIPIENT notifies the DEPARTMENT, and FEMA, in consultation with the State Historic Preservation Officer (SHPO) and appropriate Native American tribes, determines appropriate measures have been taken to ensure that the project is in compliance with the National Historic Preservation Act. In addition, upon discovery of human skeletal remains, the SUBRECIPIENT is required by state law to notify the county coroner and local law enforcement in the most expeditious manner possible and to immediately stop any activity which may cause further ground disturbance.
- e. Determine the presence of hazardous materials and/or toxic waste, and identifying, handling, managing, abating and disposing of such materials in accordance with the requirements and to the satisfaction of the governing local, state and federal agencies, including but not limited to the Washington Department of Ecology. Such materials may include, but are not limited to, asbestos, lead-based paint, propane cylinders, sand blasting residue, discarded paints and solvents, cleaning chemicals, containers of pesticides, lead-acid batteries, items containing chlorofluorocarbons (CFCs), motor oil and used oil filters, and unlabeled tanks or containers.
- f. Conduct work during the non-flood season as determined by the local floodplain administrator. However, should construction be required during the flood season, as determined by the local floodplain administrator, all construction equipment shall be staged in an area not susceptible to flood events or be readily transportable out of the floodplain to minimize flood damage.
- g. Dispose of all debris at an approved and permitted location. No debris shall be temporarily staged or disposed of in a floodplain and/or a wetland.
- h. Confirm with the State Department of Ecology whether this project will require a consistency determination under the Coastal Zone Management Act. If required, the SUBRECIPIENT shall obtain and comply with all requirements of the determination prior to starting the project.
- i. Select, implement, monitor, and maintain Best Management Practices (BMPs) to control soil erosion and sedimentation, reduce spills and pollution, and provide habitat protection. The acquisition site shall be stabilized from erosion and silt laden runoff by implementing these BMPs and securing the site from transient vehicle access. Any excavation and/or grading shall be done within and/or adjacent to the existing building footprint area and not beyond undisturbed portions of the site.
- j. Resubmit the project to the DEPARTMENT and FEMA prior to implementation if any in-water work will occur or if any work will occur below the ordinary high water mark of any water resource in the area, so further coordination/consultation can take place with the National Marine Fisheries Service (NMFS) to determine whether appropriate measures have been taken to ensure the project is in compliance with the Endangered Species Act.
- k. Resubmit the project to the DEPARTMENT and FEMA for re-evaluation for compliance with national environmental policies if the "Project Limits" (including clearing, excavation, temporary staging, construction, and access areas) extend into: 1) an area not previously identified for environmental and

historic preservation review, or 2) previously undisturbed ground. Additionally, all work on the project in these areas must stop until this re-evaluation is completed.

- I. National Historic Preservation Act Section 106 requirement: All proposed repair and construction activities on buildings listed in or eligible for the National Register of Historic Places (historic properties) should be done in-kind to match existing materials and form. In-kind means that the result of the proposed activities will match all physical and visual aspects of existing historic materials, including form, color and workmanship. In-kind mortar also will match the strength and joint tooling of existing historic mortar.

m. Additional requirements as noted by FEMA in grant award document:

- a. 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. Failure to obtain all appropriate Federal, State, and local environmental permits and clearances may jeopardize Federal funding.
 - b. Sub-recipient is responsible for complying with Required Conditions Resulting from Environmental Review identified in the Environmental Report attached to this award package.
 - c. Any change to the approved Scope of Work will require re-evaluation for compliance with the National Environmental Policy Act (NEPA) and other laws and Executive Orders.
 - d. If ground disturbing activities occur during construction, applicant will monitor ground disturbance and if any potential archaeological resources are discovered, will immediately cease construction in that area and notify the State and Federal Emergency Management Agency (FEMA).
 - e. Sub-recipient is responsible for determining the presence of hazardous materials prior to retrofit work. This may include, but not limited to, asbestos and lead-based paint. Sub-recipient shall identify, handle, transport, and dispose of hazardous materials and/or toxic waste in accordance to the requirements and to the satisfaction of the governing local, state and federal agencies, including competing required noticing.
- n. Cost overruns in excess of the approval budget are fully the responsibility of the SUBRECIPIENT, including those costs resulting from a change in the Scope of Work. The project must remain cost effective (i.e., Benefit Cost Ratio of 1.0 or greater) in the event of cost overrun.

A request for additional funds to cover a cost overrun may be granted by the DEPARTMENT and FEMA only if funds are available within the HMGP ceiling for this disaster, (FEMA-DR-4309-WA). A request for additional funds must be fully documented and justified.

7. SPECIAL FLOOD HAZARD AREA REQUIREMENTS

Pursuant to the Flood Disaster Protection Act of 1973, those structures that remain in the Special Flood Hazard Area (SFHA) after the implementation of the mitigation project, flood insurance must be maintained for the life of the structure. The SFHA is defined as the land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year.

The following National Flood Insurance Program Eligibility Requirements contained in the 2023 Hazard Mitigation Assistance Program and Policy Guide apply to any project involving the alteration of existing structures, to include Mitigation Reconstruction projects that are sited within an SFHA.

- a. When the project is implemented, all structures that will not be demolished or relocated out of the SFHA must be covered by a National Flood Insurance Program (NFIP) flood insurance policy to an amount at least equal to the project cost or to the maximum limit of coverage made available with respect to the particular property, whichever is less.
- b. The SUBRECIPIENT (or property owner) must legally record with the county or appropriate jurisdiction's land records agency a notice that includes the name of the current property owner (including book/page reference to record of current title, if readily available), a legal description of the property, and the following notice of flood insurance requirements as identified on page 244 of the 2023 Hazard Mitigation Assistance Program and Policy Guide:

"This property has received Federal hazard mitigation assistance. Federal law requires that flood insurance coverage on this property must be maintained during the life of the property regardless of transfer of ownership of such property. Pursuant to 42 U.S.C. § 5154a, failure to maintain flood insurance on this property may prohibit the owner from receiving Federal disaster assistance with respect to this property in the event of a flood disaster. The Property Owner is also required to

maintain this property in accordance with the floodplain management criteria of 44 CFR § 60.3 and City/County Ordinance.”

- c. Copies of the recorded notices for each property will be provided to the DEPARTMENT at project closeout.

8. PROVISIONS APPLYING ONLY TO ACQUISITION OF PROPERTIES FOR OPEN SPACE

- a. The SUBRECIPIENT must ensure that prospective participants are informed in writing that property owner participation in this acquisition program is voluntary and that the SUBRECIPIENT will not use its eminent domain authority to acquire the property for the project purposes should negotiations fail.

Copies of the Statement of Voluntary Participation signed by each participating property owner will be provided to the DEPARTMENT by project close-out.

- b. The SUBRECIPIENT agrees that land acquired for open space purposes under this grant will be restricted in perpetuity to open space uses and will be unavailable for the construction of flood damage reduction levees, transportation facilities, and other incompatible purposes and agrees to comply with the requirements of 44 CFR Part 80 Property Acquisition and Relocation for Open Space.

- c. The SUBRECIPIENT agrees to prepare, execute and record Deed Restrictions for each affected property utilizing the current Model Deed Restriction provided on the FEMA website or available from the DEPARTMENT.

Copies of the recorded deed and attached deed restrictions for each property will be provided to the DEPARTMENT by project close-out.

- d. The SUBRECIPIENT accepts all of the requirements of the deed restriction governing the use of the land.
- e. The SUBRECIPIENT ensures that, prior to acquisition of the property, in consultation with the U.S. Army Corps of Engineers, it has addressed and considered the potential future use of these lands for the construction of flood damage reduction levees, has rejected consideration of such measures in the future in the project area, and instead has chosen to proceed with acquisition of permanent open space.

Documentation of this consultation and the SUBRECIPIENT’s consideration of this issue will be provided to the DEPARTMENT by project close-out.

- f. The SUBRECIPIENT must, prior to acquisition of the property, consult with the Washington State Department of Transportation to ensure that no future planned improvements or enhancements are under consideration that will affect the proposed project area.

Documentation of this consultation will be provided to the DEPARTMENT by project close-out.

- g. The SUBRECIPIENT will remove existing buildings from acquired properties within 90 days of settlement. The SUBRECIPIENT will provide confirmation to the DEPARTMENT as to the date of demolition of each structure included in the project in its quarterly reports, as well as confirmation that the property has been returned to “natural” or park/open space condition.

The SUBRECIPIENT will provide digital latitude and longitude coordinates and digital photographs of each property site after project implementation to the DEPARTMENT by project close-out.

- h. The SUBRECIPIENT agrees to complete FEMA Form AW-501, NFIP Repetitive Loss Update Worksheet for each property identified on FEMA’s Repetitive Loss list to document completion of mitigation on the property. The form is available on FEMA’s Web site or available from the DEPARTMENT.

The SUBRECIPIENT will provide a copy of the completed form to the DEPARTMENT by project close-out.

- i. The SUBRECIPIENT agrees to comply with the requirements of 44 CFR § 80.19 Land Use and Oversight, which are incorporated into these conditions by reference. These requirements include, but are not limited to, the following (which are described further in the 2023 Hazard Mitigation Assistance Program and Policy Guide which are incorporated herein by reference):

1. Restriction on future disaster assistance for damages to the property.
2. Lists of allowable open space uses as well as uses generally not allowed on acquired open space land.
3. Provision for salvage of pre-existing structures and paved areas.
4. Requirements pertaining to future transfer of property interest.

5. Requirement for SUBRECIPIENT monitoring and inspection of the acquired property at least every 3 years. The SUBRECIPIENT will provide the DEPARTMENT with a report on the result of the inspection within 90 days of the inspection.
6. Provisions for enforcement of violation of open space requirements.

The Military Department Agrees To:

1. Provide staff coordination and input regarding grant administration for funding and technical assistance for project and reviews for mitigation construction projects, as necessary.
2. Except as otherwise provided in Article II, A.4, of this Agreement, reimburse Lake Whatcom Water & Sewer District within 45 days of receipt and approval of signed, dated invoice voucher(s) (state form A-19) with sufficient documentation of costs to include completion of tasks to date and dated invoices for goods and services purchased. Costs must be categorized according to the budget item and cost classification shown in the Project Budget, Attachment 5. The DEPARTMENT will return invoices to the SUBRECIPIENT if the SUBRECIPIENT is unable to provide sufficient documentation within 15 calendar days of the DEPARTMENT's request for additional documentation to support the reimbursement request. Any reimbursement requests that are returned to the SUBRECIPIENT and are not returned within the 15 calendar days will be required to submit a revised reimbursement request with a new signature and date.
3. Coordinate with the staff of Lake Whatcom Water & Sewer District to schedule any sub-recipient monitoring, site visits or final inspections by DEPARTMENT staff.

PROJECT DEVELOPMENT SCHEDULE

SUBRECIPIENT: Lake Whatcom Water & Sewer District
 PROJECT TITLE: Division 7 Water Reservoir Seismic Retrofit

DESCRIPTION OF ACTIVITY/TASK	SCHEDULED COMPLETION DATE (months)
<i>Phase 1: Advertise and Select Engineering Firm</i>	1
<i>Phase 1: Design of new reservoirs and seismic valve</i>	5
<i>Phase 1: Permitting</i>	10
Total Time Required to Complete This Project: __22__ months	
Quarterly Reports Due on Project Progress, Final Project Report and all documentation, site visits and inspections.	April 15, 2022; July 15, 2022; October 15, 2022; January 15, 2023; April 15, 2023; July 15, 2023; October 15, 2023; January 15, 2024; April 15, 2024 (Final Quarterly Report & Final Closeout Report)

PROJECT BUDGET

SUBRECIPIENT: Lake Whatcom Water & Sewer District
 PROJECT TITLE: Division 7 Water Reservoir Seismic Retrofit

<i>APPROVED BUDGET CATEGORY</i>	<i>ESTIMATED COST</i>
Pre-Award Costs	\$30,750.00
Land, Structures, Right-of-ways, Appraisals	\$11,750.00
Architectural, Engineering, Geotech, etc.	\$249,979.51
Miscellaneous – sales tax, permits	\$157,474.49
	<i>Project Total</i> \$449,954.00
SubMC – This category is restricted to eligible grant administration costs, including indirect costs, and is limited to 5% of eligible <i>project</i> expenditures. The amount shown here reflects the maximum amount available, based on the approved project budget.	\$0.00
TOTAL (Project Total + SubMC): \$449,954.00	
<p>Tracking and Reporting Project Costs: Project expenses for which reimbursement is sought must be tracked and reported by approved budget cost categories, above. Documentation of expenditures by approved budget cost categories should be made on a separate spreadsheet or table and included with each A-19. Supporting documentation of all costs shall include, but not be limited to: tracking of staff time spent on the project through timesheets or other similar documentation; dated invoices from contractors and subcontractors for work completed; dated invoices for goods and services purchased; and documentation of in-kind contributions of personnel, equipment and supplies.</p> <p>Final Payment: Final payment of any remaining, or withheld, funds will be made upon submission by the SUBRECIPIENT within 60 days of completion of the project of the final report and an A-19, Voucher Distribution, and completion of all final inspections by the DEPARTMENT. Final payment also may be conditioned upon a financial review, if determined necessary by the DEPARTMENT. Adjustments to the final payment may be made following any audits conducted by the DEPARTMENT, Washington State Auditor's Office, the United States Inspector General, or their authorized representatives.</p>	


Per 2015 Hazard Mitigation Assistance Program and Policy Guide, no cost overruns will be funded. If costs exceed the maximum amount of FEMA funding approved, the SUBRECIPIENT shall pay the costs in excess of the approved budget.

A request for additional funds to cover a cost overrun may be granted by the DEPARTMENT and FEMA only if funds are available within the HMGP ceiling for this disaster, (FEMA-DR-4309-WA). A request for additional funds must be fully documented and justified.



**AGENDA
BILL
Item 8.A**

**General Manager's
Report**

DATE SUBMITTED:	October 31, 2023	MEETING DATE:	November 8, 2023
TO: BOARD OF COMMISSIONERS	FROM: Justin Clary, General Manager		
GENERAL MANAGER APPROVAL			
ATTACHED DOCUMENTS	1. General Manager's Report		
TYPE OF ACTION REQUESTED	RESOLUTION <input type="checkbox"/>	FORMAL ACTION/ MOTION <input type="checkbox"/>	INFORMATIONAL /OTHER <input checked="" type="checkbox"/>

BACKGROUND / EXPLANATION OF IMPACT

Updated information from the General Manager in advance of the Board meeting.

FISCAL IMPACT

None.

RECOMMENDED BOARD ACTION

None required.

PROPOSED MOTION

None.



LAKE WHATCOM WATER AND SEWER DISTRICT

General Manager's Report

Upcoming Dates & Announcements

Regular Meeting – Wednesday, November 8, 2023 – 6:30 p.m.

Important Upcoming Dates

Lake Whatcom Water & Sewer District			
Regular Board Meeting	Wed Nov 29, 2023	8:00 a.m.	Board Room/Hybrid
Employee Staff Meeting	Thu Nov 9, 2023	8:00 a.m.	Board Room/Hybrid Commissioner Ford to attend
Investment Comm. Meeting	Wed Nov 29, 2023	10:00 a.m.	Board Room/Hybrid
Safety Committee Meeting	Thur Nov 22, 2023	8:00 a.m.	Board Room
Lake Whatcom Management Program			
Policy Group Meeting	Wed Dec 6, 2023	3:00 p.m.	City of Bellingham Fireplace Room 625 Halleck Street/Hybrid
Joint Councils Meeting	March 2024	TBD	TBD
Other Meetings			
WASWD Section III Meeting	Thur Nov 14, 2023	6:00 p.m.	Bob's Burgers 8822 Quil Ceda Pkwy, Tulalip, WA
Whatcom Water Districts Caucus Meeting	Wed Nov 15, 2023	2:00 p.m.	Remote Attendance
Whatcom County Council of Governments Board Meeting	Wed Dec 13, 2023	3:00 p.m.	Council of Governments Offices 314 E Champion Street/Hybrid

Committee Meeting Reports

Safety Committee:

- No committee meeting has been held since the last board meeting.

Investment Committee:

- No committee meeting has been held since the last board meeting.

Upcoming Board Meeting Topics

- Euclid sewer lift station improvements project contract closeout
- General Manager annual performance evaluation
- Public Works Board Division 7 reservoir construction loan agreement approval
- Wilson Engineering 2024 on-call rates approval
- 2024 non-represented staff cost-of-living-adjustment approval

2023 Initiatives Status

Administration and Operations

Performance Management

- Explore various approaches to performance management (PerformanceStat, Lean/Six Sigma, etc.) for implementation in coming years (Six-Year Strategic Business Plan goal).
J Clary is in the process of conducting calls with other local government managers that have implemented performance management processes to gain lessons learned prior to initiating the District's analysis.

Operations Manager Support

- To facilitate the success of Jason Dahlstrom in his new role as O&M Manager, devote more time to coordinating and assisting Mr. Dahlstrom than has been recently provided to this position.
Monthly one-on-one check-in meetings are scheduled throughout 2023; attended the Evergreen Rural Water Assoc. annual conference; registered to participate in the NW Public Works Institution program; approval granted to pursue personnel management training through the APWA emerging leaders academy (was recently selected).

Records Management System Overhaul

- Implement new records management system (Six-Year Strategic Business Plan goal).
The District contracted with an enterprise content management (ECM) expert that identified the most-applicable records management system for the District. Executed interlocal agreement for purchase of preferred system WISPC; in the process of executing a purchase agreement for the selected ECM and a personal services agreement for implementation.

Safety Program Update

- Continue systematic review and revision of District's safety programs by updating eight programs in 2023.
The safety committee has finalized updates to six (6) programs (hand & power tools, flagging & traffic control, securing loads, accident investigation, welding, cutting and brazing, and construction equipment) and is reviewing the sodium hypochlorite handling program.

Capital Improvement Program Support

- Support the Engineering Department through management of specific capital improvement project(s).
Due to workload issues within the Engineering Department, the general manager has taken on a support role (either in the form of project manager or providing technical support) for several District capital improvement projects.

Emergency Response/System Security

Emergency Readiness

- Continue use of Whatcom County Department of Emergency Management services to hold tabletop and/or field emergency response field exercises.
A field exercise was conducted May 17 (facilitated by Whatcom County personnel). Staff attended a meeting on August 16 regarding participating agency status in implementation of the actions defined in the Whatcom County Natural Hazards Mitigation Plan.

Cybersecurity Assessment

- Hire an IT-service provider to perform a third-party assessment of the District's vulnerability to cybercriminal attack.

A USEPA-provided confidential cybersecurity assessment of the District's systems was completed in 2022. District management and IT consultant are in the process of prioritizing and implementing system improvements to address each action identified in the assessment.

Business Continuity Plan

- Develop a District-specific business continuity plan following FEMA guidance that leads District transition from emergency response (District Emergency Response Plan) to return to normal operation following a disruptive event.

A draft of the plan is under preparation.

Community/Public Relations

General

- Website
The District's web content is reviewed and updated on a regular basis.
- Social Media
Posts are made to District Facebook, LinkedIn, and Nextdoor (new) pages regularly; Nextdoor is also regularly monitored for District-related posts.
- Press Releases
Press releases were issued on January 26 (District's clean audit), March 29 (Commissioner Abele's resignation), April 13 (Commissioner Holland's appointment), May 11 (Kevin Cook Commitment to Excellence award), July 20 (Lake Louise Rd forcemain wastewater overflow), and October 9 (Greg Nicoll hire).

Intergovernmental Relations

- *J Clary and J Signs attended the Infrastructure Assistance Coordinating Council conference in Wenatchee October 24-26.*
- *J Clary, T Citron and J Dahlstrom provided Congressman Rick Larsen with tours of the Division 7 reservoir project site and the Sudden Valley water treatment plant on October 28.*
- *J Clary met Sean Connell of Congressman Larsen's office on November 1.*
- *J Clary scheduled to present on the Whatcom Water Alliance before the Whatcom County Council on November 8.*

Lake Whatcom Water Quality

Lake Whatcom Management Program

- Participate in meetings of Lake Whatcom Management Program partners.
No LWMP-related meetings were held since the last board meeting.

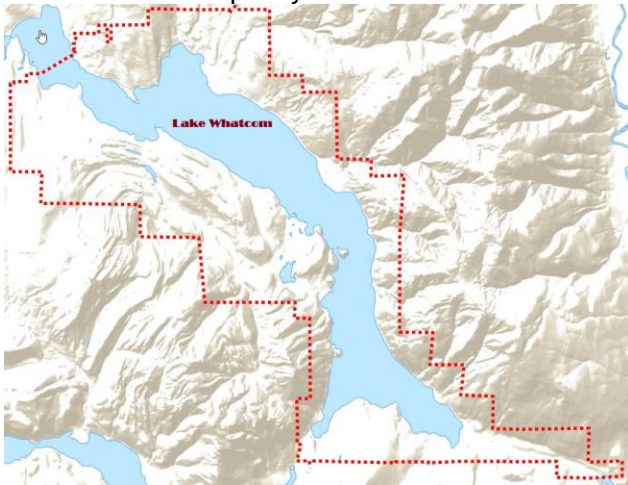


About the Lake Whatcom Water and Sewer District

The Lake Whatcom Water and Sewer District is a special purpose district focused on providing quality water and sewer service to the Sudden Valley, Geneva, and Northshore communities surrounding Lake Whatcom.

Community Served

Originally formed in 1968 as Water District No. 10, the Lake Whatcom Water & Sewer District provides water service to approximately 4,000 connections and sewer service to approximately 4,400 connections in an 18-square mile area encompassing Lake Whatcom. The District is operated by 18 full-time professionals, governed by a five-member board of commissioners elected from within the District, and has a biennial budget of approximately \$21 million. District Board and staff are committed to providing the best possible water and sewer services to its customers in a cost-efficient manner, and in a way that contributes to protecting Lake Whatcom's water quality.



System Features

- Water Sources Lake Whatcom (primary), Agate Heights wells, & Johnson well
- Water Treatment Plants 2
- Water Pump Stations 5
- Sewer Lift Stations..... 28
- Water Storage Facilities (totaling 3.1 MG) 8
- Miles of Water Main 71
- Miles of Sewer Main 75
- Population Served 10,700 (2020 Census)

Current Issues

- **Public Works Assistance Account.** The PWWA has proven an effective conduit to infrastructure investment throughout its life—since 1985 over \$3.5 billion has been invested in 2,100 critical projects. With the growing need to replace aging infrastructure, as well as to enable projects that enhance economic growth in the State, the District appreciates the Legislature's investment of \$400 million in projects during the 2023-25 biennium and **encourages protection of PWAA revenues** so that future infrastructure investments may continue. The District also **encourages consideration of any legislation that would protect PWAA loan repayment revenues from future diversion.**
- **In-house Public Works Projects.** The District appreciates the Legislature's 2023 session increase of the threshold dollar amount that is exempt from bidding requirements for in-house public work. **The District encourages maintenance of the threshold amount, which is consistent with that entitled to other local governments.**
- **Water Rights.** As the District prepares to participate in the pending water rights adjudication of WRIA No. 1, we remain open to partnerships that enable reasonable allocation of this valuable resource. The District does, however, **remain protective of existing municipal water rights necessary to meet growth (domestic and fire flow) requirements defined under the Growth Management Act.**
- **Biosolids.** Though the District does not own and operate a wastewater treatment plant (District-generated wastewater is treated by the City of Bellingham), we **support of our peer public WWTP operators in protecting their ability to continue the safe application of biosolids on agricultural lands.**



Our Commissioners and Governance

Commissioners

The Lake Whatcom Water and Sewer District is governed by a five-member, non-partisan, voter-elected Board of Commissioners.

Our Board of Commissioners serves to provide public accountability of district operations. They determine policy direction for the General Manager who is responsible for planning, organizing, directing, and controlling the day-to-day operations, business administration, and regulatory compliance functions of our District.



David Holland, Position No. 1

David Holland was appointed to the Board in April 2023. David was born and raised in Eastern Washington and has lived in Sudden Valley since 1994. He has spent 30 years within the many facets of the medical

imaging field specializing in patient care, imaging management, large project implementation, and process improvement. David currently volunteers with the Sudden Valley Auxiliary Communications Service as well as the Whatcom Emergency Communications Group associated with the Whatcom County Sheriff's Office and Search and Rescue. You will often find him out hiking the trails within the watershed with his wife and son, enjoying the beauty of the area that we live in.



Todd Citron, Position No. 2, President

Todd Citron is the District's longest-serving commissioner, having celebrated 20 years of service in 2018. A native of the Pacific Northwest, Todd spent two years in Bellingham at Western Washington

University before receiving college and graduate degrees from Wesleyan University and Boston College. He spent a decade in New England, started a family, and then moved with them to Bellingham in 1989 and into the Lake Whatcom watershed in 1991. Todd had a career in computer programming, networking, repair and technical support for 25 years. Todd's desire to preserve the health and beauty of the area is manifest in his focus on building a robust water and sewer district with efficient operating practices while distributing costs equitably.



Bruce Ford, Position No. 3

Prior to retiring, Bruce Ford served in the environmental industry at the highest level for over 40-years and has served the District as a commissioner since 2014.

He has held state operator certification in several states and worked as superintendent of a large sanitary district water reclamation plant for five years. After seven years in the municipal sector, Bruce worked for a world-wide engineering construction company for 33 years. He has in-depth experience in water and wastewater systems, environmental remediation, and project management.



Jeff Knakal, Position No. 4

Jeff Knakal has owned a home in Sudden Valley since 2014 and resided there full time since his retirement in 2020 following a career in the aerospace industry. He was appointed to the Board in 2022. He holds a

Bachelor of Science in mechanical engineering and has served as a volunteer firefighter/EMT with South Whatcom Fire Authority since 2021. His passion for the outdoors drives his desire to use his engineering and management background to help maintain healthy water systems and protect the health of Lake Whatcom.



John Carter, Position No. 5, Secretary

John Carter has been a resident of the District since 1983, and a commissioner since 2016. For the past three decades, he has held positions in public finance including serving as Chief Financial Officer

for both the Port of Bellingham and the City of Bellingham. He has served on the boards of a number of non-profits in our community and has been actively engaged in various economic development initiatives throughout Whatcom County.





Governance

The Board meets regularly on the second Wednesday of each month at 6:30 p.m. and the last Wednesday of each month at 8:00 a.m. All agendas and minutes are posted online. The public is welcome to attend and provide input on any issue or concern. As a provider of water and sewer services throughout much of the Lake Whatcom watershed, the District maintains key partnerships with Whatcom County and the city of Bellingham in the protection of this irreplaceable water source.



Capital projects represent significant investments in ensuring continuity of service to our customers. Below are some projects that are improving service to your constituents:

2023 System Improvements

Project	Purpose	Cost
 <p>South Geneva Water Booster Station Backup Generator</p>	<p>Increase water system resiliency through installation of a permanent standby generator to ensure continuous delivery of potable water during prolonged power outages.</p>	<p>\$60,000</p>
 <p>Euclid Sewer Lift Station Renovation Project</p>	<p>Renovated an aging sewer lift station with state-of-the-art systems, including installation of a permanent standby generator, increasing facility resiliency, and mitigating the potential for system failure and release of sewage to the adjacent Lake Whatcom.</p>	<p>\$835,000</p>
 <p>Sewer System Rehabilitation Projects</p>	<p>The District owns and operates over 75 miles of sewer pipe, much approaching 50+ years in age. Annually, the District systematically completes inspection and repair of its collection/conveyance systems using a variety of industry-specific techniques to ensure the continued protection of the environment against sewage releases.</p>	<p>\$298,000</p>
 <p>Other Miscellaneous Water/Sewer Projects</p>	<p>Aside from the projects listed above, the District has completed a number of smaller maintenance and capital projects throughout 2023 that proactively address water/sewer system infrastructure needs.</p>	<p>\$300,000</p>

Future System Improvements

Project	Purpose	Year Planned for Construction	Total Estimated Cost	Unfunded Amount
Water System				
Sudden Valley Water Treatment Plant Alum System Improvements	Replace alum system components, including storage tank, which are at end of useful lives.	2024	\$88,000	\$0
Division 7 Reservoir Replacement Project	Replace existing 40-year-old reservoir with two reservoirs meeting current seismic design requirements.	2024	\$2,950,000	\$0
Division 30 Reservoir Cathodic Protection	Install impressed current cathodic protection system to extend the useful life of the reservoir.	2024	\$36,000	\$0
Eagleridge Booster Station Improvements	Replace high flow pumps and associated controls due to age.	2024	\$116,000	\$0
Facility Security Improvements	Enhance physical security systems at treatment plants & reservoirs.	2026	\$184,000	\$0
Sudden Valley Water Treatment Plant Chlorine Contact Reservoir Replacement Project	Replace existing 30-year-old reservoir to meet current seismic code and future growth projections.	2027	\$2,000,000	\$2,000,000
Sudden Valley Water Treatment Plant Improvement Project	Replace finished water pumps, rehab filter beds, construct seismic upgrades, and implement chemical system improvements.	2028	3,500,000	\$3,000,000
Sewer System				
Sewer System Rehabilitation Projects	Programmatic repair/replacement of sewage collection/conveyance systems.	2024	\$119,000	\$0
Flat Car Lift Station Reverse Flow Project	Increase sewer system resiliency for natural disaster response.	2024	\$150,000	\$0
Rocky Ridge and Lakewood Lift Station Renovation Project	Renovate two 40-year-old sewer lift stations with new equipment and system components.	2024	\$1,672,000	\$0
Lake Whatcom Blvd Sewer Main Renewal-Phase 4	Systematic renewal of sections of critical sewer conveyance lines w/ cure-in-place-pipe technology.	2025	\$174,000	\$0
Agate Bay Lift Station Renovation Project	Renovate 45-year-old sewer lift station with new equipment and system components.	2027	\$1.147,000	\$0
Post Point Wastewater Treatment Plant Solids Handling Facility Renovation	Renovate aging incinerators and assoc. solids system; cost represents the District's share of city of Bellingham project.	2026	\$5,000,000	\$5,000,000
Sudden Valley, Flat Car, and Beaver Sewer Lift Stations Electrical Controls Reconditioning	Recondition electrical controls at end-of-life at three critical sewer lift stations.	2028	\$1,500,000	\$0