

**CITY OF MARYSVILLE AGENDA BILL**

**EXECUTIVE SUMMARY FOR ACTION**

**CITY COUNCIL MEETING DATE: September 26, 2022**

<b>AGENDA ITEM:</b>	
Approval of Interagency Agreement between the City and the Washington Traffic Safety Commission regarding participation in and grant funding associated with the Target Zero Task Force.	
<b>PREPARED BY:</b>	<b>DIRECTOR APPROVAL:</b>
Assistant Chief Jim Lawless	
<b>DEPARTMENT:</b>	
Police	
<b>ATTACHMENTS:</b>	
See Interagency Agreement	
<b>BUDGET CODE:</b>	<b>AMOUNT:</b>
<b>SUMMARY:</b> The Marysville Police Department has historically participated to varying degrees in the Target Zero Task Force, where in the goal is to “reduce the number of serious injury/fatality collisions through active, visible, consistent and targeted traffic law enforcement.” This is to be accomplished through High Visibility Enforcement (HVE) campaigns scheduled throughout the year (approximately 15 events), to include media campaigns and targeted emphasis enforcement focused on distracted driving, DUI, and motorcycle violations. This agreement allows us to participate and receive grant funding for reimbursement of officer overtime earned during the events, as well as associated training. This agreement covers the 2023 grant period.  This interagency agreement has been reviewed by the City Attorney and approved as to form.	

**RECOMMENDED ACTION:**

Staff requests that Council authorize the Mayor to sign and execute this interagency agreement as presented.

**RECOMMENDED MOTION:**

I move to authorize the Mayor to sign and execute this interagency agreement as presented.

# INTERAGENCY AGREEMENT

## BETWEEN THE

### Washington Traffic Safety Commission

AND

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**THIS AGREEMENT** is made and entered into by and between the Washington Traffic Safety Commission, hereinafter referred to as “WTSC,” and \_\_\_\_\_, hereinafter referred to as “SUB-RECIPIENT.”

In FFY2023, the Washington Traffic Safety Commission has delegated the management and oversight of this project to the Washington Association of Sheriffs and Police Chiefs (WASPC) by contractual agreement. WASPC will act as WTSC’s agent in the management and oversight of this project. WTSC will establish agreements with all participating agencies before transferring responsibility to WASPC. WTSC reserves the right to contact participating agencies regarding any elements of this contract.

**NOW THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, the Parties mutually agree as follows:**

#### **1. PURPOSE OF THE AGREEMENT**

The purpose of this Agreement is to provide funding, provided by the United States Department of Transportation (USDOT) National Highway Traffic Safety Administration (NHTSA) and allowed under the Assistance Listings Catalog of Federal Domestic Assistance (CFDA) number 20.600 for traffic safety grant project **2023-HVE-4691-Region 10 Target Zero Task Force**, specifically to provide funding for the law enforcement agencies in WTSC Region 10 to conduct straight time or overtime enforcement activities (traffic safety emphasis patrols) as outlined in the Statement of Work (SOW), in support of Target Zero priorities. The Target Zero Manager (TZM) and/or the Law Enforcement Liaison (LEL) shall coordinate the SOW with the SUB-RECIPIENT with the goal of reducing traffic crashes.

Grant **2023-HVE-4691-Region 10 Target Zero Task Force** was awarded to the **Region 10** to support collaborative efforts to conduct HVE activities. By signing this agreement, the SUB-RECIPIENT can seek reimbursement for straight time or overtime for approved law enforcement activity expenses incurred as a participant in the region’s HVE grant.

#### **2. PERIOD OF PERFORMANCE**

The period of performance of this Agreement shall commence upon the date of execution by both Parties, but not earlier than October 1, 2022, and remain in effect until September 30, 2023, unless terminated sooner, as provided herein.

### **3. SCOPE OF WORK**

#### **Problem and Opportunity Statement**

The main causes of serious injury and fatality collisions on Washington's roadways are driver impairment through drug and/or alcohol use, and distracted driving. In addition, nearly one in every three fatal crashes between 2016 and 2020 involved speeding as a contributing factor. Despite an increased seat belt use rate in 2021, the number of unrestrained fatalities and serious injuries have increased to the highest number since before 2010. Since 2019, unrestrained fatalities have increased over 30 percent and serious injuries have increased 58 percent. Motorcyclists also represent a high number of injured and killed because of unsafe and poorly trained riders and the challenges vehicle drivers face in observing motorcycles on the road.

In 2020, Washington experienced a 40 percent reduction in proactive traffic safety enforcement across the state.

Fatality and serious injury crashes continue to be a problem in Snohomish County. Speed is the largest contributing factor, followed by impairment and distraction. The first two priorities in our FY23 plan are for speed and DUI spending. The DUI request is higher, as those patrols tend to generate longer shifts for processing DUI's. Most of the regional DUI crashes involve speed, therefore the overlap is significant. Addressing DUI will help with the speed problem and vice versa.

The remaining request address the other issues such as seatbelt and motorcycle safety. We did see what appears will be an increase this year in motorcycle crashes, though they tend to be in late spring/summer months, which is when we will target this population during the statewide period.

Out of 258 fatal and serious injury crashes, there were 35 fatalities and 227 suspected serious injury. Seven of those fatalities and 46 of the serious injuries involved alcohol, 20 crashes involved drug impaired drivers. Speed related serious injury and fatality crashes totaled 65, 12 had alcohol involved and six drug impaired. Inattention and distraction accounted for 41 fatal or serious injury crashes. This included seven fatalities and 36 serious injury crashes. (Source: 2021 DOT Crash Data Portal).

#### **Project Purpose and Strategy:**

This project will fund High Visibility Enforcement (HVE) and Traffic Safety Enforcement Program (TSEP) patrols to prevent impaired driving, distracted driving, seat belt use, speeding, and motorcycle safety.

High Visibility Enforcement (HVE) and Traffic Safety Enforcement Program (TSEP) patrols are designed to create deterrence by increasing the expectation of a citation/fine/arrest. Officers may also remove high risk (impaired) drivers when encountered. So together, this countermeasure works by preventing dangerous driving behaviors and stopping those who still decide to engage in those behaviors.

Funding and events will be organized by local TZMs, LELs, and their local Target Zero Task Force. Task forces will use local data and professional judgement to determine enforcement priorities for their jurisdictions and will schedule and plan enforcement and outreach activities. Regional participation in the following National Campaigns is mandatory:

- Impaired driving enforcement during the Holiday DUI campaign (December 14, 2022 – January 1, 2023).
- Distracted driving enforcement during the Distracted Driving campaign (April 3 – 10, 2023).
- Seat belt enforcement during the Click It or Ticket campaign (May 15 – June 4, 2023).
- Impaired driving enforcement during the Summer DUI campaign (August 16 – September 4, 2023).

These patrols will also be coordinated with the Washington State Patrol (WSP). Target Zero Managers will establish or strengthen relationships with key WSP district personnel to improve interagency coordination with the WSP.

### **Goal**

Prevent traffic crashes to reduce traffic related deaths and serious injuries through active, visible, consistent, and targeted traffic law enforcement. Law enforcement can have a profound effect on traffic safety and this project aims to increase participation to accomplish that.

### **Requirements for National Mobilizations and Traffic Safety Enforcement Program (TSEP)**

1. HVE events will be data informed; based on crash data, anecdotal evidence, and the professional judgement of task force members. WTSC strongly believes in the expertise of local officers to understand the highest priority areas in their communities to focus their efforts.
2. The SUB-RECIPIENT will ensure that all officers participating in these patrols are BAC certified and have received and passed the SFST refresher training.
3. SUB-RECIPIENT will ensure all officers participating in Impaired Driving patrols have also received Advanced Roadside Impaired Driving Enforcement (ARIDE) training.
4. SUB-RECIPIENT shall ensure all participating personnel will use the WEMS system provided by the WTSC to record all activities in digital activity logs conducted by their commissioned officers pursuant to the HVE events. Participating officers will fill out all applicable fields of the digital activity log and use the comments field to provide details

on an irregularities, challenges or other details that would help explain what was encountered during their shift. SUB-RECIPIENT will also ensure all supervisors and fiscal staff have the ability to review and edit those activity logs.

5. Activity conducted outside of the quarterly task force operational plans will not be reimbursed.

### **Project Intent and Best Practice**

1. SUB-RECIPIENT is encouraged to help their Region Task Force fulfill the requirement to participate in the four mandatory National Campaigns. (Holiday DUI campaign in December 2022, Distracted Driving campaign in April 2023, Click It or Ticket campaign in May 2023, and Summer DUI campaign in August 2023).

NOTE: Agencies must participate in speed or impaired driving enforcement under this agreement to be eligible to receive funding under the WASPC equipment grant.

2. SUB-RECIPIENT is strongly encouraged to participate in their task force to plan and execute enforcement events.
3. Regional task force will be submitting quarterly operational plans and SUB-RECIPIENT is encouraged to participate to the fullest extent possible. Quarterly operational plans are due October 15, December 15, March 15, and June 15.
4. Participating officers should maximize their contacts during their patrols so that their activity contributes to the goals of the event.
5. SUB-RECIPIENT should promote patrol events through all earned, owned and, if funded, paid media that is available so that the public is made aware of the event before, during, and after the enforcement takes place. It is a best practice to translate messages as needed and invite local media involvement in the effort to reach communities in which HVE will occur.
6. SUB-RECIPIENT should strive to actively enforce traffic safety laws focused on collision causing behaviors in priority areas throughout the year outside of HVE events.
7. When participating in motorcycle patrols SUB-RECIPIENT should focus on the illegal and unsafe driving actions of all motor vehicles interacting with motorcycles. This includes speeding, failure to yield to a motorcycle, following too closely to a motorcycle, distracted driving, etc.
8. When participating in motorcycle patrols SUB-RECIPIENT should ensure that enforcement will focus on the illegal and unsafe driving actions of motorcycles that are known to cause serious and fatal crashes. This includes impaired driving, speeding, and following too closely.
9. Mentorship for Impaired driving:  
The Task Force may engage a DUI mentorship program to train additional officers for DUI related activities. Best practice for DUI mentorship includes 16 hours of instructions to an officer wanting to engage further in DUI emphasis activities. Up to 16 hours of

overtime or straight time will be approved to both mentor/mentees. The mentor should be a DRE when possible, or a highly effective DUI emphasis patrol officer with a minimum of ARIDE training. Mentor/mentee activities will be pre-approved by the TZM or LEL after the mentee submits their interest.

**3.1. NATIONAL AND STATE-WIDE MOBILIZATIONS**

Not all agencies are required to participate in all of these, however the region has committed to participate as a region in all of these.

<b>Mobilization</b>	<b>Dates</b>
Holiday DUI	December 15, 2022 – January 1, 2023
U Drive. U Text. U Pay.	April 3 – 10, 2023
Click It or Ticket	May 15 – June 4, 2023
It’s a Fine Line (optional if funded)	July 7 – 23, 2023
DUI Drive Sober or Get Pulled Over	August 16 – September 4, 2023

**3.2. COMPENSATION**

**3.2.1.** Compensation for the straight time or overtime work provided in accordance with this Agreement has been established under the terms of RCW 39.34. The cost of accomplishing the work described in the SOW will not exceed dollar total from amounts listed below. Payment for satisfactory performance shall not exceed this amount unless the WTSC and SUB-RECIPIENT mutually agree to a higher amount in a written Amendment to this Agreement executed by both the WTSC and SUB-RECIPIENT. Comp-time is not considered overtime and will not be approved for payment. All law enforcement agencies who are active members of the Region’s traffic safety task force with a fully executed grant agreement are eligible to participate in this grant.

**3.2.2.** WTSC will reimburse for personnel straight time or overtime expenses at 150 percent of the officer’s normal salary rate plus SUB-RECIPIENT’s contributions to employee benefits, limited to the following:

- 10. FICA
- 11. Medicare
- 12. Any portion of L & I that is paid by the employer (SUB-RECIPIENT)
- 13. Retirement contributions paid by the employer (SUB-RECIPIENT) can be included if the contribution is based on a percentage of their hours worked

Health insurance, or any other benefits not listed above, are not eligible for reimbursement.

The SUB-RECIPIENT will provide law enforcement officers with appropriate equipment (e.g., vehicles, radars, portable breath testers, etc.) to participate in the emphasis patrols.

**3.2.3.** Funding alterations are permitted as follows: Upon agreement by the regional TZM and all other parties impacted by a proposed budget alteration, the budget category amounts may be increased or decreased without amending this agreement, so long as the total grant award amount does not increase. HVE grant funds should be managed collaboratively by the SUB-RECIPIENT and the TZM.

These alterations must be requested through email communication between the regional TZM and assigned WTSC Program Manager. This communication shall include details of the requested budget modifications and a description of why these changes are needed. The TZM will also send an updated quarterly Operations Plan to the WASPC representative monitoring the project if the budget modification will result in changes to the previously submitted plan.

**3.2.4.** These funds, designated for salaries and benefits, are intended to pay for the hourly straight time or overtime costs and proportional amounts of fringe benefits of commissioned staff pursuing the activities described in the statement of work. These funds may not be used for any other purpose for example any work required to maintain a law enforcement commission including recertification trainings like firearm qualification.

**3.2.5.** Dispatch: WTSC will reimburse communications officers/dispatch personnel for work on this project providing SUB-RECIPIENT has received prior approval from their region's TZM. This activity must be overtime and only the expenses listed in section 3.2 and its subsections will be reimbursed.

**3.2.6.** Transport Officers: WTSC will reimburse transport officers for their work on this project providing SUB-RECIPIENT has received approval from their regions TZM. The TZM will work with the regional LEL to determine if need is warranted for the type of HVE activity. This activity must be overtime and only the expenses listed in section 3.2 and its subsections will be reimbursed.

**3.2.7.** The law enforcement agency involved will not schedule individual officer overtime shifts for longer than eight hours. WTSC understands there may be instances when more than eight hours are billed due to DUI processing or other reasons and an explanation should be provided on the WEMS Officer Activity Log.

**3.2.8.** The law enforcement agency involved will ensure that any reserve officer for whom reimbursement is claimed has exceeded his/her normal weekly working hours when participating in an emphasis patrol and is authorized to be paid at the amount requested. Reserve officers may only be paid at the normal hourly rate and not at the 150 percent overtime rate.

### **3.3. SUMMARY OF PROJECT COSTS**

The WTSC has awarded **\$84,000** to the **Region 10 Traffic Safety Task Force** for the purpose of conducting coordinated overtime HVE activities. By signing this agreement, the SUB-RECIPIENT

can seek reimbursement for approved straight time or overtime expenses incurred as a participant in this grant. All activity must be coordinated by the region’s traffic safety task force and TZM to be eligible for reimbursement.

The funding (Section 402, CFDA 20.600) for **Region 10** is as follows:

**EMPHASIS PATROL**

<b>Impaired Driving Patrols</b>	\$30,000
<b>Distracted Driving Patrols</b>	\$12,000
<b>Click It or Ticket</b>	\$10,000
<b>Speed</b>	\$20,000
<b>Motorcycle Safety</b>	\$12,000
<b>TOTAL</b>	<b>\$84,000</b>

**APPLICABLE STATE AND FEDERAL TERMS AND CONDITIONS:**

**4. ACTIVITY REPORTS**

The SUB-RECIPIENT agrees to have all personnel who work HVE patrols submit a WEMS Officer Activity Log within 24 hours of the end of all shifts worked. These same logs will be associated with invoices as detailed in the “BILLING PROCEDURE” section. Use of the Officer Activity Log in the WTSC’s online grant management system, WEMS, is required. Supervisor review and accuracy certification will also be done in WEMS.

**5. ADVANCE PAYMENTS PROHIBITED**

No payments in advance of or in anticipation of goods or services to be provided under this Agreement shall be made by the WTSC.

**6. AGREEMENT ALTERATIONS AND AMENDMENTS**

This Agreement may be amended by mutual agreement of the Parties in the form of a written request to amend this Agreement. Such amendments shall only be binding if they are in writing and signed by personnel authorized to bind each of the Parties. Changes to the budget, SUB-RECIPIENT’S Primary Contact, and WTSC Program Manager can be made through email communication and signatures are not required.

**7. ALL WRITINGS CONTAINED HEREIN**

This Agreement contains all the terms and conditions agreed upon by the Parties. No other

understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

### **8. ASSIGNMENT**

The SUB-RECIPIENT may not assign the work to be provided under this Agreement, in whole or in part, without the express prior written consent of the WTSC, which consent shall not be unreasonably withheld. The SUB-RECIPIENT shall provide the WTSC a copy of all third-party contracts and agreements entered into for purposes of fulfilling the SOW. Such third-party contracts and agreements must follow applicable federal, state, and local law, including but not limited to procurement law, rules, and procedures. If any of the funds provided under this Agreement include funds from NHTSA, such third-party contracts and agreements must include the federal provisions set forth in this Agreement in sections 34 through 42.

### **9. ATTORNEYS' FEES**

In the event of litigation or other action brought to enforce the Agreement terms, each Party agrees to bear its own attorney fees and costs.

### **10. BILLING PROCEDURE**

All invoices for reimbursement of HVE activities will be done using the WTSC's grant management system, WEMS. WEMS Officer Activity logs will be attached to invoices, directly linking the cost of the activity to the invoice. Because the activity, approval, and invoicing are all done within WEMS, no back up documentation is required in most cases.

Once submitted by the SUB-RECIPIENT, invoices are routed to the regional TZM for review and approval. The TZM will submit all approved invoices to the WTSC via WEMS within 10 days of receipt.

Payment to the SUB-RECIPIENT for approved and completed work will be made by warrant or account transfer by WTSC within 30 days of receipt of such properly documented invoices acceptable to WTSC. Upon expiration of the Agreement, any claim for payment not already made shall be submitted within 45 days after the expiration date of this Agreement. All invoices for goods received or services performed on or prior to June 30, 2023, **must be received by WTSC no later than August 10, 2023**. All invoices for goods received or services performed between July 1, 2023 and September 30, 2023, **must be received by WTSC no later than November 15, 2023**.

### **11. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

The SUB-RECIPIENT shall not use or disclose any information concerning the WTSC, or information which may be classified as confidential, for any purpose not directly connected with the administration of this Agreement, except with prior written consent of the WTSC, or as may be required by law.

### **12. COST PRINCIPLES**

Costs incurred under this Agreement shall adhere to provisions of 2 CFR Part 200 Subpart E.

### **13. COVENANT AGAINST CONTINGENT FEES**

The SUB-RECIPIENT warrants that it has not paid, and agrees not to pay, any bonus, commission, brokerage, or contingent fee to solicit or secure this Agreement or to obtain approval of any application for federal financial assistance for this Agreement. The WTSC shall have the right, in the event of breach of this section by the SUB-RECIPIENT, to annul this Agreement without liability.

### **14. DISPUTES**

**14.1.** Disputes arising in the performance of this Agreement, which are not resolved by agreement of the Parties, shall be decided in writing by the WTSC Deputy Director or designee. This decision shall be final and conclusive, unless within 10 days from the date of the SUB-RECIPIENT's receipt of WTSC's written decision, the SUB-RECIPIENT furnishes a written appeal to the WTSC Director. The SUB-RECIPIENT's appeal shall be decided in writing by the Director or designee within 30 days of receipt of the appeal by the Director. The decision shall be binding upon the SUB-RECIPIENT and the SUB-RECIPIENT shall abide by the decision.

**14.2.** Performance During Dispute. Unless otherwise directed by WTSC, the SUB-RECIPIENT shall continue performance under this Agreement while matters in dispute are being resolved.

### **15. GOVERNANCE**

**15.1.** This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.

**15.2.** In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

**15.2.1.** Applicable federal and state statutes and rules

**15.2.2.** Terms and Conditions of this Agreement

**15.2.3.** Any Amendment executed under this Agreement

**15.2.4.** Any SOW executed under this Agreement

**15.2.5.** Any other provisions of the Agreement, including materials incorporated by reference

### **16. INCOME**

Any income earned by the SUB-RECIPIENT from the conduct of the SOW (e.g., sale of publications, registration fees, or service charges) must be accounted for, and that income must be applied to project purposes or used to reduce project costs.

### **17. INDEMNIFICATION**

**17.1.** To the fullest extent permitted by law, the SUB-RECIPIENT shall indemnify and hold harmless the WTSC, its officers, employees, and agents, and process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs of whatsoever kind ("claims") brought against WTSC arising out of or in connection

with this Agreement and/or the SUB-RECIPIENT's performance or failure to perform any aspect of the Agreement. This indemnity provision applies to all claims against WTSC, its officers, employees, and agents arising out of, in connection with, or incident to the acts or omissions of the SUB-RECIPIENT, its officers, employees, agents, contractors, and subcontractors. Provided, however, that nothing herein shall require the SUB-RECIPIENT to indemnify and hold harmless or defend the WTSC, its agents, employees, or officers to the extent that claims are caused by the negligent acts or omissions of the WTSC, its officers, employees or agents; and provided further that if such claims result from the concurrent negligence of (a) the SUB-RECIPIENT, its officers, employees, agents, contractors, or subcontractors, and (b) the WTSC, its officers, employees, or agents, or involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the negligence of the SUB-RECIPIENT, its officers, employees, agents, contractors, or subcontractors.

**17.2.** The SUB-RECIPIENT waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless the WTSC, its officers, employees, or agents.

**17.3.** The indemnification and hold harmless provision shall survive termination of this Agreement.

#### **18. INDEPENDENT CAPACITY**

The employees or agents of each Party who are engaged in the performance of this Agreement shall continue to be employees or agents of that Party and shall not be considered for any purpose to be employees or agents of the other Party.

#### **19. INSURANCE COVERAGE**

**19.1.** The SUB-RECIPIENT shall comply with the provisions of Title 51 RCW, Industrial Insurance, if required by law.

**19.2.** If the SUB-RECIPIENT is not required to maintain insurance in accordance with Title 51 RCW, prior to the start of any performance of work under this Agreement, the SUB-RECIPIENT shall provide WTSC with proof of insurance coverage (e.g., vehicle liability insurance, private property liability insurance, or commercial property liability insurance), as determined appropriate by WTSC, which protects the SUB-RECIPIENT and WTSC from risks associated with executing the SOW associated with this Agreement.

#### **20. LICENSING, ACCREDITATION, AND REGISTRATION**

The SUB-RECIPIENT shall comply with all applicable local, state, and federal licensing, accreditation, and registration requirements and standards necessary for the performance of this Agreement. The SUB-RECIPIENT shall complete registration with the Washington State Department of Revenue, if required, and be responsible for payment of all taxes due on payments made under this Agreement.

#### **21. RECORDS MAINTENANCE**

**21.1.** During the term of this Agreement and for six years thereafter, the SUB-RECIPIENT shall

maintain books, records, documents, and other evidence that sufficiently and properly reflect all direct and indirect costs expended in the performance of the services described herein. These records shall be subject to inspection, review, or audit by authorized personnel of the WTSC, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration. The Office of the State Auditor, federal auditors, the WTSC, and any duly authorized representatives shall have full access and the right to examine any of these materials during this period.

**21.2.** Records and other documents, in any medium, furnished by one Party to this Agreement to the other Party, will remain the property of the furnishing Party, unless otherwise agreed. The receiving Party will not disclose or make available this material to any third Parties without first giving notice to the furnishing Party and giving them a reasonable opportunity to respond. Each Party will utilize reasonable security procedures and protections to assure that records and documents provided by the other Party are not erroneously disclosed to third Parties.

## **22. RIGHT OF INSPECTION**

The SUB-RECIPIENT shall provide right of access to its facilities to the WTSC or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Agreement. The SUB-RECIPIENT shall make available information necessary for WTSC to comply with the right to access, amend, and receive an accounting of disclosures of their Personal Information according to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) or any regulations enacted or revised pursuant to the HIPAA provisions and applicable provisions of Washington State law. The SUB-RECIPIENT shall upon request make available to the WTSC and the United States Secretary of the Department of Health and Human Services all internal policies and procedures, books, and records relating to the safeguarding, use, and disclosure of Personal Information obtained or used as a result of this Agreement.

## **23. RIGHTS IN DATA**

**23.1.** WTSC and SUB-RECIPIENT agree that all data and work products (collectively called "Work Product") pursuant to this Agreement shall be considered works made for hire under the U.S. Copyright Act, 17 USC §101 et seq., and shall be owned by the state of Washington. Work Product includes, but is not limited to, reports, documents, pamphlets, advertisement, books, magazines, surveys, studies, computer programs, films, tapes, sound reproductions, designs, plans, diagrams, drawings, software, and/or databases to the extent provided by law. Ownership includes the right to copyright, register the copyright, distribute, prepare derivative works, publicly perform, publicly display, and the ability to otherwise use and transfer these rights.

**23.2.** If for any reason the Work Product would not be considered a work made for hire under applicable law, the SUB-RECIPIENT assigns and transfers to WTSC the entire right, title, and

interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.

**23.3.** The SUB-RECIPIENT may publish, at its own expense, the results of project activities without prior review by the WTSC, provided that any publications (written, visual, or sound) contain acknowledgment of the support provided by NHTSA and the WTSC. Any discovery or invention derived from work performed under this project shall be referred to the WTSC, who will determine through NHTSA whether patent protections will be sought, how any rights will be administered, and other actions required to protect the public interest.

#### **24. SAVINGS**

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 completion of the SOW under this Agreement, the WTSC may terminate the Agreement under the "TERMINATION FOR CONVENIENCE" clause, without the 30-day notice requirement. The Agreement is subject to renegotiation at the WTSC's discretion under any new funding limitations or conditions.

#### **25. SEVERABILITY**

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

#### **26. SITE SECURITY**

While on WTSC premises, the SUB-RECIPIENT, its agents, employees, or sub-contractors shall conform in all respects with all WTSC physical, fire, or other security policies and applicable regulations.

#### **27. TAXES**

All payments of payroll taxes, unemployment contributions, any other taxes, insurance, or other such expenses for the SUB-RECIPIENT or its staff shall be the sole responsibility of the SUB-RECIPIENT.

#### **28. TERMINATION FOR CAUSE**

If the SUB-RECIPIENT does not fulfill in a timely and proper manner its obligations under this Agreement or violates any of these terms and conditions, the WTSC will give the SUB-RECIPIENT written notice of such failure or violation and may terminate this Agreement immediately. At the WTSC's discretion, the SUB-RECIPIENT may be given 15 days to correct the violation or failure. If the SUB-RECIPIENT is given the opportunity to correct the violation and the violation is not corrected within the 15-day period, this Agreement may be terminated at the end of that period by written notice of the WTSC.

## **29. TERMINATION FOR CONVENIENCE**

Except as otherwise provided in this Agreement, either Party may terminate this Agreement, without cause or reason, with 30 days written notice to the other Party. If this Agreement is so terminated, the WTSC shall be liable only for payment required under the terms of this Agreement for services rendered or goods delivered prior to the effective date of termination.

## **30. TREATMENT OF ASSETS**

**30.1.** Title to all property furnished by the WTSC shall remain property of the WTSC. Title to all property furnished by the SUB-RECIPIENT for the cost of which the SUB-RECIPIENT is entitled to be reimbursed as a direct item of cost under this Agreement shall pass to and vest in the WTSC upon delivery of such property by the SUB-RECIPIENT. Title to other property, the cost of which is reimbursable to the SUB-RECIPIENT under this Agreement, shall pass to and vest in the WTSC upon (i) issuance for use of such property in the performance of this Agreement, or (ii) commencement of use of such property in the performance of this Agreement, or (iii) reimbursement of the cost thereof by the WTSC in whole or in part, whichever first occurs.

**30.2.** Any property of the WTSC furnished to the SUB-RECIPIENT shall, unless otherwise provided herein or approved by the WTSC, be used only for the performance of this Agreement.

**30.3.** The SUB-RECIPIENT shall be responsible for any loss or damage to property of the WTSC which results from the negligence of the SUB-RECIPIENT, or which results from the failure on the part of the SUB-RECIPIENT to maintain and administer that property in accordance with sound management practices.

**30.4.** If any WTSC property is lost, destroyed, or damaged, the SUB-RECIPIENT shall immediately notify the WTSC and shall take all reasonable steps to protect the property from further damage.

**30.5.** The SUB-RECIPIENT shall surrender to the WTSC all property of the WTSC upon completion, termination, or cancellation of this Agreement.

**30.6.** All reference to the SUB-RECIPIENT under this clause shall also include SUB-RECIPIENT's employees, agents, or sub-contractors.

## **31. WAIVER**

A failure by either Party to exercise its rights under this Agreement shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement.

## **APPLICABLE CERTIFICATIONS AND ASSURANCES FOR HIGHWAY SAFETY GRANTS (23 CFR PART 1300 APPENDIX A):**

## **32. BUY AMERICA ACT**

The SUB-RECIPIENT will comply with the Buy America requirement (23 U.S.C. 313) when

purchasing items using federal funds. Buy America requires the SUB-RECIPIENT to purchase only steel, iron, and manufactured products produced in the United States, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. In order to use federal funds to purchase foreign produced items, the WTSC must submit a waiver request that provides an adequate basis and justification, and which is approved by the Secretary of Transportation.

### **33. DEBARMENT AND SUSPENSION**

#### Instructions for Lower Tier Certification

**33.1.** By signing this Agreement, the SUB-RECIPIENT (hereinafter in this section referred to as the “lower tier participant”) is providing the certification set out below and agrees to comply with the requirements of 2 CFR part 180 and 23 CFR part 1300.

**33.2.** The certification in this section is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**33.3.** The lower tier participant shall provide immediate written notice to the WTSC if at any time the lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

**33.4.** The terms covered transaction, debarment, suspension, ineligible, lower tier, participant, person, primary tier, principal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Covered Transactions sections of 2 CFR part 180.

**33.5.** The lower tier participant agrees by signing this Agreement that it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by NHTSA.

**33.6.** The lower tier participant further agrees by signing this Agreement that it will include the clause titled “Instructions for Lower Tier Certification” including the “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions, and will require lower tier participants to comply with 2 CFR part 180 and 23 CFR part 1300.

**33.7.** A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48

CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

**33.8.** Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

**33.9.** Except for transactions authorized under paragraph 35.5. of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, the department or agency with which this transaction originated may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

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

**33.10.** The lower tier participant certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

**33.11.** Where the lower tier participant is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this Agreement.

**34. THE DRUG-FREE WORKPLACE ACT OF 1988 (41 U.S.C. 8103)**

**34.1.** The SUB-RECIPIENT shall:

**34.1.1.** Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and shall specify the actions that will be taken against employees for violation of such prohibition.

**34.1.2.** Establish a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace; the SUB-RECIPIENT's policy of maintaining a drug-free workplace; any available drug counseling, rehabilitation, and employee assistance programs; and the penalties that may be imposed upon employees for drug violations occurring in the workplace.

**34.1.3.** Make it a requirement that each employee engaged in the performance of the grant be given a copy of the statement required by paragraph 36.1.1. of this section.

**34.1.4.** Notify the employee in the statement required by paragraph 36.1.1. of this section that, as a condition of employment under the grant, the employee will abide by the terms of the statement, notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction, and notify the WTSC within 10 days after receiving notice from an employee or otherwise receiving actual notice of such conviction.

**34.1.5.** Take one of the following actions within 30 days of receiving notice under paragraph 36.1.3. of this section, with respect to any employee who is so convicted: take appropriate personnel action against such an employee, up to and including termination, and/or require such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.

**34.1.6.** Make a good faith effort to continue to maintain a drug-free workplace through implementation of all of the paragraphs above.

### **35. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA)**

In accordance with FFATA, the SUB-RECIPIENT shall, upon request, provide WTSC the names and total compensation of the five most highly compensated officers of the entity, if the entity in the preceding fiscal year received 80 percent or more of its annual gross revenues in federal awards, received \$25,000,000 or more in annual gross revenues from federal awards, and if the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of the Internal Revenue Code of 1986.

### **36. FEDERAL LOBBYING**

**36.1.** The undersigned certifies, to the best of his or her knowledge and belief, that:

**36.1.1.** No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any 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.

**36.1.2.** If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

**36.1.3.** The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grant, loans, and cooperative agreements), and that all sub-recipients shall certify and disclose accordingly.

**36.2.** This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**37. NONDISCRIMINATION (Title VI, 42 U.S.C. § 2000d et seq.)**

**37.1.** During the performance of this Agreement, the SUB-RECIPIENT agrees:

**37.1.1.** To comply with all federal nondiscrimination laws and regulations, as may be amended from time to time.

**37.1.2.** Not to participate directly or indirectly in the discrimination prohibited by any federal non-discrimination law or regulation, as set forth in Appendix B of 49 CFR Part 21 and herein.

**37.1.3.** To permit access to its books, records, accounts, other sources of information, and its facilities as required by the WTSC, USDOT, or NHTSA.

**37.1.4.** That, in the event a contractor/funding recipient fails to comply with any nondiscrimination provisions in this contract/funding Agreement, the WTSC will have the right to impose such contract/agreement sanctions as it or NHTSA determine are appropriate, including but not limited to withholding payments to the contractor/funding recipient under the contract/agreement until the contractor/funding recipient complies, and/or cancelling, terminating, or suspending a contract or funding agreement, in whole or in part.

**37.1.5.** To insert this clause, including all paragraphs, in every sub-contract and sub-agreement and in every solicitation for a sub-contract or sub-agreement that receives federal funds under this program.

**38. POLITICAL ACTIVITY (HATCH ACT)**

The SUB-RECIPIENT will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508), which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.

**39. PROHIBITION ON USING GRANT FUNDS TO CHECK FOR HELMET USAGE**

The SUB-RECIPIENT will not use 23 U.S.C. Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists. This Agreement does not include any aspects or elements of helmet usage or checkpoints, and so fully complies with this requirement.

**40. STATE LOBBYING**

None of the funds under this Agreement will be used for any activity specifically designed to urge or influence a state or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any state or local legislative body. Such activities include both direct and indirect (e.g., “grassroots”) lobbying activities, with one exception. This does not preclude a state official whose salary is supported with NHTSA funds from engaging in direct communications with state or local legislative officials, in accordance with customary state practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

**41. DESIGNATED CONTACTS**

The following named individuals will serve as designated contacts for each of the Parties for all communications, notices, and reimbursement regarding this Agreement:

<b>The Contact for the SUB-RECIPIENT is:</b>	<b>The Target Zero Manager for Region 10 is:</b>	<b>The Contact for WTSC is:</b>
	Stacey McShane Region 10 Target Zero Manager 425-407-2697 Stacey.McShane@snoco.org	Jerry Noviello WTSC Program Manager jnoviello@wtsc.wa.gov 360-725-9897

**42. AUTHORITY TO SIGN**

The undersigned acknowledges that they are authorized to execute this Agreement and bind their respective agencies or entities to the obligation set forth herein.

**IN WITNESS WHEREOF, the parties have executed this Agreement.**

<hr/> <p>Signature</p> <hr/> <p>Printed Name</p> <hr/> <p>Title</p> <hr/> <p>Date</p>	<p><b>WASHINGTON TRAFFIC SAFETY COMMISSION</b></p> <hr/> <p>Signature</p> <hr/> <p>Printed Name</p> <hr/> <p>Title</p> <hr/> <p>Date</p>
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