

Jefferson County
Board of Commissioners
Agenda Request

To: Board of Commissioners
Mark McCauley, County Administrator

From: Monte Reinders, Public Works Director/County Engineer 

Agenda Date: August 12, 2024

Subject: Grant for Phase 2 of JUMP! Playground

Statement of Issue:

Jefferson County Parks and Recreation and the Jefferson Universal Movement Playground Committee won a Department of Social and Health Services (DSHS) grant to build Phase 2 of the JUMP! Playground. The grant is through the Developmental Disabilities Administration division of DSHS and is called the "Dan Thompson Memorial Developmental Disabilities Community Services Account". A grant agreement is ready for approval by the BoCC.

Analysis/Strategic Goals/Pro's & Con's:

The JUMP! Playground has been a tremendous success. It is heavily used almost every day. The benefits of the playground are deep and widespread. Phase 2 is focused on a play structure specifically for children of all abilities ages 2 - 5. It also includes shade structures for both the new play area and the sea snail plaza, a custom art gate by Gunter Reimnitz, accessible tile safety surfacing, and drainage work. Phase 2 will be installed in the remaining open playground area that is currently grass.

Fiscal Impact/Cost Benefit Analysis:

The Dan Thompson Grant is \$515,565, and has no match requirement. The grant will fund all elements of Phase 2 including project management. Jefferson County will continue to own, operate, and maintain the playground.

Recommendation:

Approve the agreement and return the original to Public Works for transmittal to DSHS.

Department Contact:

Matt Tyler. 385-9129

Reviewed By:


Mark McCauley, County Administrator

Date

8/6/24

CONTRACT REVIEW FORM

Clear Form

(INSTRUCTIONS ARE ON THE NEXT PAGE)

CONTRACT WITH: Washington DSHS Dan Thompson Grant Program

Contract No:

PW 2024-096

Contract For: Grant to fund Phase 2 of JUMP! Playground Term: 7/1/24 to 6/30/25

COUNTY DEPARTMENT: Public Works
Contact Person: Matt Tyler
Contact Phone: 360-385-9129
Contact email: mtyler@co.jefferson.wa.us

AMOUNT: \$515,565

Revenue: \$515,565

Expenditure: \$515,565

Matching Funds Required: 0

Sources(s) of Matching Funds n/a

Fund # 175

Munis Org/Obj

PROCESS:

- ☐ Exempt from Bid Process
- ☐ Cooperative Purchase
- ☐ Competitive Sealed Bid
- ☐ Small Works Roster
- ☐ Vendor List Bid
- ☐ RFP or RFQ
- ☒ Other: Grant Agreement

APPROVAL STEPS:

STEP 1: DEPARTMENT CERTIFIES COMPLIANCE WITH JCC 3.55.080 AND CHAPTER 42.23 RCW.

CERTIFIED: ☒

N/A: ☒

Matthew L. Tyler
Signature

7/23/24
Date

STEP 2: DEPARTMENT CERTIFIES THE PERSON PROPOSED FOR CONTRACTING WITH THE COUNTY (CONTRACTOR) HAS NOT BEEN DEBARRED BY ANY FEDERAL, STATE, OR LOCAL AGENCY.

CERTIFIED: ☐

N/A: ☒

Matthew L. Tyler
Signature

7/23/24
Date

STEP 3: RISK MANAGEMENT REVIEW (will be added electronically through Laserfiche):

✓ Electronically approved by Risk Management on 7/24/2024.

State agreement - cannot change.

STEP 4: PROSECUTING ATTORNEY REVIEW (will be added electronically through Laserfiche):

✓ Electronically approved as to form by PAO on 7/24/2024.

State contract language - cannot change.

STEP 5: DEPARTMENT MAKES REVISIONS & RESUBMITS TO RISK MANAGEMENT AND PROSECUTING ATTORNEY(IF REQUIRED).

STEP 6: CONTRACTOR SIGNS

STEP 7: SUBMIT TO BOCC FOR APPROVAL

 Washington State Department of Social & Health Services Transforming lives	GRANT AGREEMENT Inclusive Playground Development		DSHS Agreement Number: 2488-57364 ☐ Competitive Grant: ☒ Entitlement Grant
This Grant Agreement is between the State of Washington Department of Social and Health Services (DSHS) and the Grantee identified below, and is governed by Chapter 43.20A RCW.			Program Agreement Number: Grantee Agreement Number:
GRANTEE NAME Jefferson County		GRANTEE doing business as (DBA)	
GRANTEE ADDRESS 623 Sheridan St Port Townsend, WA 98368		WASHINGTON UNIFORM BUSINESS IDENTIFIER (UBI) 161-001-169	DSHS INDEX NUMBER 1223
GRANTEE CONTACT Matt Tyler	GRANTEE TELEPHONE (360) 385-9160	GRANTEE FAX (360) 385-9234	GRANTEE E-MAIL ADDRESS mtyler@co.jefferson.wa.us
DSHS ADMINISTRATION Developmental Disabilities Admin	DSHS DIVISION Division of Developmental Disabilities		DSHS AGREEMENT CODE 1000LC-88
DSHS CONTACT NAME AND TITLE Rachel Paquin Contract Manager		DSHS CONTACT ADDRESS P.O. Box 45310 Olympia, WA 98504-5310	
DSHS CONTACT TELEPHONE Click here to enter text.	DSHS CONTACT FAX Click here to enter text.	DSHS CONTACT E-MAIL ADDRESS DanThompsonAccount@dshs.wa.gov	
IS THE GRANTEE A SUBRECIPIENT FOR PURPOSES OF THIS CONTRACT? No		ASSISTANCE LISTING NUMBER(S)	
AGREEMENT START DATE 07/01/2024	AGREEMENT END DATE 06/30/2025	AGREEMENT MAXIMUM AMOUNT \$515,565.00	
EXHIBITS. The following Exhibits are attached and are incorporated into this Contract by reference: ☐ Exhibits (specify): No Data Security Exhibit			
The terms and conditions of this Agreement are an integration of and constitute the final, entire and exclusive understanding of the agreement between the parties, superseding and merging all previous agreements, writings, and communications between the parties made prior to or at the signing of this Agreement. The parties signing below warrant they have read and understand this Agreement, and have authority to enter into this Agreement.			
GRANTEE SIGNATURE	PRINTED NAME AND TITLE		DATE SIGNED
DSHS SIGNATURE	PRINTED NAME AND TITLE Julie Manning Contract Manager		DATE SIGNED

Approved as to form only:



July 24, 2024

Philip C. Hunsucker, Date
Chief Civil Deputy Prosecuting Attorney

DSHS General Terms and Conditions

1. **Definitions.** The words and phrases listed below, as used in this Grant Agreement (hereinafter referred to as the "Agreement"), shall each have the following definitions:
- a. "Central Contracts and Legal Services" means the DSHS central headquarters contracting office, or successor section or office.
 - b. "Confidential Information" or "Data" means information that is exempt from disclosure to the public or other unauthorized persons under RCW 42.56 or other federal or state laws. Confidential Information includes, but is not limited to, Personal Information.
 - c. "Grant Agreement" or "Agreement" or "Contract" means the entire written agreement between DSHS and the Grantee, including any Exhibits, documents, or materials incorporated by reference. The parties may execute this agreement in multiple counterparts, each of which is deemed an original and all of which constitute only one agreement. E-mail or Facsimile transmission of a signed copy of this agreement shall be the same as delivery of an original.
 - d. "CCLS Chief" means the manager, or successor, of Central Contracts and Legal Services or successor section or office.
 - e. "Grantee" or "Contractor" means the individual or entity performing services pursuant to this Agreement and includes the Grantee's owners, members, officers, directors, partners, employees, and/or agents, unless otherwise stated in this Agreement. For purposes of any permitted Subcontract, "Grantee" includes any Subcontractor and its owners, members, officers, directors, partners, employees, and/or agents.
 - f. "Debarment" means an action taken by a Federal agency or official to exclude a person or business entity from participating in transactions involving certain federal funds.
 - g. "DSHS" or the "Department" means the state of Washington Department of Social and Health Services and its employees and authorized agents.
 - h. "Encrypt" means to encode Confidential Information into a format that can only be read by those possessing a "key," a password, digital certificate or other mechanism available only to authorized users. Encryption must use a key length of at least 256 bits for symmetric keys, or 2048 bits for asymmetric keys. When a symmetric key is used, the Advanced Encryption Standard (AES) must be used if available.
 - i. "Personal Information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, Social Security Numbers, driver license numbers, other identifying numbers, and any financial identifiers.
 - j. "Physically Secure" means that access is restricted through physical means to authorized individuals only.
 - k. "RCW" means the Revised Code of Washington. All references in this Agreement to RCW chapters or sections shall include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at <http://apps.leg.wa.gov/rcw/>.
 - l. "Regulation" means any federal, state, or local regulation, rule, or ordinance.
 - m. "Secured Area" means an area to which only authorized representatives of the entity possessing

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the Confidential Information have access. Secured Areas may include buildings, rooms or locked storage containers (such as a filing cabinet) within a room, as long as access to the Confidential Information is not available to unauthorized personnel.

- n. "Subcontract" means any separate agreement or Agreement between the Grantee and an individual or entity ("Subcontractor") to perform all or a portion of the duties and obligations that the Grantee is obligated to perform pursuant to this Agreement.
- o. "Tracking" means a record keeping system that identifies when the sender begins delivery of Confidential Information to the authorized and intended recipient, and when the sender receives confirmation of delivery from the authorized and intended recipient of Confidential Information.
- p. "Trusted Systems" include only the following methods of physical delivery: (1) hand-delivery by a person authorized to have access to the Confidential Information with written acknowledgement of receipt; (2) United States Postal Service ("USPS") first class mail, or USPS delivery services that include Tracking, such as Certified Mail, Express Mail or Registered Mail; (3) commercial delivery services (e.g. FedEx, UPS, DHL) which offer tracking and receipt confirmation; and (4) the Washington State Campus mail system. For electronic transmission, the Washington State Governmental Network (SGN) is a Trusted System for communications within that Network.
- q. "WAC" means the Washington Administrative Code. All references in this Agreement to WAC chapters or sections shall include any successor, amended, or replacement regulation. Pertinent WAC chapters or sections can be accessed at <http://apps.leg.wa.gov/wac/>.

2. **Amendment.** This Agreement may only be modified by a written amendment signed by both parties. Only personnel authorized to bind each of the parties may sign an amendment.

3. **Assignment.** The Grantee shall not assign this Agreement to a third party without the prior written consent of DSHS.

4. **Billing Limitations.**

- a. DSHS shall provide funding to the Grantee only for authorized project work provided in accordance with this Agreement.
- b. DSHS shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were performed.

5. **Compliance with Applicable Law and Washington State Requirements.**

- a. **Applicable Law.** At all times during the term of this Agreement, the Grantee shall comply with all applicable federal, state, and local laws and regulations, including but not limited to, nondiscrimination laws and regulations.
- b. **Civil Rights and Nondiscrimination.** Contractor shall comply with all federal and state civil rights and nondiscrimination laws, regulations, and executive orders to the extent they are applicable to this Agreement, including, but not limited to, and as amended, Titles VI and VII of the Civil Rights Act of 1964; Sections 503 and 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act (ADA); Executive Order 11246; the Health Insurance Portability and Accountability Act of 1996 (HIPAA); the Age Discrimination in Employment Act of 1967, the Age Discrimination Act of 1975, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, and Chapter 49.60 of the Revised Code of Washington, Washington's Law Against Discrimination. These laws, regulations and

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executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated.

In the event of the Contractor's noncompliance or refusal to comply with any applicable nondiscrimination laws, regulations, and executive orders, this Agreement may be rescinded, canceled, or terminated in whole or in part.

- c. **Certification Regarding Russian Government Contracts and/or Investments.** Grantee shall abide by the requirements of Governor Jay Inslee's Directive 22-03 and all subsequent amendments. The Grantee, by signature to this Agreement, certifies that the Grantee is not presently an agency of the Russian government, an entity which is Russian-state owned to any extent, or an entity sanctioned by the United States government in response to Russia's invasion of Ukraine. The Grantee also agrees to include the above certification in any and all Subcontracts into which it enters. The Grantee shall immediately notify DSHS if, during the term of this Agreement, Grantee does not comply with this certification. DSHS may immediately terminate this Agreement by providing Grantee written notice if Grantee does not comply with this certification during the term hereof.

6. Confidentiality.

- a. The Grantee shall not use, publish, transfer, sell or otherwise disclose any Confidential Information gained by reason of this Agreement for any purpose that is not directly connected with Grantee's performance of the services contemplated hereunder, except:
 - (1) as provided by law; or,
 - (2) in the case of Personal Information, with the prior written consent of the person or personal representative of the person who is the subject of the Personal Information.
- b. The Grantee shall protect and maintain all Confidential Information gained by reason of this Agreement against unauthorized use, access, disclosure, modification or loss. This duty requires the Grantee to employ reasonable security measures, which include restricting access to the Confidential Information by:
 - (1) Allowing access only to staff that have an authorized business requirement to view the Confidential Information.
 - (2) Physically Securing any computers, documents, or other media containing the Confidential Information.
 - (3) Ensure the security of Confidential Information transmitted via fax (facsimile) by:
 - (a) Verifying the recipient phone number to prevent accidental transmittal of Confidential Information to unauthorized persons.
 - (b) Communicating with the intended recipient before transmission to ensure that the fax will be received only by an authorized person.
 - (c) Verifying after transmittal that the fax was received by the intended recipient.
 - (4) When transporting six (6) or more records containing Confidential Information, outside a Secured Area, do one or more of the following as appropriate:

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(a) Use a Trusted System.

(b) Encrypt the Confidential Information, including:

- i. Encrypting email and/or email attachments which contain the Confidential Information.
- ii. Encrypting Confidential Information when it is stored on portable devices or media, including but not limited to laptop computers and flash memory devices.

Note: If the DSHS Data Security Requirements Exhibit is attached to this Agreement, this item, 6.b.(4), is superseded by the language contained in the Exhibit.

(5) Send paper documents containing Confidential Information via a Trusted System.

(6) Following the requirements of the DSHS Data Security Requirements Exhibit, if attached to this Agreement.

- c. Upon request by DSHS, at the end of the Agreement term, or when no longer needed, Confidential Information shall be returned to DSHS or Grantee shall certify in writing that they employed a DSHS approved method to destroy the information. Grantee may obtain information regarding approved destruction methods from the DSHS contact identified on the cover page of this Agreement.
- d. Paper documents with Confidential Information may be recycled through a contracted firm, provided the Agreement with the recycler specifies that the confidentiality of information will be protected, and the information destroyed through the recycling process. Paper documents containing Confidential Information requiring special handling (e.g. protected health information) must be destroyed on-site through shredding, pulping, or incineration.
- e. Notification of Compromise or Potential Compromise. The compromise or potential compromise of Confidential Information must be reported to the DSHS Contact designated on the Agreement within one (1) business day of discovery. Grantee must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law or DSHS.

7. Debarment Certification. The Grantee, by signature to this Agreement, certifies that the Grantee is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from participating in transactions (Debarred). The Grantee also agrees to include the above requirement in any and all Subcontracts into which it enters. The Grantee shall immediately notify DSHS if, during the term of this Agreement, Grantee becomes Debarred. DSHS may immediately terminate this Agreement by providing Grantee written notice if Grantee becomes Debarred during the term hereof.

8. E-Signature and Records. An electronic signature or electronic record of this Agreement or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement or such other ancillary agreement for all purposes.

9. Governing Law and Venue. This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought hereunder shall be in Superior Court for Thurston County.

10. Relationship Between the Parties. The parties understand and agree that no employer-employee relationship will be created by this Agreement. The Grantee and his or her employees or agents performing under this Agreement are not employees or agents of the Department. The Grantee, his or her employees, or agents performing under this Agreement will not hold himself/herself out as, nor

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claim to be, an officer or employee of the Department by reason hereof, nor will the Grantee, his or her employees, or agent make any claim of right, privilege or benefit that would accrue to such officer or employee.

11. **Inspection.** The Grantee shall, at no cost, provide DSHS and the Office of the State Auditor with reasonable access to Grantee's place of business, Grantee's records, and DSHS client records, wherever located. These inspection rights are intended to allow DSHS and the Office of the State Auditor to monitor, audit, and evaluate the Grantee's performance and compliance with applicable laws, regulations, and these Agreement terms. These inspection rights shall survive for six (6) years following this Agreement's termination or expiration.
12. **Maintenance of Records.** The Grantee shall maintain records relating to this Agreement and the performance of the services described herein. The records include, but are not limited to, accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. All records and other material relevant to this Agreement shall be retained for six (6) years after expiration or termination of this Agreement.

Without agreeing that litigation or claims are legally authorized, if any litigation, claim, or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

13. **Order of Precedence.** In the event of any inconsistency or conflict between the General Terms and Conditions and the Special Terms and Conditions of this Agreement or any Program Agreement, the inconsistency or conflict shall be resolved by giving precedence to these General Terms and Conditions. Terms or conditions that are more restrictive, specific, or particular than those contained in the General Terms and Conditions shall not be construed as being inconsistent or in conflict.
14. **Severability.** If any term or condition of this Agreement is held invalid by any court, the remainder of the Agreement remains valid and in full force and effect.
15. **Survivability.** The terms and conditions contained in this Agreement or any Program Agreement which, by their sense and context, are intended to survive the expiration or termination of the particular agreement shall survive. Surviving terms include, but are not limited to: Billing Limitations; Confidentiality, Disputes; Indemnification and Hold Harmless, Inspection, Maintenance of Records, Termination for Default, and Termination or Expiration Procedure.
16. **Agreement Renegotiation, Suspension, or Termination Due to Change in Funding.**

If the funds DSHS relied upon to establish this Agreement are withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding, after the effective date of this Agreement but prior to the normal completion of this Agreement or Program Agreement:

- a. At DSHS's discretion, the Agreement or Program Agreement may be renegotiated under the revised funding conditions.
- b. At DSHS's discretion, DSHS may give notice to Grantee to suspend performance when DSHS determines that there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow Grantee's performance to be resumed prior to the normal completion date of this Agreement.

- (1) During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.

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(2) When DSHS determines that the funding insufficiency is resolved, it will give Grantee written notice to resume performance. Upon the receipt of this notice, Grantee will provide written notice to DSHS informing DSHS whether it can resume performance and, if so, the date of resumption. For purposes of this subsection, "written notice" may include email.

(3) If the Grantee's proposed resumption date is not acceptable to DSHS and an acceptable date cannot be negotiated, DSHS may terminate the Agreement by giving written notice to Grantee. The parties agree that the Agreement will be terminated retroactive to the date of the notice of suspension. DSHS shall be liable only for payment in accordance with the terms of this Agreement for services rendered prior to the retroactive date of termination.

c. DSHS may immediately terminate this Agreement by providing written notice to the Grantee. The termination shall be effective on the date specified in the termination notice. DSHS shall be liable only for payment in accordance with the terms of this Agreement for services rendered prior to the effective date of termination. No penalty shall accrue to DSHS in the event the termination option in this section is exercised.

17. **Waiver.** Waiver of any breach or default on any occasion shall not be deemed to be a waiver of any subsequent breach or default. Any waiver shall not be construed to be a modification of the terms and conditions of this Agreement. Only the CCLS Chief or designee has the authority to waive any term or condition of this Agreement on behalf of DSHS.

Additional General Terms and Conditions:

18. **Commencement of Work.** No project work shall be performed by the Grantee until the Agreement is executed by the Grantee and DSHS and received by DSHS.

19. **Construction.** The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement.

20. **Grantee Certification Regarding Ethics.** The Grantee certifies that the Grantee is now, and shall remain, in compliance with Chapter 42.52 RCW, Ethics in Public Service, throughout the term of this Agreement.

21. **Grantee Commitments, Warranties and Representations.** Any written commitment by the Grantee within the scope of this Agreement shall be binding upon the Grantee. Failure of the Grantee to fulfill such a commitment may constitute breach and shall render the Grantee liable for damages under the terms of this Agreement. For purposes of this section, a commitment by the Grantee includes but is not limited to: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by the Grantee in its response to the solicitation resulting in this Agreement ("Bid") or contained in any Grantee or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Bid or used to effect the sale to DSHS.

22. **Disputes.**

a. In the event a bona fide dispute concerning a question of fact arises between DSHS and the Grantee that cannot be resolved between the parties, either party may initiate the dispute resolution procedure provided herein.

b. The initiating party shall reduce its description of the dispute to writing and deliver it to the

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responding party. The responding party shall respond in writing within three (3) Business Days (which shall mean Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington). The initiating party shall have three (3) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.

- (1) If the dispute cannot be resolved after three (3) Business Days, a dispute resolution panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the dispute resolution panel within the next three (3) Business Days.
 - (2) The dispute resolution panel will review the written descriptions of the dispute, gather additional information as needed, and render a written decision on the dispute in the shortest practical time.
 - (3) Each party shall bear the cost for its panel member and share equally the cost of the third panel member.
- c. Unless irreparable harm will result, the parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.
 - d. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a dispute resolution panel whenever possible.
 - e. Except to the extent that disclosure is required by applicable law or court order, all negotiations pursuant to this clause are confidential and shall be treated by the parties as statements made in compromise negotiations for purposes of the rules of evidence.
 - f. DSHS and the Grantee agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Agreement that are not affected by the dispute.
 - g. If the subject of the dispute is the amount due and payable by DSHS for services being provided by the Grantee, the Grantee shall continue providing services pending resolution of the dispute provided DSHS pays the Grantee the amount DSHS, in good faith, believes is due and payable, and may withhold the difference between such amount and the amount the Grantee, in good faith, believes is due and payable.

23. Indemnification and Hold Harmless.

- a. The Grantee shall be responsible for and shall indemnify, defend, and hold DSHS harmless from any and all claims, costs, charges, penalties, demands, losses, liabilities, damages, judgments, or fines, of whatsoever kind or nature, arising out of or relating to a) the Grantee's or any Subcontractor's performance or failure to perform this Agreement, or b) the acts or omissions of the Grantee or any Subcontractor.
- b. The Grantee's duty to indemnify, defend, and hold DSHS harmless from any and all claims, costs, charges, penalties, demands, losses, liabilities, damages, judgments, or fines shall include DSHS' personnel-related costs, reasonable attorney's fees, court costs, and all related expenses.
- c. The Grantee waives its immunity under Title 51 RCW to the extent it is required to indemnify,

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defend, and hold harmless the State and its agencies, officials, agents, or employees.

- d. Nothing in this term shall be construed as a modification or limitation on the Grantee's obligation to procure insurance in accordance with this Agreement or the scope of said insurance.

24. Limitation of Liability.

- a. This section does not modify any sections or any other conditions as are elsewhere agreed to herein between the parties. The following are not considered consequential, incidental, indirect, or special damages as the term is used in the foregoing section.
 - (1) Claims pursuant to any provision of this Agreement calling for liquidated damages;
 - (2) Claims for attorney's fees and other litigation costs DSHS becomes entitled to recover as a prevailing party in an action;
 - (3) Claims for physical damage to real or tangible property;
 - (4) Claims arising from reckless or intentional misconduct;
 - (5) Amounts due or obligations under the following sections, if included: (i) indemnification; (ii) intellectual property indemnification; (iii) inspection and maintenance of records; (iv) damages resulting from default; (v) data security requirements; (vi) or breaches of confidentiality including disclosure of PHI; or
 - (6) Any loss or claim to the extent the loss or claim is covered by a policy of insurance maintained, or required by this Agreement to be maintained, by the Grantee.
- b. Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

25. Patent and Copyright Indemnification.

- a. The Grantee, at its expense, shall defend, indemnify, and hold DSHS harmless from and against any claims against DSHS that any Product or Work Product supplied hereunder, or DSHS's use of the Product or Work Product within the terms of this Agreement, infringes any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. Product shall mean any Grantee-supplied equipment, Software, or documentation. The Grantee shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by DSHS provided that DSHS:
 - (1) Promptly notifies the Grantee in writing of the claim, but DSHS's failure to provide timely notice shall only relieve the Grantee from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to the Grantee; and
 - (2) Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant the Grantee sole control of the defense and all related settlement negotiations.
- b. If such claim has occurred, or in the Grantee's opinion is likely to occur, DSHS agrees to permit the Grantee, at its option and expense, either to procure for DSHS the right to continue using the

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Product or Work Product or to replace or modify the same so that they become non-infringing and functionally equivalent. If use of the Product or Work Product is enjoined by a court and the Grantee determines that none of these alternatives is reasonably available, the Grantee, at its risk and expense, will take back the Product or Work Product and provide DSHS a refund. In the case of Work Product, the Grantee shall refund to DSHS the entire amount DSHS paid to the Grantee for the Grantee's provision of the Work Product. In the case of Product, the Grantee shall refund to DSHS its depreciated value. No termination charges will be payable on such returned Product, and DSHS will pay only those charges that were payable prior to the date of such return. Depreciated value shall be calculated on the basis of a useful life of four (4) years commencing on the date of purchase and shall be an equal amount per year over said useful life. The depreciation for fractional parts of a year shall be prorated on the basis of three hundred sixty-five (365) days per year. In the event the Product has been installed less than one (1) year, all costs associated with the initial installation paid by DSHS shall be refunded by the Grantee.

c. The Grantee has no liability for any claim of infringement arising solely from:

- (1) The Grantee's compliance with any designs, specifications or instructions of DSHS;
- (2) Modification of the Product or Work Product by DSHS or a third party without the prior knowledge and approval of the Grantee; or
- (3) Use of the Product or Work Product in a way not specified by the Grantee;

unless the claim arose against the Grantee's Product or Work Product independently of any of these specified actions.

d. This Section, *Patent and Copyright Indemnification*, is intended to survive the expiration or termination of the agreement.

- 26. Public Records Act.** The Grantee acknowledges that DSHS is subject to the Public Records Act (Chapter 42.56 RCW) and that this Agreement is a public record as defined in Chapter 42.56 RCW. Any specific information that is claimed by the Grantee to be Proprietary Information must be clearly identified as such by the Grantee. "Proprietary Information" means information owned by the Grantee to which the Grantee claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws. To the extent consistent with Chapter 42.56 RCW, DSHS will maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view the Grantee's Proprietary Information, DSHS will notify the Grantee of the request and of the date that such records will be released to the requester unless the Grantee obtains a court order from a court of competent jurisdiction enjoining that disclosure. If the Grantee fails to obtain the court order enjoining disclosure, DSHS will release the requested information on the date specified.
- 27. Subcontracting.** Except as otherwise provided in this Agreement, the Grantee shall not Subcontract any of the contracted services without the prior written approval of DSHS. Grantee is responsible to ensure that all terms, conditions, assurances and certifications set forth in this Agreement are included in any and all Subcontracts. Any failure of Grantee or its Subcontractors to perform the obligations of this Agreement shall not discharge the Grantee from its obligations hereunder or diminish DSHS' rights or remedies available under this Agreement.
- 28. Termination for Convenience.** DSHS may terminate this Agreement in whole or in part when it is in the best interest of DSHS by giving the Grantee at least thirty (30) calendar days' written notice.

DSHS General Terms and Conditions

29. Termination for Default. The CCLS Chief may immediately terminate this Agreement for default, in whole or in part, by written notice to the Grantee if DSHS has a reasonable basis to believe that the Grantee has:

- a. Failed to meet or maintain any requirement for contracting with DSHS;
- b. Failed to protect the health or safety of any DSHS client;
- c. Failed to perform under, or otherwise breached, any term or condition of this Agreement; and/or
- d. Violated any applicable law or regulation.

If it is later determined that the Grantee was not in default, the termination shall be considered a termination for convenience.

30. Termination or Expiration Procedure. The following terms and conditions apply upon Agreement termination or expiration:

- a. The Grantee shall cease to perform any services required by this Agreement as of the effective date of termination or expiration.
- b. If the Agreement is terminated, the Grantee shall comply with all instructions contained in the termination notice.
- c. The Grantee shall immediately deliver to the DSHS contact named on page one of this Agreement, or to his or her successor, all DSHS property in the Grantee's possession. The Grantee grants DSHS the right to enter upon the Grantee's premises for the sole purpose of recovering any DSHS property that the Grantee fails to return within ten (10) calendar days of the effective date of termination or expiration of this Agreement. Upon failure to return DSHS property within ten (10) calendar days, the Grantee shall be charged with all reasonable costs of recovery, including transportation.
- d. DSHS shall be liable only for payment required under the terms of this Agreement for service rendered up to the effective date of termination or expiration.
- e. DSHS may withhold a sum from the final payment to the Grantee that DSHS determines necessary to protect DSHS against loss or additional liability.
- f. The rights and remedies provided to DSHS in this Section are in addition to any other rights and remedies provided at law, in equity, and/or under this Agreement, including consequential and incidental damages.

Special Terms and Conditions

- 1. Definitions Specific to Special Terms.** The words and phrases listed below, as used in this Agreement, shall each have the following definitions:
 - a. "ADA Accessible," "Americans with Disabilities Act Accessible," and "Americans with Disabilities Act Standards for Accessible Design" means a business or organization that has buildings, grounds, or areas of operation that has certain features in place that allow individuals with disabilities to safely use and navigate them.
 - b. "American Disabilities Act Compliance" means to design the building upgrades to meet the latest ADA standards. To reach ADA compliance, existing buildings should remove all architectural barriers as much as possible to accommodate persons with disabilities. For example, to be considered an ADA compliant restroom, common standards and requirements must be applied during modification. These include but are not limited to standards relating to toilets, sinks and stalls. "Backup documentation" means receipts, product use logs, personnel time sheets (with specific designation of hourly participation in Grant activity), etc.
 - c. "Backup documentation" may include receipts, product use logs, personnel time sheets (with specific designation of hourly participation in Grant activity), etc.
 - d. "Budget Tracker" means a detailed document tracking the revenue and expenditures from the grant, by category, per billing cycle and cumulatively, from the budget.
 - e. "Client" means a person who has a developmental disability under RCW 71A.10.020(6) and has been determined eligible to receive services from the Department of Social and Health Services (DSHS) Developmental Disabilities Administration (DDA) under chapter 71A.16 RCW.
 - f. "Developmental Disabilities Administration" or "DDA" means an administration within Department of Social and Health Services (DSHS).
 - g. "Indirect" costs, sometimes called overhead costs, are business or operational costs incurred for a common purpose and not directly connected with a specific project. Indirect costs include costs incurred by the recipient, and may include costs incurred by others who supply goods, services, or facilities to the recipient, such as: Utilities for a facility used for both project-related and non-project-related recipient activities; Maintaining a department that provides services to a project, as well as other recipient activities (e.g., a warehouse or mailroom or accounting or payroll / HR); and Supervisory staff or management who oversee project activities and other, non-project-related recipient activities.
- 2. Purpose and Legal Authority.** Pursuant to the Revised Code of Washington (RCW) 43.20A.050, DSHS is authorized to enter into a grant agreement for the purposes set forth herein.

The purpose of this Grant is to provide accessible and inclusive play equipment in the Jefferson Universal Movement Playground - JUMP! along with shade structures over the central seating area and portions of the play area.
- 3. Integrated Settings:** Grantee must adhere to the Home and Community Based settings (HCBS) requirements under 42CFR 441.530(a)(1), including that:
 - a. The setting is integrated in the greater community and supports individuals to have full access to the greater community; and
 - b. Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid HCBS.

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- 4. Funding Requirements.** Project expenditures must meet RCW 71A.20.170. Funds received from DSHS for this project shall be used to:
- a. Supplement, and may not replace, supplant, or reduce current state expenditure levels for supports and services in the community setting for eligible persons with developmental disabilities.
 - b. Benefit people who are eligible to receive services from the Developmental Disabilities Administration (DDA). This includes people who are currently receiving DDA services, as well as people who are on the No Paid Services (NPS) Caseload and not currently receiving DDA services.
 - c. Improve or enhance the Medicaid Home and Community Based Services (HCBS) system.
 - d. Duplicative services are not allowed for the same Client when other providers are performing the same or similar service(s). Goods and services may not duplicate other goods or services available through Washington Medicaid (Apple Health), Medicare, or other legally liable resources.
- 5. Grantee Qualifications.** The grantee shall meet the minimum qualifications:
- a. A current Washington State Business License or a valid explanation of why the person is exempt from registering the business with the state of Washington.
 - b. The grantee and any employees of the Grantee must maintain all necessary license registration and certification as required by State statutes or regulations.
 - c. Grantees who provide purchasing and payment services must use a financial business account (i.e. credit cards or checks) to make purchases on behalf of clients which will be reimbursed. The Grantee's personal financial accounts may not be used.
 - d. Grantees who are a legal manufacturer, a retail establishment, or a wholesale distributor of technology or other goods that hold a signed DSHS grant for Assistive Technology, Specialized Equipment and Supplies, or other closely related grant are not eligible for this grant.
 - e. Grantees who provide transportation services must meet the following qualifications:
 - (1) Operate and maintain the transportation vehicles in a manner consistent with protecting and promoting the Client health and welfare.
 - (2) Have a current, active driver's license, or employ drivers who have current drivers' licenses, appropriate to the operation of the vehicle(s) utilized in the transport of Clients.
 - (3) Have applicable Business Automobile Liability Insurance as described in this Grant before providing transportation.
- 6. Statement of Work.** The Grantee shall complete the following:
- a. Install drainage and subgrade materials in and around the playground.
 - b. Install a playground with accessible and inclusive play structures for 2–5-year-old children that accommodates those with developmental, intellectual, and physical disabilities age along with typically developing peers. The play structure itself has a ramped deck entry to a platform with slides, sensory panels and at the very end, an accessible glider that accommodates wheelchairs and walkers with room for able-bodied children as well.

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- c. Install accessible rubber tile play surfacing so all children can freely move around the playground.
- d. Install a shade structure over the Sea Snail Plaza (central seating area) which has 5 tables with bench seating.
- e. Install shade structure over new Phase 2 Toddler play area.
- f. Contract with local craftsman to fabricate and install a second child proof Art gate with Salish Sea theme and welcoming Jefferson Universal Movement Playground Archway that will have a matching JUMP! logo mounted at top of entry.

Budget Category	Budget Amount
Personnel	
Professional Project Management and Construction Services by Jefferson County Parks and Recreation	\$20,000.00
Professional Services and Contractors	
Gunter Reimnitz, Art Gate Fabricator and Installer	\$6,925.00
Playground Installers	\$186,106.00
Equipment and Supplies	
Playground Equipment for 2-5 year old children	\$150,384.00
Shade structures	\$58,985.00
Accessible Rubber Tile Surfacing	\$47,614.00
Drainage and subgrade prep materials and install	\$21,000.00
Indirect (cannot exceed 15% of direct costs)	
Potential inflation, change orders and shipping increases (5% of total)	\$24,551.00
Total	\$515,565.00

- 7. **Ownership and Use.** The Grantee will retain ownership to the equipment and improvements according to this Agreement and for the purposes detailed in this Agreement. When not needed for the original purpose of this Agreement, the equipment and improvements may be used for other activities related to enhancing services to the Developmentally Disabled. Future costs associated to the equipment and improvements are the sole responsibility of Grantee.
- 8. **Presentation, Curriculum, and Promotional Materials.** Any communications intended for public distribution that uses DSHS /DDA's logo shall comply with DSHS's graphic requirements, and any additional requirements specified in this Agreement. Before the use of DSHS's logo, contact DSHS for guidelines.
- 9. **Grant Award.** In accordance with the terms and conditions of this Agreement, DSHS shall provide Grantee with up to a maximum grant of \$515,565.00 (the "Grant") for satisfactory performance of the Project work funded under this Agreement, as described above in the Statement of Work. The Contractor shall be reimbursed for the actual cost of goods and services purchased as approved by DDA and the completion of activities listed in the statement of work. Funding may be moved between budget categories upon written permission of DSHS and will not require an amendment.
- 10. **Reporting.** The Contractor shall provide quarterly updates to DSHS/DDA using the suggested format below. Quarterly updates must include a budget tracker and be submitted electronically to DSHS DDA Program Manager at DanThompsonAccount@dshs.wa.gov. The purpose of the quarterly update report is to show documentation of progress towards Objective(s) and Output(s) as listed in the Statement of Work.

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a. The quarterly update report shall include the following:

- (1) Report on the purchase and installation of the art gate, playground equipment, shade structures, accessible rubber tile surfacing, and drainage and subgrade materials in accordance with ADA compliance.
- (2) Photographs of installation progress, where possible.

The Grantee shall provide a cumulative final report for the 4th quarter, including the above. The final report shall be submitted electronically to DSHS DDA Program Manager at DanThompsonAccount@dshs.wa.gov with the Contractor's final invoice.

b. The final report shall include the following:

- (1) Outcomes, results, and impacts of this project for DDA eligible clients and the extended community, including photographs where possible.
- (2) A combination of statistics of clients using the enhancements and a testimony of an improved experience because of the enhancements, collected through survey feedback. Survey data may be collected through JUMP! social media platform(s), newsletter recipients, partnership with school district(s), etc.
- (3) Lessons learnt.
- (4) Plans for how the park areas and structures developed through this project will be maintained moving forward.

11. Billing and Payment.

- a. The Contractor shall submit invoices quarterly by the 10th of October 2024, January 2025, April 2025, July 2025 using State Form A-19 Invoice Voucher, or such other form as designated by DSHS. Consideration for services rendered shall be payable upon receipt of properly completed invoices which shall be submitted to the Program Manager at DanThompsonAccount@dshs.wa.gov.
- b. Invoices shall include a budget tracker, backup documentation, and a quarterly update report. If there are no accrued expenditures within a quarterly period, the Contractor will submit a budget tracker showing a \$0.00 expenditure and a quarterly update report. Budget tracker, invoices and update report shall describe and document to DSHS' satisfaction a description of the work performed, activities accomplished, the progress of the project, and the costs invoiced.
- c. Payment shall be considered timely if made by DSHS within thirty (30) days after receipt and acceptance by DSHS of the properly completed invoice. Payment shall be sent to the address designated by the Contractor on page one (1) of this Contract. DSHS may, at its sole discretion, withhold payment claimed by the Contractor for services rendered if Contractor fails to satisfactorily comply with any term or condition of this Contract.
- d. Contractor shall not be reimbursed for any purchases not authorized by this contract.

12. Background Check. The signatory for this Grant agrees to undergo and successfully complete a DSHS criminal history background check conducted by DSHS or the AAA every two years, and as required under RCW 43.20A.710, and RCW 43.43.830 through 43.43.842. If the Grantee has owners, employees or volunteers who may have unsupervised access to Clients in the course of performing the work under this Grant, the Grantee shall require those owners, employees or volunteers to successfully

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complete a criminal history background check prior to any unsupervised access and at least every two years thereafter. The Grantee must maintain documentation of successful completion of required background checks.

13. Insurance.

The Grantee shall obtain and maintain for the duration of the Agreement, at Grantee's expense, the following insurance coverages, and comply with the following insurance requirements.

a. General Liability Insurance

The Grantee shall maintain Commercial General Liability Insurance or Business Liability Insurance, no less comprehensive than coverage under Insurance Service Offices, Inc. (ISO) form CG 00-01, including coverage for bodily injury, property damage, and contractual liability. The amount of coverage shall be no less than \$2,000,000 per occurrence and \$4,000,000 General Aggregate. The policy shall include liability arising out of the parties' performance under this Agreement, including but not limited to premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured Agreement. The State of Washington, Department of Social & Health Services (DSHS), its elected and appointed officials, agents, and employees of the state, shall be named as additional insureds.

- b. In lieu of general liability insurance mentioned in Subsection a. above, if the Grantee is a sole proprietor with less than three contracts, the Grantee may choose one of the following three general liability policies, but only if attached to a professional liability policy. If selected the policy shall be maintained for the life of the Agreement:

Supplemental Liability Insurance, including coverage for bodily injury and property damage that will cover the Grantee wherever the service is performed with minimum limits of \$2,000,000 per occurrence; and \$4,000,000 General Aggregate. The State of Washington, DSHS, its elected and appointed officials, agents, and employees shall be named as additional insureds;

or

Workplace Liability Insurance, including coverage for bodily injury and property damage that provides coverage wherever the service is performed with minimum limits of \$2,000,000 per occurrence; and \$4,000,000 General Aggregate. The State of Washington, DSHS, its elected and appointed officials, agents, and employees shall be named as additional insureds:

or

Premises Liability Insurance if services are provided only at their recognized place of business, including coverage for bodily injury, property damage with minimum limits of \$2,000,000 per occurrence; and \$4,000,000 General Aggregate. The State of Washington, DSHS, its elected and appointed officials, agents, and employees shall be named as additional insureds.

c. Workers' Compensation

The Grantee shall comply with all applicable Workers' Compensation, occupational disease, and occupational health and safety laws and regulations. The State of Washington and DSHS shall not be held responsible for claims filed for Workers' Compensation under Title 51 RCW by the Grantee or its employees under such laws and regulations.

d. Employees and Volunteers

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Insurance required of the Grantee under the Agreement shall include coverage for the acts and omissions of the Grantee's employees and volunteers. In addition, the Grantee shall ensure that all employees and volunteers who use vehicles to transport clients or deliver services have personal automobile insurance and current driver's licenses.

e. Subcontractors

The Grantee shall ensure that all subcontractors have and maintain insurance with the same types and limits of coverage as required of the Grantee under the Agreement. Failure of Subcontractors to comply with the insurance requirements in this Agreement does not limit the Grantee's liability or responsibility.

f. Separation of Insureds

All insurance policies shall include coverage for cross liability and contain a "Separation of Insureds" provision.

g. Insurers

The Grantee shall obtain insurance from insurance companies identified as an admitted insurer/carrier in the State of Washington, with a current Best's Reports' rating of A-, Class VII, or better.

h. Evidence of Coverage

The Grantee shall, upon request by DSHS, submit a copy of the Certificate of Insurance, policy, and additional insured endorsement for each coverage required of the Grantee under this Agreement. The Certificate of Insurance shall identify the Washington State Department of Social and Health Services as the Certificate Holder. A duly authorized representative of each insurer, showing compliance with the insurance requirements specified in this Agreement, shall execute each Certificate of Insurance.

The Grantee shall maintain copies of Certificates of Insurance, policies, and additional insured endorsements for each subcontractor as evidence that each subcontractor maintains insurance as required by the Agreement.

i. Material Changes

The insurer shall give the DSHS point of contact listed on page one of this Agreement 45 days advance written notice of cancellation or non-renewal of any insurance policy required under this Agreement. If cancellation is due to non-payment of premium, the insurer shall give DSHS 10 days advance written notice of cancellation. Failure to provide notice as required may result in termination of the Agreement.

j. Waiver of Subrogation

Grantee waives all rights of subrogation against DSHS for the recovery of damages to the extent such damages are or would be covered by insurance required under the Agreement. Grantee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies whether or not DSHS receives the waiver of subrogation endorsement from the insurer.

k. Coverage Limits

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By requiring insurance, the State of Washington and DSHS do not represent that the coverage and limits required in this Agreement will be adequate to protect the Grantee. Such coverage and limits shall not limit the Grantee's liability in excess of the required coverage and limits, and shall not limit the Grantee's liability under the indemnities and reimbursements granted to the State and DSHS in this Agreement.

l. Primary Coverage

All Grantee's insurance provided in compliance with this Agreement shall be primary and shall not seek contribution from insurance or self-insurance programs afforded to or maintained by the State. Insurance or self-insurance programs afforded to or maintained by the State shall be in excess of, and shall not contribute with, insurance required of the Grantee and Subcontractors under this Agreement.

m. Waiver

The Grantee waives all rights, claims and causes of action against the State of Washington and DSHS for the recovery of damages to the extent said damages are covered by insurance maintained by Grantee.

n. Liability Cap

Any limitation of liability or liability cap set forth in this Agreement shall not preclude DSHS from claiming under any insurance maintained by the Grantee pursuant to this Agreement, up to the policy limits.

o. Professional Liability (errors & omissions)

The Grantee shall maintain insurance of at least \$1,000,000 per occurrence, \$2,000,000 General Aggregate for malpractice or errors and omissions coverage against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use, and damages because of negligent acts, errors, and omissions in any way related to this Agreement.