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TO: Mayor Emily Dean and Helena City Commissioners
FROM: Becky Dockter, City Attorney
DATE: September 14, 2026; updated November 2, 2026
RE: Montana Disaster and Emergency Services - Homeland Security Program Grant Award

Purpose: This memo is written for the purpose of responding to concerns raised by members of the public about the acceptance of the Montana Disaster and Emergency Services-Homeland Security Program grants on the agenda for November 9, 2026 and to recommend approval of the grants.

Procedural Background: On September 14, 2026, the Helena City Commission considered acceptance of a State Homeland Security Grant Award of $53,000. During the meeting, the Commission heard the City present that this funding would be used for installation of security cameras at the City/County Administrative Building public entrances, the court room and lobby spaces for Municipal Court, as well as the replacement of non-compliant cameras in public spaces at the Law and Justice Center. The grant award was tabled for a future meeting.

During the September 14, 2026 Commission meeting, Commissioners requested information about other counties/cities that accepted or denied a grant award from the same federal program.

Since then, the City of Helena has been awarded two other grants from the same program. One grant award is for the Helena Police Department to fund the "Montana Analysis and Technical Information Center (MATIC) – Fusion Center" for an "Information Liaison Officer" for $125,000.00. The other one is for "HazMat Sustainment (2 Year POP)" for $80,000.00. All three of these grants are awarded under the FY 2025 State Homeland Security Grant Funding and subject to the same federal grant conditions administered through the State Disaster and Emergency Services (DES) as the State agency responsible for administering the terms of the grant.

During the October 28, 2026 administrative meeting, City Manager Lake requested and the Commission approved through consensus decision and consider it at the November 9, 2026 City Commission meeti

The following memoranda is intended to address i of the public before, during, and after the September 14, 202 me below provides information regarding collaboration with nd counties who considered grants under the same program.

The Memo later confirms there are new or additional requirements in both Articles 33 and 61.

Analysis:

The language of the grant conditions does not present new or additional requirements for compliance. Even if the City determines it cannot comply with certain terms, the agreement addresses exceptions for resource limitations and provisions allowing termination if grant conditions cannot be met.

During the September 14, 2026 meeting, members of the public raised concerns regarding grant conditions. They surmised that:

1. Conditions force cooperation with immigration enforcement;
2. Conditions lack clarity;
3. Judicial enforcement will force compliance by City of Helena;
4. The 30-day termination period requires compliance during the termination period;
5. Conditions place anti-discrimination and DEI programs in jeopardy.

These concerns are addressed in this memorandum and are quelled by the language of the grant conditions that are either unenforceable against the City, inapplicable, or allow an exception for City compliance.

In particular, **Article 11** entitled "Communication and Cooperation with the Department of Homeland Security and Immigration Officials" raised concerns about the requirement to cooperate with federal immigration operations. Similarly, **Article 19** entitled "Anti-Discrimination Grant Award Certification" raised concerns about DEI programs in the City. The language of Article 61 specifically reaches the question of whether Articles 11 and 19 are applicable. **They are not.**

Article 61 specifically excludes application of those two relevant articles to this grant award:

> **Article 61 State Homeland Security Program: Non-Applicability of Specific Terms and Agreement Articles**
> Notwithstanding their inclusion in this award package, the following terms and Agreement Articles *do not apply to this grant award*: (1) paragraph C.IX(Communication and Cooperation with the Department of Homeland Security and Immigration Officials) of the DHS Standard Terms and Conditions and [illegible] Cooperation with the Department of Hom[illegible] award package; and (2)paragraph C.XV[illegible] Certification regarding immigration) of th[illegible] paragraph (2)(a)(iii)of the Agreement Art[illegible] package. (Emphasis added.)

There appear to be approximately 292 Executive Orders issued since January of 2025. These concern everything from Diversity Equity and Inclusion, to the environment, to abortion. One federal judge called this provision "impermissibly ambiguous."

Both Articles 11 and 19 are not applicable to

Article 33 requires compliance with Presidential Executive Orders related to grants. This was raised as a concern because of the number of Executive Orders that have been adopted, amended, and rescinded at this time. It is not possible to track without great effort the Presidential Orders that apply at this time or at the time of compliance with the grant conditions. If compliance of this article, or any article, becomes mandatory in a way that is unacceptable by the City Commission, it may choose to terminate the grant pursuant to Article 42 termination clause. As a result, I am not concerned that the City will be held to obligations without recourse.

Article 60 contains several provisions, none of which raise concerns for the City of Helena.

There is no "Article 42 termination clause." Article 59 states that Article 42 "does not apply to this award."

Specifically, subsection 1, by its language, is not likely to occur in Helen Montana law. Subsection 1 specifically prohibits other federal agencies, Homeland Security or the Department of Justice, from designating a local recipient as a sanctuary jurisdiction. Helena is not designated as a sanctuary jurisdiction and Title 2, Chapter 1, part 6 of Montana Code Annotated prohibits any city in Montana from being designated as a sanctuary jurisdiction in Montana. The City of Helena complies with this term.

Nothing in this law prohibits DHS from labeling Helena a sanctuary city. There is no federal definition of sanctuary city and DHS is not bound by Montana law.

Subsection 2 of Article 60 provides:

> 2. Certification a. The state, territorial or local recipient and subrecipients must certify under penalty of perjury pursuant to 28 U.S.C. §§ 1746, and using a form that is acceptable to the Department of Homeland Security, that they will comply with the following requirements related to coordination and cooperation with the Department of Homeland Security and immigration officials….

The first point worth noting is that certification is not required by the City of Helena. Certification paperwork was not a part of the grant application or packet and when City staff inquired of the Montana Department of Emergency Services (DES) (state agency responsible for administering the grant), personnel assured the City it will not require the certification contemplated by this Article 60, subsection 2. It is my opinion that without the certification, neither the State nor the federal government can enforce this provision against the City.

Oral representations are not part of contracts. Without including this in the contract, the City remains obligated to certify compliance.

There is no legal requirement that all required certification documents accompany a contract. Articles 1 and 2 state that the City will have to execute future documents. And DHS "may require applicants to certify additional assurances."

with the language of the majority of subsec
atutes. The specific and cited statutes are th
it mentions specific statutes for prohibitin
couraging or inducing an alien to enter the
s, or prohibiting harboring, concealing or s
refer to federal laws in existence to which
already required to comply. See Article 60, Subsections 2.(i) and 2(ii).

FInally, the concern that the City could be required to participate in immigrati
activities beyond its authority is addressed by the provision allowing the City
cooperation when it lacks the necessary resources. In particular, Article 60, sub
requires:

> They will honor requests for cooperation, such as participating in joint operations
> sharing of information, or request for short term detention of an alien pursuant to
> valid detainer. A jurisdiction does not fail to comply with the requirement merely
> because it lacks the necessary resources to assist in a particular instance.

No grants prior identified. These conditions are new for Fiscal Year 25 grants.

Individual officers are free to decide when they want to comply.

y is not required to certify compliance with this provision, and the grant condition
sly allow the City to decline compliance when it lacks the necessary resources. This
Commission has heard over the past year that the Helena Police Department lacks resources, as well as authority and plans, to conduct immigration actions beyond what is required by state and federal law. The City's operations have remained unchanged despite previously accepting grants with similar conditions, and there is no indication that accepting these awards would

This exception only applies to "cooperation" with immigration enforcement. The City cannot claim lack of resources for the other requirements that it (1) "provide access to detainees," and (2) not "publicize the existence of an immigration enforcement operation."

result in a different outcome. HPD is not legally authorized to do federal immigration work and this grant condition does not grant that authority to the HPD to do so. If HPD is requested to cooperate in a joint operation, it would decide whether to do so based upon local, state, and federal law, not this grant condition.

Moreover, the final sentence of Article 60 provides that while the terms and conditions are material to the grant of award, the remedy for noncompliance is termination of the grant award. The concerns about judicial enforcement or some other requirement for specific performance of this grant condition are misplaced. The likely consequence, and the only one expressly authorized under the grant terms, would be repayment of the grant funds.

The termination clause for this grant award supports acceptance of the grant award in tha
limits any impact to the City. **Article 42** specifically allows the City to terminate the award
or in part, simply by sending written notification to DHS stating the reasons for
ation. The only requirement for termination is that notice is provided at least 30 da
o termination. DHS may also terminate the award if the recipient fails to comply with the
and conditions of the federal award, but there is no language providing for a penalty for
mpliance.

ontana DES personnel are the sole enforcement arm of the state for these grant awards.
ave confirmed that when a grantee submits notice of termination because it can no
comply with the terms of grant conditions, DES personnel will collaborate with the City
ermination date and compliance with termination provisions. Concerns w
the 30-day notice provision would require the city to comply with terms of the
for 30 days while termination was finalized. DES personnel confirmed this is no
that the City had already indicated its inability to comply. In addition, DES offi
generally takes a day or a few days to terminate (not 30 days) and do not requir
g that time.

st be utilized only for the purposes in which it was applied

Conclusion: For the reasons sta

The majority of cities and counties across the state have accepted this grant award. I have collaborated with City and County Attorneys from Lewis and Clark County, Missoula County, City of Missoula, City of Great Falls, City of Bozeman, City of Billings whom have all presented or will present the same or similar arguments to their respective government bodies and recommend acceptance of the grants. The following chart shows the grant acceptance across Montana. I recommend the City of Helena accept the grant awards.

Article 60 actually says DHS "may take any remedy for noncompliance." This includes forcing the City to certify immigration cooperation

Incorrect statement of Article 60 language.

There is no "Article 42 termination clause." Article 59 states that Article 42 "does not apply to this award."

Article 60 states that DHS can also enforce grant terms related to immigration.

Oral representations are not part of a contract. Any oral representations the City may rely on should be written down

There are 129 municipalities and 56 Counties in Montana. The memo identifies 7 cities and approximately 13 counties, slightly less than a majority.

No record of Bozeman accepting. List of cities may be inaccurate.

No indication that these entities actually analyzed the grant conditions. Nationwide, dozens of States and cities have sought and recieved injunctive relief from federal courts, recognizing that Articles 33 and 60 are problematic. If the City of Helena does not want to comply with these provisions, it should join the ongoing litigation.