

**THE Behavioral Health CONTRACT Between
Pacific County AND Naselle Grays River School District
Contract #2022-2023 Behavioral Health Contract WVSD**

THIS CONTRACT is made and entered into this by and between **Pacific County**, hereinafter referred to as "COUNTY," and **Naselle Grays River School District**, hereinafter referred to as "CONTRACTOR". COUNTY and the CONTRACTOR are together referenced as the "Parties".

For and in consideration of the mutual benefit derived, the Parties hereby agree to diligently fulfill the following respective duties and to perform the following respective services in accordance with all of the conditions, terms, requirements and regulations of the Contract.

The purpose of this Contract is to improve the health, stability, and welfare of individuals and others affected by substance use and/or mental health disorders, as outlined in **Exhibit A- Statement of Work and Budget**, thereby lessening the burden to the COUNTY and city resources.

**THE TERM OF CONTRACT SHALL BE
JANUARY 1, 2023-DECEMBER 31, 2023**

- 1. PAYMENT.** All payments will be made in accordance with the laws of the State of Washington. The COUNTY will issue payment(s) to CONTRACTOR monthly, CONTRACTOR upon receipt of properly completed COUNTY invoices, which shall be submitted to the Representative for the COUNTY not later than the fifth business day of the month following the month services were provided and expense incurred. The invoice must include a signature and date from the CONTRACTOR.
- 2. RELATIONSHIP OF PARTIES.** The CONTRACTOR is an independent CONTRACTOR and is not an employee of the COUNTY. The COUNTY will not provide fringe benefits, including health insurance benefits, paid vacation, or any other employee benefits, for the benefit of the CONTRACTOR.
- 3. ELIGIBLE USE OF FUNDS & COMPLIANCE.** Funding awarded under this Contract may only be used for eligible activities and expenses described in **Exhibit A-Statement of Work and Budget** which is incorporated into this Contract.

This Contract includes funds from the following direct and indirect local, state, and/or federal sources. All services provided under this Contract must be provided in full compliance with CFR42 and all applicable local, state, and federal program rules including:

- a. Pacific County .1% Sales Tax Funds (RCW 82.14.460) for the delivery of mental health and substance use prevention, intervention, and treatment services. The purpose of the funds is to improve the health, stability, and welfare of individuals and others affected by substance use and/or mental health disorders thereby lessening the burden to the COUNTY

4. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION.

- a. “Confidential Information” as used in this section includes:
 - i. All material provided to the CONTRACTOR by the COUNTY that is designated as “confidential” by the COUNTY;
 - ii. All material produced by the CONTRACTOR that is designated as “confidential” by the COUNTY; and
 - iii. All personal information in the possession of the CONTRACTOR that may not be disclosed under state or federal law. “Personal information” includes but is not limited to “Protected Health Information” under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) and CFR 42.
- b. The CONTRACTOR shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of the COUNTY or as may be required by law. The CONTRACTOR shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto, including and accordance with 42 CFR 431.300 through 431.307, and Revised Code of Washington Chapters 70.02, 71.05, and 71.34. Upon request, the CONTRACTOR shall provide the COUNTY with its policies and procedures on confidentiality. The COUNTY may require changes to such policies and procedures as they apply to this Contract whenever the CONTRACTOR reasonably determines that changes are necessary to prevent unauthorized disclosures. The CONTRACTOR shall make the changes within the time period specified by the COUNTY. Upon request, the CONTRACTOR shall immediately return to the COUNTY any Confidential Information that the COUNTY reasonably determines has not been adequately protected by the CONTRACTOR against unauthorized disclosure.
- c. Unauthorized Use or Disclosure: The CONTRACTOR shall notify the COUNTY within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

5. CRIMINAL BACKGROUND HISTORY CHECK. A background criminal history clearance is required every three years for all employees, subcontractors, and/or volunteers who may have unsupervised access to children or vulnerable adults, in accordance with RCW 43.43.830-845, RCW 74.15.030, and chapter 388.06 WAC. If the CONTRACTOR elects to hire or retain an individual after receiving notice that the employee has a conviction for an offense that would disqualify the applicant from having unsupervised access to children or vulnerable adults as defined in Chapter [74.34](#) RCW, then COUNTY shall deny payment for any subsequent services rendered by the CONTRACTOR.

6. INDEMNIFICATION.

- a. **Indemnification by Contractor.** To the fullest extent permitted by law, the CONTRACTOR agrees to indemnify, defend and hold the COUNTY and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property, including the loss of use resulting therefrom. The indemnity includes but is not limited to: 1) liability arising in whole or in part by any action or omission, negligent or otherwise, of the CONTRACTOR, its employees, agents or volunteers or CONTRACTOR's subcontractors and their employees, agents or volunteers; or 2) liability directly or indirectly arising out of, resulting from, or in connection with performance of this Contract; or 3) liability based upon the CONTRACTOR'S or its subcontractors' use of, presence upon or proximity to the property of the COUNTY. This indemnification obligation of the CONTRACTOR shall not apply in the limited circumstance where the claim, damage, loss or expense is caused by the sole negligence of the COUNTY. This indemnification obligation of the CONTRACTOR shall not be limited in any way by the Washington State Industrial Insurance Action RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the CONTRACTOR hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the CONTRACTOR are a material inducement to COUNTY to enter into the Contract, are reflected in the CONTRACTOR's compensation, and have been mutually negotiated by the parties.
- b. **Participation County – No Waiver.** The COUNTY reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of CONTRACTOR's indemnity obligations under the Contract.
- c. **Survival of Contractor's Indemnity Obligations.** The CONTRACTOR agrees all CONTRACTORS's indemnity obligations shall survive the completion, expiration or termination of this Contract.

7. INSURANCE.

Without limiting the CONTRACTOR'S indemnification of COUNTY, and prior to commencement of this Contract, CONTRACTOR shall obtain, provide and maintain during the term of this Contract, policies or insurance of the type and amounts described below and, in a form, satisfactory to the COUNTY.

- a. **General Liability Insurance.** CONTRACTOR shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability.

- b. **Professional Liability (Errors & Omissions) Insurance.** CONTRACTOR shall maintain professional liability insurance that covers the services to be performed in connection with this Contract, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Contract and CONTRACTOR agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this Contract.
- c. **Workers' Compensation Insurance.** CONTRACTOR shall, at its own expense, maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

CONTRACTOR shall submit to COUNTY, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of COUNTY, its officers, agents, employees and volunteers.

- d. **Waiver of Subrogation.** All insurance coverage maintained or procured pursuant to this Contract shall be endorsed to waive subrogation against COUNTY, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow CONTRACTOR or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. CONTRACTOR hereby waives its own right of recovery against COUNTY, and shall require similar written express waivers and insurance clauses from each of its subcontractors.
- e. **Automobile Liability Insurance.** Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

The CONTRACTOR shall provide the COUNTY with properly executed certificate of insurance and provide a policy endorsement naming the COUNTY as an additional insured. CONTRACTOR agrees that its liability insurance shall be primary and non-contributory to the COUNTY's and that CONTRACTOR's liability insurance policy shall so state.

8. ATTORNEY'S FEES/COST OF SUIT AND VENUE.

If either party files suit to enforce this Contract, parties agree that the prevailing party in any such action shall be entitled to collection costs, reasonable attorney's fees, and costs of suit.

- a. **Disputes.** Differences between the CONTRACTOR and the COUNTY, arising under and by virtue of this Contract, shall be brought to the attention of the COUNTY at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due CONTRACTOR shall be decided by the COUNTY'S Contract representative or designee. All rulings, orders, instructions and decisions of the COUNTY'S contract representative shall be final and conclusive, subject to their right to seek judicial relief pursuant to **Choice of Law, Jurisdiction and Venue.**
- b. **Choice of Law, Jurisdiction and Venue.** This Contract has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each party hereto that this Contract shall be governed by the laws of the State of Washington, both as to its interpretation and performance.

Any action at law, suit in equity, or judicial proceeding arising out of this Contract shall be instituted and maintained only in any of the courts of competent jurisdiction in Pacific County, Washington.

- c. **Severability.** If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

If any provision of this Contract is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

Should the COUNTY determine that the severed portions substantially alter this Contract so that the original intent and purpose of the Contract no longer exists, the COUNTY may, in its sole discretion, terminate this Contract.

- 9. ASSIGNMENT.** The CONTRACTOR's obligations under this Agreement may not be assigned or transferred to any other individual or entity without the prior written consent of the COUNTY.

- 10. MODIFICATION.** The parties may mutually agree to modify this Agreement. Any modification to the terms of this Agreement must be in writing and signed by both parties.

11. TERMINATION. The CONTRACTOR and the COUNTY has the right to terminate this Agreement as follows:

- a. The COUNTY may terminate this Agreement at any time and for any reason by submitting written notice of its intention to the CONTRACTOR at least thirty (30) days prior to the specified effective date of such termination. The COUNTY may also terminate this Agreement with less than thirty (30) days' written notice if the CONTRACTOR has violated any of the provisions herein, federal, state or local laws, or if the COUNTY deems the CONTRACTOR's performance of its responsibilities herein identified to be substantially unsatisfactory.
- b. The CONTRACTOR may terminate this Agreement upon submitting written notice of its intention to the COUNTY at least thirty (30) days prior to the specified effective date of such termination.

12. NOTICES. All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when delivered in person or deposited in the United States mail, postage prepaid. Address changes by either party must be provided by written notice to the other in the manner set forth above.

13. SEVERABILITY. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

14. WAIVER. The COUNTY's failure to enforce any provision of this Agreement shall not be construed as a waiver of limitation of the COUNTY's right to: 1) subsequently enforce and compel strict compliance with every provision of this Agreement; or 2) seek any and all legal remedies available to it based on the CONTRACTOR's breach or non-performance.

15. GOVERNING LAWS. This agreement shall be governed by the laws of the State of Washington, both as to its interpretation and performance. Any action at law, suit in equity, or judicial proceeding arising out of this agreement shall be instituted and maintained only in any of the courts of competent jurisdiction in Pacific COUNTY, Washington.

16. DISPUTE RESOLUTION. The parties agree to attempt to informally resolve any disputes regarding the terms of, or compliance with, this agreement. If, despite good-faith efforts to resolve a dispute, the dispute remains unresolved, either party may bring a court action to resolve the dispute.

17. ATTORNEY'S FEES. In the event either party files a court action in any trial or appellate court seeking enforcement of this agreement, the prevailing party shall be entitled to all court costs and reasonable attorney's fees.

18. OWNERSHIP. Any and all data, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the CONTRACTOR or the CONTRACTOR's subcontractors or consultants for delivery to the COUNTY under this Agreement shall be the sole and absolute property of the COUNTY. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the COUNTY at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the CONTRACTOR uses to perform this Agreement but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the COUNTY is owned by the CONTRACTOR and is not "work made for hire" within the terms of this Agreement.

19. PUBLIC RECORDS ACT. This Agreement and related records may be subject to public inspection pursuant to Washington's Public Records Act (RCW 42.56). To the extent that public records in the custody of the CONTRACTOR are needed for the COUNTY to respond to a request for public records, as determined by the COUNTY, the CONTRACTOR agrees to make them promptly available to the COUNTY. If the CONTRACTOR considers any portion of any record provided to the COUNTY under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the CONTRACTOR shall clearly identify any specific information that they claim to be confidential or proprietary. If the COUNTY receives a public records request to inspect or copy the information so identified by the CONTRACTOR and the COUNTY determines that release of the information is required by Public Record Act or is otherwise appropriate, the COUNTY's sole obligations shall be to notify the CONTRACTOR of the request and the date that such information will be released to the requester unless the CONTRACTOR obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the CONTRACTOR fails to timely obtain a court order enjoining disclosure, the COUNTY will release the requested information on the date specified. CONTRACTOR agrees to indemnify and, to the greatest extent legally possible, to hold harmless the COUNTY in any action by a third party due to the negligence, recklessness or intentional actions by the CONTRACTOR relating to is performance of this contract. This includes any lawsuit filed by a third party for the COUNTY's allegedly improper release of confidential or proprietary information pursuant to a public records request.

20. ENTIRE AGREEMENT. This Agreement including **Exhibit A**, contains the entire Agreement of the parties and there are no other promises or conditions or any other Agreement whether oral or written. This Agreement supersedes any prior written or oral Agreements between the parties.

21. COUNTERPARTS. This agreement may be executed in counterparts, each of which will be deemed to be an original copy of this agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this agreement and of signature pages by facsimile transmission or other electronic means shall constitute effective execution and delivery of this agreement as to the parties and may be used in lieu of the original agreement for all purposes. Signatures of the parties transmitted by facsimile or other electronic means shall be deemed to be their original signatures for all purposes.

22. CONTRACT PROVISIONS Payments due to the Provider/Contractor under this Agreement are expressly conditioned upon the Provider's/Contractor's strict compliance with all insurance requirements under this Agreement. Payment to the Provider/Contractor shall be suspended in the event of non-compliance. Upon receipt of evidence of full compliance, payments not otherwise subject to withholding or set-off will be released to the Provider/Contractor.

23. DEBARMENT CERTIFICATION. The CONTRACTOR hereby declares that it is not suspended or debarred from securing federal and/or state funds and shall remain so during the term of this Contract. Suspension and/or debarment of the Subgrantee from securing federal or state funds shall be cause for immediate termination of this Agreement/Contract by the County.

IN WITNESS WHEREOF the parties hereto have caused this AGREEMENT to be executed this _____ day of _____, 2022.

CONTRACTOR	PACIFIC COUNTY
NASELLE GRAYS RIVER SCHOOL DISTRICT	BOARD OF COUNTY COMMISSIONERS

Date

Chair

APPROVED AS TO FORM

Commissioner

Prosecutor's Office

WSBA #

Commissioner

ATTEST

Clerk of the Board