

CONTRACT FOR SERVICES

Between
PACIFIC COUNTY, WASHINGTON
And
THE JOINT PACIFIC COUNTY HOUSING AUTHORITY

THIS CONTRACT is made between Pacific County – P.O. Box 187, South Bend, Washington, 98586-0187 (the “COUNTY”), and The Joint Pacific County Housing Authority – 820 11th Avenue, Longview, Washington 98632 (the “RECIPIENT”).

WHEREAS, RCWs 36.22.178, 36.22.179, and 36.22.1791 establish fees on documents recorded in the Pacific County Auditor’s Office, and direct said fees to be used to implement low and moderate income housing programs and to implement the recently adopted Pacific County Five-Year Plan to End Homelessness; and

WHEREAS, Pacific County established the Low Income Assistance Account, Fund No. 127, to deposit these low and moderate income and homeless recording fees; and in 2015 the County will separate this Fund into two funds for accountability purposes; Fund 178-Affordable Housing for All, and Fund 179-Homeless Housing and Assistance, and

WHEREAS, as per RCWs 36.22.178, 36.22.179, and 36.22.1791, Pacific County entered into an inter-agency agreement with the cities of Ilwaco, Long Beach, Raymond and South Bend in April 2008 to direct the expenditure of these recording fees; and

WHEREAS, the inter-agency agreement specifies that expenditure of recording fee funds from Fund No. 127 shall, following budget adoption by the Board of Pacific County Commissioners, be directed by the Joint Pacific County Housing Authority Board; and

WHEREAS, the Joint Pacific County Housing Authority Board has requested that Pacific County provide funding in the County’s 2018 Funds No. 178 and 179 to support a variety of low and moderate income housing programs; and

WHEREAS, transfer of recording fees from Pacific County Funds No. 178 and 179 to the Joint Pacific County Housing Authority requires entering into a contract for services; and

WHEREAS, the Joint Pacific County Housing Authority Board has entered into an agreement with the Longview Housing Authority to provide administrative support and serve as their fiscal agent,

NOW, THEREFORE, in consideration of covenants, conditions, performances and promises hereinafter contained, the parties hereto agree as follows:

1. FUNDING

One Hundred and Twenty Thousand Dollars (\$120,000) has been pledged within Pacific County Funds No.178 and 179 to assist the RECIPIENT with provision of services to low and moderate income housing programs and to implement the Pacific County Five Year Plan to End Homelessness. Said amount shall constitute the maximum reimbursement the RECIPIENT is eligible to receive from the COUNTY under this CONTRACT.

2. **USE OF FUNDS and SCOPE OF WORK**

The RECIPIENT shall use these COUNTY funds solely to implement low and moderate income housing programs and to implement the Pacific County Ten Year Plan to End Homelessness in keeping with the requirements of RCWs 36.22.178, 36.22.179, and 36.22.1791. Specifically, these funds shall support the following activities:

TABLE 1

ACTIVITY	ALLOCATION	Recording Fee Revenue Source
Driftwood Project Supportive Housing Services	\$25,000	Fund 179
Predevelopment/Development for new, or preservation of existing low income housing projects	\$75,000	Fund 179
Eagles Apt Maintenance and Operation Subsidy	\$20,000	Fund 178
TOTAL	\$120,000	Fund 178-\$20,000 Fund 179-\$100,000

3. **PAYMENT PROVISIONS**

The COUNTY, from the Pacific County Funds 178 and 179, has pledged One Hundred and Twenty Thousand Dollars (\$120,000) to assist the RECIPIENT to implement the three activities identified in Section 2, Table 1, of this CONTRACT. These funds are to be dispersed to the RECIPIENT on a cost reimbursement basis with backup documentation for expenses up to the maximum contract amount. **FINAL BILLING WITH BACKUP DOCUMENTATION IS DUE NO LATER THAN DECEMBER 18, 2020.**

4. **EVALUATION AND MONITORING**

- A. The RECIPIENT shall maintain books, records, documents and other evidence and accounting procedures and practices that sufficiently and properly reflect the performance of this CONTRACT. The RECIPIENT will retain all books, records, documents and other material relevant to this CONTRACT for six (6) years after expiration of the CONTRACT, or from the date final payment hereunder is made, whichever is later.
- B. The COUNTY or the State Auditor and any of their representatives shall have full access to and the right to examine during normal business hours and as often as the COUNTY or the State Auditor may deem necessary, those books, records, documents and other evidence retained by the RECIPIENT with respect to all matters covered in this CONTRACT. Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials, payrolls, and records of matters covered by this CONTRACT. These rights shall last for six (6) years after expiration of the CONTRACT, or from the date final payment hereunder is made, whichever is later.
- C. The COUNTY will use reasonable security procedures and protections to assure that related records and documents provided by the RECIPIENT are not erroneously disclosed to third parties. To the extent chapter 42.56 RCW permits, pertinent records

and other documents in any medium furnished by the RECIPIENT will remain its property unless otherwise agreed.

- D. The RECIPIENT shall cooperate with and freely participate in any other monitoring or evaluation activities pertinent to this CONTRACT that the COUNTY needs to have conducted.

5. **RECAPTURE PROVISION**

- A. In the event the RECIPIENT fails to expend these funds in accordance with state law and/or the provisions of this CONTRACT, the COUNTY reserves the right to recapture funds in an amount equivalent to the extent of noncompliance.
- B. Such right of recapture shall exist for six (6) years after expiration of this CONTRACT or final payment hereunder, whichever occurs later. Repayment by the RECIPIENT of funds under this recapture provision shall occur within twenty (20) days of demand. In the event the COUNTY is required to institute legal proceedings to enforce this recapture provision, the COUNTY shall be entitled to its costs thereof, including reasonable attorney's fees.

6. **NONDISCRIMINATION**

The RECIPIENT shall comply with all federal and state nondiscrimination laws, including, but not limited to chapter 49.60 RCW – Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq. – the Americans with Disabilities Act (ADA).

7. **NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**

In the event the RECIPIENT fails or refuses to comply with any nondiscrimination law, regulation, or policy, this CONTRACT may be rescinded, canceled, or terminated in whole or in part, and the RECIPIENT may be declared by the COUNTY ineligible for further Low Income Housing Assistance Funds. The RECIPIENT shall be given a reasonable time in which to cure any such noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

8. **PUBLIC RECORDS ACT**

This Agreement and all public records associated with this Agreement shall be available from the COUNTY for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the RECIPIENT are needed for the COUNTY to respond to a request under the Act, as determined by the COUNTY, the RECIPIENT agrees to make them promptly available to the COUNTY. If the RECIPIENT 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 RECIPIENT shall clearly identify any specific information that it claims to be confidential or proprietary. If the COUNTY receives a request under the Act to inspect or copy the information so identified by the RECIPIENT and the COUNTY determines that release of the information is required by the Act or otherwise appropriate, the COUNTY's sole obligations shall be to notify the RECIPIENT (a) of the request and (b) of the date that such information will be released to the requester unless the RECIPIENT obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the RECIPIENT fails to timely obtain a court order enjoining disclosure, the COUNTY will release the requested information on the date specified.

The COUNTY has, and by this section assumes, no obligation on behalf of the RECIPIENT to claim any exemption from disclosure under the Act. The COUNTY shall not be liable to the RECIPIENT for releasing records not clearly identified by the RECIPIENT as confidential or proprietary. The COUNTY shall not be liable to the RECIPIENT for any records that the COUNTY releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

RECIPIENT 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 RECIPIENT relating to its 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.

9. **EMPLOYMENT RELATIONSHIPS**

The RECIPIENT, its employees or agents performing under this CONTRACT are not deemed to be employees of the COUNTY nor agents of the COUNTY in any manner whatsoever. No officer, employee or agent of the RECIPIENT will hold themselves out as, or claim to be, an officer, employee or agent of the COUNTY by reason hereof, nor will they make any claim, demand or application to or for any right or privilege applicable to an officer, employee or agent of the COUNTY.

10. **INDEMNIFICATION/HOLD HARMLESS**

1. **Indemnification by RECIPIENT.** To the fullest extent permitted by law, the RECIPIENT 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) which 1) are caused in whole or in part by any action or omission, negligent or otherwise, of the RECIPIENT, its employees, agents or volunteers or RECIPIENT's subcontractors and their employees, agents or volunteers; or 2) are directly or indirectly arising out of, resulting from, or in connection with performance of this Contract; or 3) are based upon the RECIPIENT'S or its subcontractors' use of, presence upon or proximity to the property of the COUNTY. This indemnification obligation of the RECIPIENT 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 RECIPIENT shall not be limited in any way by the Washington State Industrial Insurance Act RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the RECIPIENT hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the RECIPIENT are a material inducement to COUNTY to enter into the Contract, are reflected in the RECIPIENT's compensation, and have been mutually negotiated by the parties.
2. **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 RECIPIENT's indemnity obligations under the Contract.

3. **Survival of RECIPIENT's Indemnity Obligations.** The RECIPIENT agrees all RECIPIENT S's indemnity obligations shall survive the completion, expiration or termination of this Contract.

11. **INSURANCE**

Without limiting the RECIPIENT'S indemnification of COUNTY, and prior to commencement of this contract, RECIPIENT 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.** RECIPIENT shall maintain commercial general liability insurance with at least as broad as Insurance Services Office form CG 00 0, 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.** RECIPIENT 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 RECIPIENT 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.** RECIPIENT shall, at its own expense, maintain Workers' Compensation Insurance (statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).
- 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 RECIPIENT or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. RECIPIENT hereby waives its own right of recovery against COUNTY, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

The RECIPIENT must name the COUNTY as an additional insured. The RECIPIENT agrees that its liability insurance shall be primary and non-contributory to the COUNTY's and that RECIPIENT 's liability insurance policy shall so state.

12. **CONTRACT MODIFICATIONS**

The COUNTY and the RECIPIENT may, from time to time, request changes in services being performed with these funds. Any such changes that are mutually agreed upon shall be incorporated herein by written amendment to this CONTRACT. It is mutually agreed and understood that no alteration or variation of the terms of this CONTRACT shall be valid unless made in writing and signed by the parties hereto, and that any oral understanding or agreements not incorporated herein shall not be binding. For example and without limitation, an amendment to this CONTRACT must be approved in writing by the COUNTY prior to the RECIPIENT expending funds for the items covered within that amendment. Costs incurred by the RECIPIENT in contravention of this Paragraph are the sole responsibility of the RECIPIENT.

13. **CONTRACT PERIOD**

The terms of this CONTRACT and the performance of the parties hereto shall be deemed to have commenced the 1st day of January 2020. It will continue in effect through the 18th day of December 2020 unless sooner terminated or extended as provided herein.

14. **TERMINATION OF CONTRACT**

- A. If, through any cause, the RECIPIENT shall fail to fulfill in a timely and proper manner its obligations under this CONTRACT, or if the RECIPIENT shall violate any of its covenants, agreements or stipulations, the COUNTY shall thereupon have the right to terminate this CONTRACT and withhold the remaining allocation if such default or violation is not corrected within twenty (20) days after submitting written notice to the RECIPIENT describing such default or violation.
- B. Notwithstanding any provisions of this CONTRACT, either party may terminate this CONTRACT by providing written notice of such termination, specifying the effective date thereof, at least twenty (20) days prior to such date. Payment for Project-related expenses incurred by the RECIPIENT and not otherwise paid for by the COUNTY prior to the effective date of such termination shall be as the COUNTY reasonably determines.
- C. The COUNTY may unilaterally terminate all or part of this CONTRACT, or reduce the Scope of Work, if the COUNTY loses the authority to collect low and moderate income housing and/or homeless recording fees, or if the amount of recording fees collected is reduced below the level necessary to provide the amount identified in Section 1 of this CONTRACT.

15. **SPECIAL PROVISION**

The failure of the COUNTY to insist upon the strict performance of any provision of this CONTRACT or to exercise any right based upon breach thereof or the acceptance of any performance during such breach shall not constitute a waiver of any right under this CONTRACT.

16. **SEVERABILITY**

In the event any provision, or any portion thereof, contained in this CONTRACT is held to be unconstitutional, invalid or unenforceable, said provision(s) or portion(s) thereof shall be deemed severed and the remainder of this CONTRACT shall not be affected and shall remain in full force and effect. Furthermore, if such an event occurs, the parties agree to negotiate a modification to replace the unacceptable provision(s) as soon as possible.

17. **DISPUTE RESOLUTION**

Except as otherwise provided in this CONTRACT, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute hearing. The parties shall select a dispute resolution team to resolve the dispute. The team shall consist of a representative appointed by the COUNTY, a representative appointed by the RECIPIENT, and a third party mutually agreed upon by both parties. This team shall attempt, by majority vote, to resolve the dispute. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

18. **GOVERNING LAW AND VENUE**

This CONTRACT shall be construed and enforced in accordance with, and its validity and performance governed by, the laws of the state of Washington. The superior court of Pacific County, Washington shall be the venue for any suit between the parties arising out of this CONTRACT.

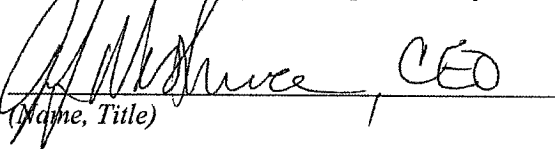
19. **ENTIRE CONTRACT**

This contract represents all the terms and conditions agreed to by the parties. No other understandings, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind any parties hereto.

IN WITNESS WHEREOF, representatives of both the RECIPIENT and the COUNTY executed this CONTRACT the date(s) so noted below.

RECIPIENT

Joint Pacific County Housing Authority


(Name, Title)

Jennifer Westerman

**BOARD OF COUNTY COMMISSIONERS
PACIFIC COUNTY, WASHINGTON**

Chair

Commissioner

Commissioner

APPROVED AS TO FORM

Pacific County Prosecutor's Office

WSBA#

ATTEST:

Marie Guernsey
Clerk of the Board