

CONTRACT

Between
PACIFIC COUNTY, WASHINGTON
And
THE CITY OF SOUTH BEND
SOUTH BEND LIBRARY CAPITAL IMPROVEMENT PROJECT

THIS CONTRACT is made between Pacific County – P O Box 187, South Bend, Washington, 98586-0187 (the “COUNTY”), and the City of South Bend, P O Drawer 9, South Bend, Washington, 98586 (the “RECIPIENT”).

WHEREAS, the RECIPIENT’S South Bend Library Capital Improvement Project (PROJECT) meets the definition of a project eligible for public facility funding as defined by Chapter 82.14.370 RCW; and

WHEREAS, the RECIPIENT’S PROJECT implements the economic development purposes identified in Chapter 82.14.370 RCW by expanding economic development opportunities and promoting job creation and retention in Pacific County; and

WHEREAS, the RECIPIENT’S PROJECT is listed on the Pacific County Overall Economic Development Plan as adopted by Resolution No. 2022-042; and

WHEREAS, RCW 82.14.370 provides statutory authority for rural (distressed) counties to impose sales and use taxes to finance public facilities in rural counties as deductions from the tax otherwise required to be collected or paid over to the state department of revenue under chapters 82.08 or 82.12 RCW; and

WHEREAS, finding Pacific County to be a rural “distressed county” in need of public facilities, the Board of Pacific County Commissioners enacted Ordinance No. 148 which imposed a sales and use tax under RCW 82.14.370(1) for twenty-five (25) years at the rate of four one-hundredths percent (0.04%) effective July 1, 1998, and established the Public Facilities Improvements Fund No. 302 within the COUNTY treasury to finance public facilities within Pacific County; and

WHEREAS, finding Pacific County a “rural county” in need of additional “public facilities” financing, the Board of County Commissioners enacted Ordinance No. 148-A increasing the locally retained sales and use tax rate under Ordinance No. 148 to eight one-hundredths percent (0.08%) effective August 1, 1999, and subsequently the Board of County Commissioners enacted Ordinance No. 148-B further increasing the locally retained sales and use tax rate under Ordinance No. 148A to nine one-hundredths percent (0.09%) effective August 1, 2007; and

WHEREAS, the COUNTY has the statutory authority under RCW 82.14.370 to assist with financing public facilities throughout Pacific County; and

WHEREAS, the COUNTY desires to financially assist the RECIPIENT with its PROJECT; and

WHEREAS, the RECIPIENT wishes to enter into this CONTRACT for expenditures related to its PROJECT as listed in Section 3. Scope of Work.

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

1. **FUNDING**

A total of Forty Thousand Dollars (\$40,000) has been pledged within the Pacific County Public Facilities Improvement Fund No. 302 to assist the RECIPIENT with this “public facilities” improvement.

Said amount shall constitute the maximum reimbursement the RECIPIENT is eligible to receive from the COUNTY under this CONTRACT. These funds are to be dispersed on a reimbursement basis only as provided in Section 4. Payment Provisions.

2. **USE OF FUNDS**

The RECIPIENT shall use these COUNTY funds solely for expenses to complete Section 3, Scope of Work.

3. **SCOPE OF WORK**

Redesign and replacement of the front steps of the South Bend Carnegie Library to meet current code requirements and to address separation and settling due to water intrusion; repair of interior plaster ceiling and walls, repair to exterior walls and the basement to prevent further health and safety issues associated with the water intrusion; installation of a sump pump, repair of the drain and improve drainage around the foundation, as described in the Rural Economic Development Infrastructure Funding Application (see Attachment A).

4. **PAYMENT PROVISIONS**

Funds shall be disbursed to the RECIPIENT by warrant within forty-five (45) days of billing.

As a provision for receiving reimbursement, the RECIPIENT shall provide the COUNTY the following:

- An invoice with backup documentation detailing expenditures in support of the PROJECT specified in Section 3. Scope of Work.

5. **CONTRACT PERIOD**

The term of this CONTRACT and the performance of the parties hereto shall commence the 1st day of January, 2023. It will continue in effect through the 15th of December, 2023 unless sooner terminated or extended as provided herein.

6. **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. The COUNTY will not disclose or make this material available to anyone other than those authorized by/in the above paragraph without first providing notice to the RECIPIENT and giving the RECIPIENT a reasonable opportunity to respond.
- 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.

7. **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.

8. **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) as amended.

9. **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 Public Facilities Improvement 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.

10. **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.

11. **INDUSTRIAL INSURANCE COVERAGE**

The parties agree that the COUNTY will not be responsible for the payment of any industrial insurance premiums or related claims or other benefits that may arise during the performance of services under this CONTRACT for any RECIPIENT employee, or for any consultant, contractor or subcontractor, or employee(s) thereof retained by the RECIPIENT.

12. **INDEMNIFICATION/HOLD HARMLESS**

A. **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.

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 RECIPIENT's indemnity obligations under the Contract.

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

13. **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.

14. **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.

15. **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 Public Facilities Improvements funds are reduced as a result of a reduction or loss of the rural sales and use taxing authority or a substantial reduction in taxable activity.

16. **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.

17. **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.

18. **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.

19. **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.

20. **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 CONTRACTOR are needed for the COUNTY to respond to a request under the Act, 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 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 CONTRACTOR 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 CONTRACTOR (a) of the request and (b) of 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.

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

21. **ADMINISTRATION**

The following individuals are designated to co-administer this CONTRACT. They shall also serve as their respective party's contact person for any and all communications relative to this CONTRACT.

For the COUNTY:

Paul Plakinger, County Administrative Officer
Pacific County General Administration
P O Box 187
South Bend, WA 98586-0006
Telephone: (360) 875-9334

For the RECIPIENT:

Julie Struck, Mayor
City of South Bend
P O Drawer 9
South Bend, WA 98586
Telephone: (360) 875-5571

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

RECIPIENT
City of South Bend

BOARD OF COUNTY COMMISSIONERS
PACIFIC COUNTY, WASHINGTON

Julie Struck, Mayor Date

Lisa Olsen, Chair

Frank Wolfe, Commissioner

Mike Runyon, Commissioner

APPROVED AS TO FORM

APPROVED AS TO FORM

Prosecutor's Office WSBA#

Amanda Bennett Date
Clerk of the Board

**PACIFIC COUNTY
RURAL ECONOMIC DEVELOPMENT
INFRASTRUCTURE FUNDING APPLICATION**

Policy Framework:

The 0.09% funds are to be used only for the purpose of financing public facilities. A public facility is defined as a project of a local government for the planning, acquisition, construction, repair, reconstruction, replacement, rehabilitation, or improvement of bridges, roads, trails, domestic and industrial water, flood control, sanitary sewer, earth stabilization, storm sewer, railroad, electricity, natural gas, buildings or structures, telecommunications, transportation and port facilities all for the purpose of job creation, retention, or expansion.

Monies collected under this law shall only be used for the purpose of financing public facilities. The public facility must be listed in the County's Comprehensive Economic Development Strategy (OEDP list) or with your city's or county's comprehensive plan.

Project Definitions:

Annual Competitive Fund: Award must be under contract with the County by the end of the year in which it is awarded. Project to be paid in full by the end of the year following the award year.

Long-Term Financing Fund: All other multi-year financed projects must be under contract with the County by the end of the year in which they are awarded, and construction shall commence in the calendar year following the project award by the County Commissioners.

Allocation Specifics:

The 0.09% funds will be divided up into two specific areas for allocation; an annual competitive fund and a long-term financing fund. The competitive fund will be ranked and distributed on an annual basis with any remaining money deposited in the long-term balance. The long-term fund will be ranked only for the amount remaining after subtracting previously awarded dollars. Any project that will be paid for in full within three years should be included as part of the annual competitive ranking. All other multi-year financed projects will compete with the long-term financed group.

Each awarded project must be under contract with the County by the end of the year in which it is awarded, and construction started in the calendar year following the date the project is awarded by the County Commissioners, who, during a regular Commissioner meeting, approve of the distribution of the 0.09% funds for those specific projects. Absent an extension, an entity not meeting the deadline can resubmit their project at a later time for consideration by the PCOG Board if funds are available.

Last funding year:

2032

This form can be filled on screen. If you need a free pdf reader, go to <https://get.adobe.com/reader/>

– **PACIFIC COUNTY
RURAL ECONOMIC DEVELOPMENT
INFRASTRUCTURE FUNDING APPLICATION**

Project Title: Annual Long-term SB Library Capital Improvement Project

Applicant: City of South Bend

Contact: Name Julie Struck

Address: PO Drawer 9

City, state, zip: South Bend, Wa 98586

Phone #: E-Mail: julie.struck@southbend-wa.gov

Name of person authorizing submittal (print or type): Julie Struck

Signature of person authorizing submittal:

1. Is project listed in the County's Comprehensive Economic Development Strategy (OEDP List, formerly called WA-CERT) or with your city's or county's comprehensive plan? (Attach copy of OEDP list or comprehensive plan). If not, do not submit application.

Yes No - Yes – Application in to OEDP and also in comprehensive plan

2. Briefly describe your project:

Project includes redesign and replacement of the front steps of the South Bend Carnegie Library in order to meet current code requirements and to address separation and settling due to water intrusion. It will also include the repair of interior plaster ceiling and walls, repair to exterior walls and the basement to prevent further health and safety issues associated with the water intrusion. It will include the installation of a sump pump, repair of the drain and improve drainage around the foundation.

3. Describe the current status of your project: (Include work completed or in progress)

Many structural deficiencies noted in a structural and health and safety assessment conducted in 2017/2018 have been addressed including mold, lead and asbestos remediation in the basement, the repair of fascia and soffits and a new HVAC system.

4. State why this project meets the standard of HB2260 passed during the Washington State 1999 Legislative Session:

The SB Carnegie Library is on State and Federal historic registers. As a worksource connection site, the library offers job search and resume assistance as well as free wi-fi, computer access, copy, scan, fax, and printing to businesses and individuals. It also provides free online and print resources for business planning.

5. Total project cost: \$ 200,000 +

6. Yearly amount requested from this funding: \$40,000

Revised February 2017

7. Number of years funding is requested: One

8. Is this a phased project? Yes No (Describe) No

9. List all other approved funding sources and amounts and describe why this funding request is necessary to complete the "funding package":

The Friends of the Library are applying for a Capital Library Improvement Grant through the State Department of Commerce. The .09 monies will help with the 50% match required for that grant.

10. Have you applied for any other sources to complete your funding? Yes No (List) Yes

Source Amount Status

Department of Commerce Capital Library Improvement Grant – Application Pending

11. Describe project specific employment benefits as follows:

Additional ____ 4 ____ FTE During Construction

Additional ____ 0 ____ FTE Employed by Facility when complete

Additional ____ 0 ____ FTE hired as a direct result of this project

Retained ____ 3 ____ FTE as a direct result of this project

Explain in detail the basis for the numbers of FTEs and provide any supporting documentation from employers.

It will require a crew to do the work of replacing the stairs and repairing the interior and exterior walls of the building. At least 4 FTE's will be needed for that. The library itself is already staffed and staffing needs (3) will not change as a result of this project.

Additional ____ 0 ____ Businesses Created by Facility when complete

Retained ____ 40+ ____ Businesses as a direct result of this project

12. What quantifiable outcomes are you going to track to measure the success of this project.

The quantifiable outcome will be seen by the ability of people to safely enter and exit the building including people with disabilities

13. Describe any other economic benefits of this project:

The library has an impact on the local economy and workforce development through provision of resources and classes and provision of direct services to individuals including the cost savings through access to goods and services, as well as access to information and technology.

14. List any other information you feel is pertinent to this application:

Gray & Osbourne is currently conducting an engineering/cost analysis for the Department of Commerce Grant application. Once it is complete, we will have a more thorough understanding of the design, engineering and costs.