

SUBRECIPIENT AGREEMENT

**Between
PACIFIC COUNTY, WASHINGTON
And
WILLAPA COMMUNITY DEVELOPMENT ASSOCIATION**

THIS AGREEMENT is made between Pacific County – P O Box 187, South Bend, Washington, 98586 (“COUNTY”), and Willapa Community Development Association – P O Box 627, Raymond, Washington 98577 (“RECIPIENT”).

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. 126 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 Department of General Administration (GA) was awarded funding from Pacific County Capital Projects Fund No. 302-Public Facilities Improvements to support the American Legion Post 150 Veteran Housing and Resource Center in downtown Raymond; and

WHEREAS, GA desires to support the Willapa Community Development Association in their pursuit to construct the American Legion Post 150 Veteran Housing and Resource Center in downtown Raymond.

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

1. FUNDING

A total of One Hundred Fifty Thousand Dollars (\$150,000) has been pledged within Pacific County Capital Projects Fund No. 302-Public Facilities Improvements to assist RECIPIENT with eligible activities related to the American Legion Post 150 Veteran Housing and Resource Center. Said amount shall constitute the maximum reimbursement RECIPIENT is eligible to receive from COUNTY under this AGREEMENT.

Funding will be provided as follows:

- Fiscal Year 2023 – Seventy-Five Thousand Dollars (\$75,000)
- Fiscal Year 2024 – Seventy-Five Thousand Dollars (\$75,000)

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

RECIPIENT shall use these COUNTY funds solely for reimbursement of expenses specifically for the American Legion Post 150 Veteran Housing and Resource Center Project in downtown Raymond.

3. **AGREEMENT PERIOD**

The terms of this AGREEMENT and the performance of the parties hereto shall be deemed to have commenced on January 1, 2023. It will continue in effect through December 15, 2024, unless sooner terminated or extended as provided herein.

4. **PAYMENT PROVISIONS**

These funds are to be dispersed to RECIPIENT on a cost reimbursement basis with backup documentation for expenses up to the maximum AGREEMENT amount as specified in Section 1. Funding.

The COUNTY must receive from RECIPIENT the final invoice with backup documentation (for expenses incurred through the effective date referenced above in Section 3. Agreement Period) **no later than December 15, 2024**.

5. **EVALUATION AND MONITORING**

- A. RECIPIENT shall maintain books, records, documents, and other evidence and accounting procedures and practices that sufficiently and properly reflect the performance of this AGREEMENT. RECIPIENT will retain all books, records, documents, and other material relevant to this AGREEMENT for six (6) years after expiration of the AGREEMENT, or from the date final payment hereunder is made, whichever is later.
- B. 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 COUNTY or the State Auditor may deem necessary, those books, records, documents, and other evidence retained by RECIPIENT with respect to all matters covered in this AGREEMENT. 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, payroll, and records of matters covered by this AGREEMENT. These rights shall last for six (6) years after expiration of this AGREEMENT, or from the date final payment hereunder is made, whichever is later.
- C. COUNTY will use reasonable security procedures and protections to assure that related records and documents provided by 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 RECIPIENT will remain its property unless otherwise agreed.
- D. RECIPIENT shall cooperate with and freely participate in any other monitoring or evaluation activities pertinent to this AGREEMENT that COUNTY needs to have conducted.

6. **RECAPTURE PROVISION**

- A. In the event RECIPIENT fails to expend these funds in accordance with state law and/or the provisions of this AGREEMENT, 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 AGREEMENT or final payment hereunder, whichever occurs later. Repayment by RECIPIENT of funds under this recapture provision shall occur within twenty (20) days of demand. In the event COUNTY is required to institute legal proceedings to enforce this recapture provision, COUNTY shall be entitled to its costs thereof, including reasonable attorney's fees.

7. **NONDISCRIMINATION**

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).

8. **NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**

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. **PUBLIC RECORDS ACT**

This Agreement and all public records associated with this Agreement shall be available from 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 RECIPIENT are needed for COUNTY to respond to a request under the Act, as determined by COUNTY, RECIPIENT agrees to make them promptly available to COUNTY. If RECIPIENT considers any portion of any record provided to COUNTY under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, RECIPIENT shall clearly identify any specific information that it claims to be confidential or proprietary. If COUNTY receives a request under the Act to inspect or copy the information so identified by RECIPIENT and COUNTY determines that release of the information is required by the Act or otherwise appropriate, COUNTY's sole obligation shall be to notify RECIPIENT (a) of the request and (b) of the date that such information will be released to the requester unless RECIPIENT obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If RECIPIENT fails to timely obtain a court order enjoining disclosure, COUNTY will release the requested information on the date specified.

COUNTY has, and by this section assumes, no obligation on behalf of RECIPIENT to claim any exemption from disclosure under the Act. COUNTY shall not be liable to RECIPIENT for releasing records not clearly identified by RECIPIENT as confidential or proprietary. COUNTY shall not be liable to RECIPIENT for any records that 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 COUNTY in any action by a third party due to the negligence, recklessness, or intentional actions by RECIPIENT relating to its performance of this AGREEMENT. This includes any lawsuit filed by a third party for COUNTY's allegedly improper release of confidential or proprietary information pursuant to a public records request.

10. **EMPLOYMENT RELATIONSHIPS**

RECIPIENT, its employees, or agents performing under this AGREEMENT are not deemed to be employees of COUNTY nor agents of COUNTY in any manner whatsoever. No officer, employee, or agent of RECIPIENT will hold themselves out as, or claim to be, an officer, employee, or agent of 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 COUNTY.

11. **INDEMNIFICATION/HOLD HARMLESS**

- A. **Indemnification by RECIPIENT.** To the fullest extent permitted by law, RECIPIENT agrees to indemnify, defend and hold 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 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 AGREEMENT; or 3) are based upon RECIPIENT'S or its subcontractors' use of, presence upon or proximity to the property of COUNTY. This indemnification obligation of RECIPIENT shall not apply in the limited circumstance where the claim, damage, loss or expense is caused by the sole negligence of COUNTY. This indemnification obligation of RECIPIENT 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 RECIPIENT hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of RECIPIENT are a material inducement to COUNTY to enter into the AGREEMENT, are reflected in RECIPIENT's compensation, and have been mutually negotiated by the parties.
- B. **Participation by COUNTY – No Waiver.** 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 AGREEMENT.
- C. **Survival of RECIPIENT's Indemnity Obligations.** RECIPIENT agrees all RECIPIENT'S indemnity obligations shall survive the completion, expiration, or termination of this AGREEMENT.

12. **INSURANCE**

Without limiting RECIPIENT'S indemnification of COUNTY, and prior to commencement of this AGREEMENT, RECIPIENT shall obtain, provide, and maintain during the term of this AGREEMENT, policies or insurance of the type and amounts described below and in a form satisfactory to 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, 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 AGREEMENT and RECIPIENT agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this AGREEMENT.
- 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 AGREEMENT 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.

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

13. **AGREEMENT MODIFICATIONS**

COUNTY and 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 AGREEMENT. It is mutually agreed and understood that no alteration or variation of the terms of this AGREEMENT 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 AGREEMENT must be approved in writing by COUNTY prior to RECIPIENT expending funds for the items covered within that amendment. Costs incurred by RECIPIENT in contravention of this Paragraph are the sole responsibility of RECIPIENT.

14. **TERMINATION OF AGREEMENT**

- A. If, through any cause, RECIPIENT shall fail to fulfill in a timely and proper manner its obligations under this AGREEMENT, or if RECIPIENT shall violate any of its covenants, agreements, or stipulations, COUNTY shall thereupon have the right to terminate this AGREEMENT and withhold the remaining allocation if such default or violation is not corrected within twenty (20) days after submitting written notice to RECIPIENT describing such default or violation.
- B. Notwithstanding any provisions of this AGREEMENT, either party may terminate this AGREEMENT 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 RECIPIENT and not otherwise paid for by COUNTY prior to the effective date of such termination shall be as 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.

15. **SPECIAL PROVISION**

The failure of COUNTY to insist upon the strict performance of any provision of this AGREEMENT, 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 AGREEMENT.

16. **SEVERABILITY**

In the event any provision, or any portion thereof, contained in this AGREEMENT is held to be unconstitutional, invalid, or unenforceable, said provision(s) or portion(s) thereof shall be deemed severed and the remainder of this AGREEMENT 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 AGREEMENT, 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 COUNTY, a representative appointed by 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 AGREEMENT 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 AGREEMENT.

19.

The RECIPIENT certifies to the best of its knowledge and belief, that it and its principals:

- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
- B. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph a.2. of this certification; and
- D. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

20.

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

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed this 10th day of October, 2023.

RECIPIENT
Willapa Community Development Assoc.

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

David Gauger
Executive Director

Lisa Olsen, Chair

Tax ID No. 91-1956539

Jerry Doyle, Commissioner

David Tobin, Commissioner

ATTEST:

Amanda Bennett, Clerk of the Board Date