

**RESOLUTION 2023-AA**

**A RESOLUTION OF THE TOWN OF EATONVILLE, WASHINGTON,  
AUTHORIZING THE MAYOR TO SIGN AN ARPA BENEFICIARY  
AGREEMENT WITH PIERCE COUNTY FOR THE REPAIR OF THE  
MASHIEL RIVER STREAMBANK ARMOR**

**WHEREAS**, the Town of Eatonville staff noted the loss of riprap protecting the riverbank from erosion over the last two winters; and

**WHEREAS**, the Town of Eatonville applied for and was awarded \$990,000.00 in grant funds by Pierce County; and

**WHEREAS**, the grant funds are to be used to repair the Mashel River Streambank Armor protecting the Town's Wastewater Treatment Plant; and

**WHEREAS**, grant matching funds in the amount of \$110,000.00 will be allocated from the Wastewater Capital Fund, bringing the total estimated project costs to \$1,100,000.00; and

**WHEREAS**, the grant agreement will be between the Town of Eatonville and Pierce County; and

**WHEREAS**, the Eatonville Town Council authorizes the Mayor to sign a Beneficiary Agreement with Pierce County; now therefore,

**THE TOWN COUNCIL OF THE TOWN OF EATONVILLE, WASHINGTON,  
HEREBY RESOLVES AS FOLLOWS:**

**THAT:** The Town Council hereby approves and authorizes the Mayor to sign the ARPA Beneficiary Agreement SC-110196, attached hereto as Exhibit A.

**PASSED** by the Town Council of Town of Eatonville and attested by the Town Clerk in authentication of such passage this 24<sup>th</sup> day of July 2023.

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David Baublits, Mayor

ATTEST:

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Miranda Doll, Town Clerk

RESOLUTION 2023-AA



<b>Title:</b> Sewer and Water Utility Infrastructure Partnership Program			
<b>Start Date:</b>	10/27/2022	<b>End Date:</b>	06/01/2025
		Mashel River Streambank Armor Repair	
<i>The County reserves the right to extend this Agreement for additional periods. The decision to extend is subject to the availability of funding, the continued priority of need for a specific service, and satisfactory performance by the Beneficiary during the period specified in this Agreement. Notification of intent to extend Agreement for additional periods with the Beneficiary will occur prior to the expiration of this Agreement.</i>			
<b>TOTAL AGREEMENT AMOUNT:</b>		Not to Exceed \$990,000.00	
<b>Beneficiary Name:</b> Town of Eatonville			
<b>Mailing Address:</b>		201 Center St W.	
<b>Contact Name:</b>	Seth Boettcher	<b>Title:</b>	Town Administrator
<b>Phone:</b>	360-832-3361 x105	<b>Email:</b>	<a href="mailto:sboettcher@eatonville-wa.gov">sboettcher@eatonville-wa.gov</a>
<b>Fiscal Contact:</b>		<b>Email:</b>	
<b>Agency UBI:</b>	272-000-002	<b>Agency SAM:</b>	L9AMJGACAZ48
Planning and Public Works Contacts			
<b>Contract Manager:</b>	Aileen Quenga	<b>Email:</b>	<a href="mailto:Aileen.Quenga@piercecounitywa.gov">Aileen.Quenga@piercecounitywa.gov</a>
<b>Program Contact:</b>	Dana Larsen	<b>Email:</b>	<a href="mailto:Dana.Larsen@piercecounitywa.gov">Dana.Larsen@piercecounitywa.gov</a>
<b>Fiscal Contact:</b>	General Email box for invoices	<b>Email:</b>	<a href="mailto:PCPWContractServices@piercecounitywa.gov">PCPWContractServices@piercecounitywa.gov</a>
<p><b>NOW, THEREFORE, for and in consideration of the mutual covenants, promises, and agreements contained herein, County and Beneficiary, referred to individually as a "Party" and collectively as the "Parties," mutually agree that Beneficiary shall provide the services and comply with the requirements set forth herein and the attachments, incorporated by reference into this Agreement:</b></p>			
<b>EXHIBITS</b>			
<b>A: Statement of Work</b>		<b>C: Recordkeeping, Reporting and Audit Requirements</b>	
<b>B: Compensation and Financial Requirements</b>		<b>D: General Terms and Conditions</b>	
<p>This Agreement, including all Exhibits and other documents incorporated by reference, contains all the terms and conditions agreed upon by the Parties. No other understandings and representations, verbal or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind the Parties. The Parties signing below warrant that they have read and understand this Agreement and have authority to enter this Agreement.</p>			
<b>Beneficiary:</b>	<b>Date</b>	<b>Beneficiary:</b>	<b>Date</b>
<b>Beneficiary:</b>	<b>Date</b>		
<b>Ian Northrip Deputy Prosecuting Attorney</b>	<b>Date</b>	<b>Gary Robinson, Finance Director</b>	<b>Date</b>
<b>Jen Tetatzin, Planning and Public Works Director</b>	<b>Date</b>	<b>Bruce Dammeier, County Executive (over \$250k)</b>	<b>Date</b>

## EXHIBIT A – STATEMENT OF WORK

### 1. BACKGROUND AND PURPOSE

In support of improving public health and addressing housing availability due to impacts from the COVID-19 pandemic, Pierce County is awarding federal American Rescue Plan Act (ARPA) stimulus funding for sewer and water systems infrastructure improvements.

This Agreement is intended to provide funding for Beneficiary to:

- Invest in critical utility infrastructure projects that improve access to clean drinking water.
- Support vital wastewater infrastructure.
- Support increased availability for affordable housing.

### 2. BENEFICIARY RESPONSIBILITIES

- 2.1 The Beneficiary project will include site investigation, preliminary design, permitting, detailed design, and construction for protection of the right bank of the Mashel River adjacent to the Town of Eatonville Wastewater Treatment Plant using engineered wood bank protection measures, protecting the treatment plant from further erosion.
- 2.2 Once complete, this project will provide protection to the riverbank along the frontage of the Town of Eatonville Wastewater Treatment Plant, protecting the embankment of the wastewater solids holding pond from further erosion. This will allow the continued safe and effective operation of the treatment plant and prevent the potential release of approximately 5.8 million gallons of wastewater contamination from the solids holding pond to the Mashel River. With appropriate monitoring and maintenance, this protection is expected to last for the life of the engineered wood structures, approximately 25 years.
- 2.3 Beneficiary will meet or exceed the deliverables and milestones on or before the deadlines set forth in the Performance Based Outputs and Outcomes listed in Sections 3 and 3a.

### 3. PERIOD OF PERFORMANCE & PERFORMANCE BASED OUTPUTS AND OUTCOMES

- 3.1 The period of performance for this Agreement begins on the **Agreement Start Date** and ends on the **Agreement End Date** as set forth herein on page one (1) of this Agreement. Funds awarded to Beneficiary must be expended prior to the Agreement End Date or they may be forfeited. County reserves the right to extend this Agreement for additional periods. The decision to extend this Agreement is subject to the availability of funding, the continued priority of need, and satisfactory performance by the Beneficiary during the period specified in this Agreement.

- 3.2 Beneficiary shall negotiate in good faith and execute any and all contracts, agreements, and other documents required by the County or this Agreement and/or to comply with federal, state, and local laws, regulations, and requirements.

**3a. SCHEDULE**

<b>Milestone Number</b>	<b>Milestone Description</b>	<b>Specific Deliverables</b>	<b>Schedule</b>	<b>NTE Reimbursement Amounts per Milestone</b>
1	Survey, Data Collection, and Field Study	Survey base map, critical areas delineation, and cultural resources pedestrian survey	August 2023	\$50,000
2	Preliminary Design (30%)	Draft design documents including basis of design memorandum and figures showing the selected alternative in sufficient detail for use in permit applications	January 2024	\$53,900
3	Permit Documents	Complete applications and support materials for all local, state, and federal land use, environmental, and cultural resources permits required for the project	February 2024	\$53,300
4	90% Design	Near-complete plans, specifications, and estimate for the selected alternative	June 2024	\$24,400
5	Final Bid Documents	Final plans, specifications, and estimate suitable for public bid	July 2024	\$7,200
6	Execute Construction Contract	Executed contract for construction of the improvements	September 2024	\$2,600
7	Permit Approvals from Regulatory Agencies	Required approvals to construct the project	October 2024	\$1,300
8	Project Construction	Physical construction of the project completed	January 2025	\$757,500
9	Project Closeout	Finalize documentation including 60-day waiting period for retainage release, and close out project	March 2025	\$39,800
<b>Total</b>				<b>\$990,000</b>

#### **4. REPORTING/DELIVERABLES**

- 4.1. The Beneficiary shall report Performance indicators including both output and outcome measures of programs supported with ARPA funding. At a minimum, the information should include the following, but Beneficiaries are encouraged to provide any additional datapoints that support efforts to promote equitable outcomes.

4.1.1 Total Number of residences connected.

4.1.2 Demographic information (age, gender, race/ethnicity, location, income etc.)

4.1.3 Outcomes over time of how the program positively impacted the target audience,

- 4.2 In addition, when requested, the Beneficiary shall complete the ARPA Funding Project report provided by the County as part of the required reporting to the US Treasury on all ARPA awards.

- 4.3 All reporting shall be done no less than quarterly. The County reserves the right to change the reporting frequency as needed and request additional performance measures, output measures, or other information regarding service delivery data for the funding awarded to the Beneficiary for the purpose of ARPA reporting.

## EXHIBIT B – BUDGET AND FINANCIAL REQUIREMENTS

1. The maximum consideration for this Agreement is not to exceed **\$990,000.00**, as set forth in the funding table below. Beneficiary shall monitor its expenses and ensure those expenses do not exceed the maximum consideration for this Agreement.

**Funding Table:**

<b>Milestone Number</b>	<b>Milestone Description</b>	<b>Specific Deliverables</b>	<b>Schedule</b>	<b>NTE Reimbursement Amounts per Milestone</b>
1	Survey, Data Collection, and Field Study	Survey base map, critical areas delineation, and cultural resources pedestrian survey	August 2023	\$50,000
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9	Project Closeout	Finalize documentation including 60-day waiting period for retainage release, and close out project	March 2025	\$39,800
<b>Total</b>				<b>\$990,000</b>

2. Payments under this Agreement to Beneficiary shall be in the form of reimbursement for appropriate, approved, and eligible costs actually incurred by Beneficiary and supported by suitable documentation. County shall reimburse Beneficiary for the total invoiced amount of approved, eligible costs incurred by Beneficiary for each invoice submitted by Beneficiary to County for reimbursement, not to exceed the **Total Agreement Amount**.
3. Beneficiary shall submit reimbursement requests via e-mail to [pcpwcontractservices@piercecountywa.gov](mailto:pcpwcontractservices@piercecountywa.gov) in a form acceptable to County no more frequently than monthly. County shall issue payment to Beneficiary for all properly submitted reimbursement requests no later than thirty (30) days after the receipt of complete and accurate reimbursement information from Beneficiary.
4. Failure to submit reimbursement requests in a form acceptable to County and/or the submission of incomplete or inaccurate reimbursement request information may result in payment delays.
5. The County's payment options for Beneficiary include electronic payments via Automated Clearing House (ACH). The ACH payment is a safe and efficient electronic payment option that credits the Beneficiary's bank account directly and provides for an increase in efficiency for both the Beneficiary and the County. In order to participate in the ACH option, Beneficiary is required to have a completed and current ACH Vendor Payment Enrollment form and W-9 on file with the County. Each form must be completed in its entirety and be current and accurate. Enrollment forms are available upon request by e-mailing [pcacctspayable@piercecountywa.gov](mailto:pcacctspayable@piercecountywa.gov). Completed enrollment forms and W-9s should be mailed to Pierce County Finance Department, 950 South Fawcett, Suite 100, Tacoma, WA 98402. Once enrolled, the ACH payment process will remain in effect for the Beneficiary until such time as the County receives written notice of revocation from the Beneficiary.
6. Beneficiary shall not expend funds provided by County under this Agreement for costs incurred prior to the Start Date listed on Page 1 of this Agreement, unless specifically authorized by the County in writing.
7. Beneficiary shall not expend funds provided by County under this Agreement for costs found to be ineligible or inappropriate under this Agreement or pursuant to applicable laws and/or regulations.
8. If Beneficiary does not meet or exceed the Project Description & Requirements or the Performance Based Outputs & Outcomes set forth herein, or otherwise violates the terms of this Agreement, the County reserves the right to recapture up to the full amount of County funds expended under this Agreement. Such right of recapture shall exist for a period not to exceed three (3) years following termination or expiration of this Agreement. Beneficiary agrees to repay such County funds under this recapture provision within thirty (30) calendar days of demand.

## EXHIBIT C – RECORDKEEPING, REPORTING & AUDIT REQUIREMENTS

### 1. RECORDKEEPING, REPORTING & AUDIT

- 1.1. This Agreement shall be considered a public document and will be available for inspection and copying by the public in accordance with the Public Records Act, RCW 42.56 (the “Act”). If Beneficiary considers any portion of any record provided to County under this Agreement, whether in electronic or hard copy form, to be protected under law, Beneficiary shall clearly identify each such portion with words such as “CONFIDENTIAL,” “PROPRIETARY” or “BUSINESS SECRET.” If a request is made for disclosure of such portion, County will determine whether the material should be made available under the Act. If County determines that the material is subject to disclosure, County will notify Beneficiary of the request and allow Beneficiary ten (10) business days to take whatever action it deems necessary to protect its interests. If Beneficiary fails or neglects to take such action within said period, County will release the portions of record(s) deemed by County to be subject to disclosure. County shall not be liable to Beneficiary for inadvertently releasing records pursuant to a disclosure request not clearly identified by Beneficiary as “CONFIDENTIAL,” “PROPRIETARY” or “BUSINESS SECRET.”
- 1.2. Beneficiary shall maintain books, records, and documents of its performance under this Agreement in accordance with generally accepted accounting principles. Beneficiary shall retain all financial information, data, and records related to and/or arising from performance of this Agreement for six (6) years after the date of final payment under this Agreement, unless longer and otherwise provided or required by law. Beneficiary shall provide access to its facilities to the County, the state and/or federal agencies or officials at all reasonable times in order to monitor and evaluate the performance of this Agreement, if and as necessary. County shall give reasonable notice to Beneficiary of the date on which the audit shall begin. The audit rights under this Section extend only to financial and accounting books, records, and documents directly related to this Agreement.
- 1.3. Beneficiary shall provide a status report to County of the progress made on the **Project Description & Requirements, the Performance Based Outputs & Outcomes, and the Additional Project Specific Reporting**, 90 days after the Start Date of this Agreement and every 90 days thereafter until Beneficiary’s obligations under this Agreement have been satisfied.
- 1.4. In addition, when requested, the Beneficiary shall complete the ARPA Funding Project report provided by the County as part of the required reporting to the US Treasury on all ARPA awards.
- 1.5. Upon reasonable request by County, Beneficiary shall provide to County any and all information, data, and other reporting, to the fullest extent permitted by law, that is required by the County to comply with federal, state, and local laws and to meet the County’s auditing and reporting obligations.
- 1.6. The County reserves the right to request additional performance measures, output measures, or other information regarding service delivery data for the funding awarded to the Beneficiary for the purpose of ARPA reporting.



## 2. ADDITIONAL PROJECT SPECIFIC REPORTING

- 2.1 The Beneficiary shall complete financial, performance and compliance activities as required and outlined in this Agreement and by the SLFRF Program, including those summarized by the SLFRF Compliance and Reporting Guidance released by the U.S. Department of the Treasury. Not all SLFRF or Federal requirements are listed in this Agreement, but all applicable federal requirements are incorporated herein. Beneficiary must determine the applicable SLFRF and federal requirements and must comply with all such requirements. Beneficiary agrees to indemnify, defend, and hold harmless County for any failure to comply with applicable SLFRF or other federal requirements.

SLFRF Guidance Requirements include but are not limited to the following required reporting metrics, Beneficiary must provide quarterly reports that contain the following information:

### A. All Infrastructure Projects:

- Projected/actual construction start date (month/year)
- Projected/actual initiation of operations date (month/year)
- Project Location
- A recipient may provide a certification that, for the relevant project, all laborers and mechanics employed by contractors and subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the “Davis-Bacon Act”), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as “baby Davis-Bacon Acts”). If such certification is not provided, a recipient must provide a project employment and local impact report detailing:
  - The number of employees of contracts and sub-contractors working on the project;
  - The number of employees on the project hired directly and hired through a third party;
  - The wages and benefits of workers on the project by classification; and
  - Whether those wages are at rates less than those prevailing.
- Recipients must maintain sufficient records to substantiate this information upon request. A recipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing:
  - How the recipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project, including a description of any required professional certifications and/or in-house training;

- How the recipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project;
- How the recipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities, including descriptions of safety training, certification, and/or licensure requirements for all relevant workers (e.g., OSHA 10, OSHA 30);
- Whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and
- Whether the project has completed a project labor agreement.
- Whether the project prioritizes local hires.
- Whether the project has a Community Benefit Agreement, with a description of any such agreement.

B. Water and Sewer Projects (Required once the project starts):

- National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable; for projects aligned with the Clean Water State Revolving Fund)
- Public Water System (PWS) ID number (if applicable; for projects aligned with the Drinking Water State Revolving Fund)
- Median Household Income of service area
- Lowest Quintile Income of the service area

## EXHIBIT D – GENERAL TERMS & CONDITIONS

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- 1. Applicable Law and Venue.** This Agreement shall be governed, construed, and interpreted according to the laws of the State of Washington. In the event either Beneficiary or County deem it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, Beneficiary and County agree that any such action or proceeding shall be brought in Pierce County Superior Court. Beneficiary and County shall be responsible for their own attorney's fees and costs.
- 2. Assignment.** Beneficiary shall not assign any interest in this Agreement and shall not transfer any interest in the Agreement to any entity or person without prior written approval by the County.
- 3. Compliance with Laws.** Beneficiary shall comply with all relevant federal, state, and local laws. Specifically, but not by way of limitation, Beneficiary shall comply with Revised Code of Washington (RCW) 39.12 (Prevailing Wages on Public Projects) if and as applicable. Prevailing wage work means work, construction, alteration, repair or improvement that is performed at a cost to the state or any other public agency. This includes, but is not limited to, construction, reconstruction, maintenance, replacement or repair, such as demolition, remodeling, renovation, road construction, building construction, ferry construction and utilities construction. Beneficiary shall contact Pierce County Contract Compliance with any questions, or for additional information, related to prevailing wages on public projects or other compliance requirements at 253-798-7456.
- 4. Conflict of Interest.** Beneficiary warrants that it has no direct or indirect economic interest which conflicts in any manner with its performance of this Agreement. Beneficiary shall comply with County's Code of Ethics, Pierce County Code 3.12, and revisions thereto, as applicable.
- 5. Debarment.** Beneficiary shall assure that its officers, agents, contractors/subcontractors, and consultants shall not fund, contract with, or engage the services of any consultant, contractors/subcontractors, supplier, or other party who is debarred, suspended, or otherwise ineligible to receive public funds. Beneficiary certifies that Beneficiary is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in the Agreement by any federal, state, or local department or agency. If requested by County, Beneficiary shall complete a certification to the terms of this Section.
- 6. Defense & Indemnity Agreement.** The Beneficiary agrees to defend, indemnify and save harmless the County, its appointed and elected officers and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the County, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons, and for damages to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Beneficiary, its contractors/subcontractors, its successor or assigns, or its or their agent, servants, or employees, the County, its appointed or elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the County, its appointed or elected officials or employees.
  - a. The preceding paragraph is valid and enforceable only to the extent of the Beneficiary's negligence where the damages arise out of services or work in connection with or collateral to, a contract or agreement relative to construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including moving and demolition in connection therewith, a contract or agreement for architectural,

landscape architectural, engineering, or land surveying services, or a motor carrier transportation contract and where the damages are caused by or result from the concurrent negligence of (i) the County or its agents or employees, and (ii) the Beneficiary or the Beneficiary's agents or employees.

- 7. Disputes.** If a dispute relating to and/or arising from this Agreement cannot be settled through direct discussions between the Parties, the Parties agree to endeavor to settle the dispute through a mediation provider acceptable to both Parties, the cost of which shall be borne equally by the Parties. The County reserves the right to join any dispute under this Agreement with any other claim in litigation or other dispute resolution forum, and the Beneficiary agrees to such joinder, so that all disputes relating to and/or arising from this Agreement may be consolidated and resolved in a single forum.
- 8. Entire Agreement:** This written Agreement represents the entire agreement between the Parties and supersedes any prior oral statements, discussions or understandings between the Parties.
- 9. E-Verify Participation.** Beneficiary shall comply with Pierce County Code 2.106.022, as applicable.
- 10. Future Non-Allocation of Funds.** Notwithstanding any other terms of this Agreement, if sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the County will not be obligated to make payment for services or amounts after the end of the fiscal period through which funds have been appropriated and allocated, unless authorized by county ordinance. No penalty or expense shall accrue to the County in the event this provision applies.
- 11. Improper Influence.** Beneficiary and County warrant that each did not now and will not employ, retain, or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining, or extending this Agreement. Each agrees, warrants, and represents that no gratuity whatsoever has been or will be offered or conferred with a view towards obtaining, maintaining, or extending this Agreement.
- 12. Independent Contractor.** Nothing herein shall be construed as creating the relationship of employer and employee, or principal and agent, between Beneficiary and County and the County or any of the Beneficiary's employees or agents. Beneficiary and County shall each retain all authority for services rendered, standards of performance, control of personnel, and other matters incident to the performance of services by Beneficiary and County, respectively, pursuant to this Agreement. Beneficiary acknowledges that Beneficiary is not entitled to any County benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other special rights or privileges afforded to County employees. Beneficiary represents that Beneficiary maintains a separate place of business and will report and pay all taxes as required by federal, state, and local law. Beneficiary will defend, indemnify, and hold harmless County, its officers, agents or employees from any loss or expense, including but not limited to settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this Section.
- 13. Industrial Insurance Waiver.** With respect to the performance of this Agreement and as to claims against the County, its officers, agents and employees, the Beneficiary expressly waives its immunity under Title 51 of the RCW, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this Agreement extend to any claim brought by or on behalf of any employee of the Beneficiary. This waiver is mutually negotiated by the Parties to this Agreement.
- 14. Licensing and Accreditation Standards.** Beneficiary agrees to comply with all applicable federal, state, and local licensing requirements, all applicable accrediting or certification standards, and any other standards

or criteria established by County to ensure quality of services, and to supply proof of said compliance upon demand.

- 15. Local, Minority & Women's Business Enterprises.** Beneficiary is encouraged to utilize qualified local businesses and business enterprises certified by the Washington State Office of Minority and Women's Business Enterprises (MWBE) when practicable. A directory of MWBE firms is published by the Washington State Office of Minority and Women's Business Enterprises (OMWBE) and available at [omwbe.wa.gov](http://omwbe.wa.gov), by calling 360-664-9750, or by contacting Pierce County Contract Compliance at 253-798-7456.
- 16. Modifications.** Either party may request changes in the Agreement. Any and all agreed modifications shall be in writing, signed by each of the Parties.
- 17. No Third-Party Beneficiary.** County does not intend by this Agreement to assume any contractual obligations to anyone other than Beneficiary, and Beneficiary does not intend by this Agreement to assume any contractual obligations to anyone other than County. County and Beneficiary do not intend that there be any third-party beneficiary to this Agreement.
- 18. Non-Discrimination and Equal Employment Opportunity.**
  - a. **Nondiscrimination in Employment.** During performance of this Agreement, Beneficiary agrees that it will not discriminate against any employee or applicant for employment because of the employee or applicant's sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression, age except by minimum age and retirement provisions, or any other basis protected by law, unless based upon a bona fide occupational qualification.
  - b. **Equal Employment Opportunity Efforts.** Beneficiary will undertake and require all contractors/subcontractors to undertake equal employment opportunity efforts to ensure that applicants and employees are treated, without regard to their sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression, age, or any other basis protected by law. Equal employment opportunity efforts shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. Beneficiary agrees to post, and to require contractors/subcontractors to post in conspicuous places available to employees and applicants for employment notices setting forth this nondiscrimination clause.
  - c. **Nondiscrimination in Subcontracting Practices.** During the term of this Agreement, Beneficiary shall not create barriers to open and fair opportunities to participate in County contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with contractors/subcontractors and suppliers, Beneficiary shall not discriminate against any person because of their sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression, age except by minimum age and retirement provisions, or any other basis protected by law, unless based upon a bona fide occupational qualification.
  - d. **Compliance with Non-Discrimination Laws and Regulations.** Beneficiary shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders and regulations that prohibit discrimination. These laws include, but are not limited to, RCW chapter 49.60, Titles VI and VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Restoration

Act of 1987. Beneficiary shall further comply fully with any equal opportunity requirements set forth in any federal regulations, statutes or rules included or referenced in the contract documents.

- e. **Compliance with Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) and the Americans with Disabilities Act of 1990 as amended (ADA).** Pursuant to Title II of the ADA, and Section 504, County must not discriminate against people with disabilities in providing services, programs or activities even if those services, programs or activities are carried out by Beneficiary. Beneficiary agrees that it shall provide all programs, services, and activities to County employees or members of the public under this Agreement in the same manner as County is obligated to under Title II of the ADA, and Section 504 and shall not deny participation of the benefits of such services, programs, or activities to people with disabilities on the basis of such disability. Failure to comply with this Section shall be a material breach of, and grounds for the immediate termination of, this Agreement. The Beneficiary shall not discriminate against persons with disabilities in performing this Agreement. In any subcontracts for the programs, activities and services under this Agreement, the Beneficiary shall include the requirement that the contractor/subcontractor provide to persons with disabilities access to programs, activities and services provided under that contract, as required by the disability access laws; that the contractor/subcontractor shall not discriminate against persons with disabilities in providing the work under this Agreement and that the Beneficiary shall provide that the County is a third party beneficiary to that required provision.
- f. **Sanctions for Violations.** Any violation of the mandatory requirements of the provisions of this Section shall be a material breach of this Agreement, for which Beneficiary may be subject to damages, withholding payment and any other sanctions provided for by contract and by applicable law.

- 19. **Notice.** Except as otherwise set forth in the Agreement, for all purposes under this Agreement, except service of process, notice shall be given by the Beneficiary to the County contact(s) at the addresses reflected on the page one (1) of this Agreement. Notice to the Beneficiary for all purposes under this Agreement shall be given to the mailing address reflected on page one (1) of this Agreement. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.
- 20. **Religious Activities.** In accordance with the First Amendment of the United States Constitution and with Article 1, Section 11 of the Washington State Constitution, as a general rule, funds received under this Agreement may not be used for religious activities. Beneficiary may not engage in inherently religious activities such as worship, religious instruction, or proselytization as part of this Agreement. Beneficiary may engage in inherently religious activities, but such activities must be separated in time or place from performance under this Agreement and participation by individuals to receive services under this Agreement must be voluntary. In performing this Agreement, Beneficiary shall not discriminate against individuals receiving the benefits of this Agreement on the basis of religion or religious belief.
- 21. **Severability.** If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which

can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

- 22. Survival.** The terms and conditions contained in this Agreement that by their sense and context are intended to survive the expiration of this Agreement shall so survive.
- 23. Taxes.** Beneficiary shall pay all federal, state, and local taxes incurred by Beneficiary. Beneficiary shall require payment of all federal, state, and local taxes incurred by any of its employees, contractors, consultants, and agents who are paid from funds provided under this Agreement or act in furtherance of this Agreement. Beneficiary hereby agrees to indemnify the County against any demand to pay taxes arising from the Beneficiary's failure to pay taxes owed relating to and/or arising from this Agreement.
- 24. Waiver.** Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.