

Title: 47th Ave Sidewalks
Storm Sewers
Start Date: July 1, 2011
End Date: December 31, 2013
Fiscal Year: 2011
Contract Amount: \$119,150
Subrecipient: City of Fife
Contact: Dave Zabell
Telephone: 253-896-8602
BARS Code: 134.900.CG11.55952.63.0110
CFDA #: 14.218
Agreement #: 90827

PIERCE COUNTY COMMUNITY CONNECTIONS

CDBG Public Facilities Subrecipient Agreement

This contractual agreement, referred to as this "Agreement", is comprised of these General Terms and Conditions, any attached Exhibits, and subsequent Amendments. The Agreement is a contract between PIERCE COUNTY, subsequently referred to as the "County", and City of Fife, subsequently referred to as the "Subrecipient". Subrecipient agrees to the terms and conditions set forth in this Agreement, including the following Exhibits:

- Exhibit A Applicable Definitions
- Exhibit B Scope of Work
- Exhibit C Compensation and Financial Requirements and;
- Exhibit D Special Provisions

1. PERIOD OF PERFORMANCE

The period of performance for this Agreement begins **July 1, 2011** and ends **December 31, 2013**. The 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 for a specific service, and satisfactory performance by the Subrecipient during the period specified in this Agreement. Notification of intent to contract for additional periods with the Subrecipient will occur prior to the expiration of this Agreement.

2. CONSIDERATION

The maximum consideration for this Agreement shall not exceed **\$119,150 (One hundred nineteen thousand, one hundred fifty and 00/100 dollars)**.

3. SCOPE OF WORK AND REIMBURSEMENT

- A. The Subrecipient agrees to provide those services set out in the exhibits.
- B. The County agrees to pay the Subrecipient for services outlined in Exhibit B, Scope of Work, and in accordance with Exhibit C, Compensation and Financial Requirements. Payment by the County is subject to receipt of such funds by the County from the funding source.
- C. Total funds provided under this Agreement cannot be modified and administrative costs cannot be increased without the express prior written approval of the County.
- D. If the County cannot make payment to the Subrecipient due to non-payment by the funding source, the failure to pay by the County shall not constitute a breach of contract.

4. AMENDMENTS

- A. All Amendments to this Agreement shall be in writing and approved by the County.
- B. No Amendments to this Agreement shall be implemented without prior written approval by the County.
- C. Changes to the general scope of the services to be performed under this Agreement or to any other provisions of this Agreement shall be made by written Amendment.

5. INSURANCE

- A. Throughout the life of this Agreement and any Amendments, the Subrecipient and, if applicable, its consultants or subcontractors, shall carry Commercial General Liability Insurance, Commercial General Automobile Liability Insurance and Professional Liability Coverage, and other coverage as may be appropriate unless otherwise provided in Exhibit D, Special Provisions.
- B. Pierce County shall be named as an additional insured on all required policies except Professional liability insurance for services performed under this Agreement; the Subrecipient's insurance is considered the primary source of coverage.
- C. The Subrecipient shall not begin work under this Agreement until all insurance documentation required in this section has been obtained and approved by the County Risk Management and Insurance Department. The Subrecipient shall provide a Certificate of Insurance executed by an authorized insurance agent indicating the coverage below:

Commercial General Automobile Liability	Bodily Injury Liability and Property Damage Liability Insurance \$1,000,000.00 each occurrence with no greater than a \$1,000.00 deductible.
Commercial General Liability	Bodily Injury Liability and Property Damage Liability Insurance \$1,000,000.00 each occurrence OR combined single limit coverage of \$2,000,000, with no greater than a \$1000.00 deductible.
Professional Liability Insurance	Shall include errors and omissions insurance providing \$1,000,000.00 coverage with not greater than a \$5,000.00 deductible for all liability which may be incurred during the life of this Agreement.

- D. In the event of non-renewal, cancellation or material change in the coverage provided, thirty (30) calendar days written notice shall be furnished to the County prior to the date of non-renewal, cancellation, or change. Such notice must be sent to the Pierce County Risk Management Department, 955 Tacoma Avenue South, Room 303, Tacoma, Washington 98402.
- E. The County has no obligation to report occurrences unless a claim is filed with the Pierce County Risk Management Department and the County has no obligation to pay the Subrecipient's insurance premiums.

6. ADDITIONAL INSURANCE COVERAGE OR BOND

The Subrecipient shall maintain through the life of this Agreement, a separate fidelity or faithful performance bond payable to "Pierce County" or obtain blanket employee dishonesty coverage as part of their Commercial General Liability insurance policy, in the minimum amount of **\$29,788**. The bond or insurance shall be conditioned upon the Subrecipient faithfully accounting for all funds received by the Subrecipient under this Agreement, including subsequent amendments, and further assuring that such funds are used only for the purposes of this Agreement. The County shall request in writing any increases in the amount of the bond or insurance coverage and the Subrecipient shall comply within fifteen (15) calendar days of receipt of the written notice.

7. DEFEND, HOLD HARMLESS AND INDEMNIFY

- A. The Subrecipient and its officers, agents, employees, subcontractors and/or consultants, agree to defend, indemnify and save harmless Pierce and its appointed and elective 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, and 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, or on account of damage to property, including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Subrecipient, its officers, agents, employees, subcontractors, and/or consultants, successor or assigns, or the County, or its appointed or elected officers, employees or agents, except only such injury or damage as shall have been occasioned by the sole negligence of the County, or its appointed or elected officials or employees. The Subrecipient's obligation to indemnify, defend, and hold harmless shall not be eliminated by any actual or alleged concurrent negligence of the County, or its agents, agencies, employees and officers, except as provided below.
- B. The Subrecipient agrees that the obligation to indemnify, defend and hold the County harmless as provided above extends to any claim brought on behalf of any employee of the Subrecipient and its subcontractors or consultants. The Subrecipient specifically and expressly waives any immunity under Insurance Title 51, RCW, and acknowledges that this waiver was mutually negotiated and agreed to by the parties herein.
- C. The following paragraph applies to all work or services 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:

If the claim, suit, or action for injuries, death, or damages as provided for in the preceding paragraph is caused by or results from the concurrent negligence of the County or the County's agents or employees, and the Subrecipient or its officers, agents, or employees, the indemnity provisions provided for in this Agreement shall be valid and enforceable only to the extent of the Subrecipient's negligence.

- D. The Subrecipient shall bear sole responsibility for damage to completed portions of the project and to property located off the project caused by erosion, siltation, run-off, or other related items arising during construction of the project. The Subrecipient shall also bear sole responsibility for any pollution of rivers, streams, ground water, or other waters which may occur as a result of construction operations.

The Subrecipient shall exercise all necessary precautions throughout the life of the project to

prevent pollution, erosion, siltation, and damage to property.

- E. In addition to any other remedy authorized by law, the County may retain so much of the money otherwise due the Subrecipient as deemed necessary by the County to ensure indemnification until disposition has been made of such suits or claims under subject to the provisions of this section.

8. NON-DISCRIMINATION IN EMPLOYMENT AND CLIENT SERVICES

- A. During the performance of this Agreement, the Subrecipient shall comply with federal, state, and local laws including, but not limited to:
- Section 703, Titles VI and VII of the Civil Rights Act of 1964 [42 U.S.C. 2000d and e], the Civil Rights Act of 1991 [42 U.S.C. 1981],
 - The Americans with Disabilities Act of 1990 (ADA) [42 U.S.C. 12101 *et seq.*],
 - Sections 503 and 504 of the Rehabilitation Act of 1973 [29 U.S.C. 793 and 794], the Age Discrimination in Employment Act of 1967 [29 U.S.C. 621],
 - The Age Discrimination Act of 1975 [42 U.S.C. 6102],
 - The Vietnam Era Veterans Readjustment Assistance Act of 1974 [38 U.S.C. 2011],
 - Any relevant Executive Order (E.O.) issued by the President of the United States
 - The Washington State Law Against Discrimination [Chapter 49.60 RCW], and
 - Any related provisions of the Code of Federal Regulations (CFR), Washington Administrative Code (WAC) and Revised Code of Washington (RCW), or any subsequent amendments to these provisions.
- B. Requirements of the County's Non-discrimination Plan are incorporated by reference to this Agreement and include, but are not limited to paragraphs listed below.
- C. The Subrecipient shall not discriminate against any employee or applicant for employment, nor conduct any unlawful employment practices because of race, color, religion, creed, national origin, sex, sexual orientation, age, marital status, veteran status, or the presence of any sensory, mental, or physical disability, or the use of a trained guide dog or service animal by a disabled person. This requirement does not apply, however, to a religious corporation, association, or educational institution with respect to the employment of individuals of a particular religion to perform work connected with the operation of such corporation, association, or educational institution, in pursuit of its activities.
- D. The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, national origin, sex, sexual orientation, age, marital status, veteran status, or the presence of any sensory, mental, or physical disability, or the use of a trained guide dog or service animal by a disabled person. For newspaper advertisements, the Subrecipient may state that the Subrecipient is an Equal Opportunity Employer, instead of using the longer qualification.
- E. The Subrecipient will not, on the basis of race, color, religion, creed, national origin, sex, age,

disability, sexual orientation, marital status, or veteran status:

1. Deny an eligible individual any services or other benefits provided under this Agreement or any subcontracts awarded pursuant to this Agreement;
 2. Provide any services or other benefits to an individual which are different, or are provided in a different manner from those provided to others under this Agreement or any subcontracts awarded pursuant to this Agreement;
 3. Subject an individual to unlawful segregation or separate treatment, or unlawful discriminatory treatment in any manner related to the receipt of any services and/or the use of the Subrecipient's facilities, or other benefits provided under this Agreement; nor
 4. Deny any individual an opportunity to participate in any service provided by this Agreement, or afford an opportunity to do so which is different from that afforded others under this Agreement. In determining: (i) the types of service or the benefits to be provided; (ii) the class of individuals to whom, or the situation in which, such services or other benefits will be provided; or (iii) the class of individuals to be afforded an opportunity to participate in any service or other benefits; the Subrecipient will not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, religion, creed, national origin, sex, sexual orientation, age, marital status, veteran status, or the presence of any sensory, mental, or physical disability, or the use of a trained guide dog or service animal by a disabled person.
- F. As required by Title III of the ADA regarding places of public accommodation, the Subrecipient will ensure equal opportunity for individuals with disabilities to receive services. The Subrecipient will make reasonable modifications to policies, practices, and procedures that deny equal access to individuals with disabilities.

8. DRUG-FREE WORKPLACE

The Subrecipient shall maintain a written drug-free workplace policy, notifying employees that the possession or use of a controlled substance is prohibited in the workplace, and specifying the actions which will be taken against employees for any violation of the policy. The policy shall be developed and prominently posted as soon as practically possible, but no later than sixty (60) calendar days after the effective date of this Agreement.

9. PAYMENT OF TAXES

As a condition of performance of this Agreement, the Subrecipient shall pay all federal, state, and local taxes incurred by the Subrecipient and shall require their payment by any subcontractor or any other person in the performance of this Agreement. Satisfactory performance of this section is a condition precedent to payment by the County under this Agreement.

10. RELATIONSHIP, ASSIGNABILITY, AND SEVERABILITY

The Subrecipient, its employees, agents, consultants or subcontractors performing work under this Agreement are independent contractors and are not employees or agents of the County in any manner whatsoever. The Subrecipient, its employees, agents, consultants, or subcontractors will not hold itself out as, nor claim to be, an officer or employee of the County for any reason, and will not make any claim, demand, or application to or for any right, privilege, or benefit applicable to an officer or employee of the County including, but not limited to Worker's Compensation coverage,

Unemployment Insurance, Social Security, retirement membership or credit, health care, or vacation or sick leave benefits.

The performance of all or part of this Agreement by the Subrecipient shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Subrecipient or any employee of the Subrecipient, or any subcontractor, or any employee of any subcontractor by the County at the present time or in the future.

The Subrecipient shall not assign any interest in this Agreement and shall not transfer any interest in the Agreement to any person without prior written approval by the County. If any provision of this Agreement or portion thereof, is found to be invalid, the remainder of this Agreement shall not be affected, providing the remainder continues to conform to applicable federal, state, and local laws and regulations.

11. AUDITS

The Subrecipient shall submit to the County's fiscal representative an independent audit engagement letter and other reports as follows:

- A. Subrecipients that are required to have an A-133 audit (Single Audit) must submit a copy of the independent auditor engagement letter to the County once this Agreement has been executed.
- B. Inform the County's fiscal representative in advance of the date and time of the independent auditor's exit interview with the Subrecipient so that a County representative can be present if the County so desires.
- C. Submit the independent Certified Public Accountant (CPA's) auditor's financial statement report, the A-133 audit (single audit) reports and the management letter ("collectively referred to as "reports") to the County within thirty (30) calendar days following the issuance of such reports.
- D. Provide comments on any findings and recommendations in the reports, including a plan for corrective action for any findings.
- E. The working papers of the reports must be available to the County.

In the event the Subrecipient's independent auditor does not provide the assurances necessary to satisfy federal and/or state audit requirements, the County retains the right to request a full audit and the Subrecipient will be responsible for any and all costs incurred in order to provide the required audit and assurances.

The reports will be submitted to the County's fiscal representative annually if the Subrecipient receives an annual audit due to requirements other than stated in this Agreement.

For Subrecipients who are not required to obtain an A-133 audit, the County, at its discretion, may require the Subrecipient to obtain an independent review or an independent audit, at the Subrecipient's expense, conducted by an independent CPA. A-133 (single audit) requirements may also apply. See Exhibit C, Compensation and Financial Requirements.

- A. The Subrecipient must establish and maintain adequate internal control systems and standards that apply to the entire operation of the organization.
- B. The Subrecipient will provide the County with financial, service, progress, and other reports, at

those intervals and in such formats as are required by the County.

12. RECORDS AND REPORTS

- A. The Subrecipient shall retain all books, records (including medical and treatment records), documents, reports, and other data relevant to this Agreement, for a minimum of six (6) years after expiration or termination of this Agreement, unless longer and otherwise provided or required by law. If any audit, claim, litigation, or other legal action involving the records is started before applicable retention dates expire, the records shall be maintained until completion and resolution of all issues arising therefrom or until the end of applicable retention dates, whichever is later.
- B. An adequate audit trail shall be maintained. All transactions are to be clearly documented. The documentation is to be readily available for examination.
- C. The Subrecipient shall clearly separate allowable costs from unallowable costs, in accordance with the regulations and restrictions normally associated with federal programs including OMB Circular A-21, A-87 (2 CFR 225), A-110, A-122 (2 CFR 230), and A-133, A-102, or A-110 (2 CFR 215) (as appropriate), OMB's Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and other such uniform administrative requirements for grants-in-aid now in effect or which hereafter may be made applicable by local, state, or federal laws or regulations. All of the above are incorporated in this Agreement by reference.
- D. The Subrecipient shall maintain written policy and procedural manuals for all services, information systems, personnel, and accounting/finance in sufficient detail such that operations can continue should staff changes or absences occur.
 - 1. The Subrecipient must establish and maintain an accounting system which adequately and separately identifies all funding sources and all application of funds associated with providing the required services including, but not limited to, local, state, and federal grants, fees, donations, federal funds, and all other funds, public or private. All costs incurred by the Subrecipient must be accurately identified and recorded even when no revenue is received for services. This accounting system provides the means to gather fiscal data necessary to determine: a) the cost of a unit of service; b) the bid price; and c) if funds were generated in excess of allowable costs.
 - 2. These records shall contain information pertaining to projects, contracts, grants, or sub-grant awards, and all authorizations, obligations, non-obligated balances, assets, outlays, liabilities, expenditures, and revenue.
 - 3. The Subrecipient shall maintain all books, records, documents, reports, and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in performance of this Agreement. Subrecipients shall maintain their fiscal books, records, documents, and other data in a manner consistent with generally accepted accounting principles.
 - 4. All records required to be maintained by this Agreement or by state and federal regulations, except for exempt medical and treatment records, are public records and shall be maintained and released, when requested, in accordance with applicable laws.

13. RIGHT TO INSPECTION AND USE OF MATERIALS

- A. County representatives, the State Auditor, and officials of the federal government shall have the right to review and monitor the financial and service components of this Agreement. The County's review will occur with reasonable notice, and will include, but is not limited to, on-site inspection by County agents or employees, and inspection of all records or other materials which the County deems pertinent to performance, compliance, or quality assurance in conjunction with this Agreement.
- B. During the term of this Agreement and for one calendar year following termination or expiration of this Agreement, the Subrecipient shall, upon receiving reasonable notice, provide the County with access to its place of business and to its records that are relevant to compliance with this Agreement.
- C. The County may duplicate, use, and disclose in any manner, for any purpose whatsoever and authorize others to so do, all material created under this Agreement and paid for by the County.

14. DEBARMENT OF SUBRECIPIENTS

The Subrecipient shall assure that, its officers, agents, subcontractors, and consultants shall not fund, contract with, or engage the services of any consultant, subcontractor, supplier, or other party who is debarred, suspended, or otherwise ineligible to receive funds.

The Subrecipient certifies that the Subrecipient is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in the Agreement by any federal department or agency. If requested by the County, the Subrecipient shall complete a Certification Debarment, Suspension, Ineligibility, and Voluntary Exclusion form.

15. RESOLUTION OF DISPUTES

- A. A Subrecipient with a complaint involving this Agreement is encouraged to first attempt to resolve the matter with the County informally by telephoning the appropriate County representative or by meeting with that individual in person. If the informal dispute resolution process is unsatisfactory and the Subrecipient elects to register a formal complaint, a Subrecipient shall submit a detailed written description of the issues which form the basis of the complaint to the appropriate Manager at Community Connections, 1305 Tacoma Avenue South, Suite 104, Tacoma, WA 98402.
- B. Upon receipt of a formal written complaint, a County Manager or designee will promptly send a written confirmation to the Subrecipient acknowledging receipt of the complaint. The County Manager or designee shall also promptly contact the Subrecipient to establish a meeting to discuss and seek agreement and resolution of the formal complaint. The manager shall issue a written decision regarding the Subrecipient's formal complaint no later than fifteen (15) working days following completion of the meeting.
- C. If agreement and resolution are not reached and the Subrecipient elects to pursue the complaint further, the Subrecipient may, within five (5) working days after receipt of the Manager's written decision, file a written appeal to the Director of Pierce County Community Connections at the address listed in this Agreement. The appeal must state all facts and arguments upon which the appeal is based. The Director or designee will render a written decision within fifteen (15) working days following completion of the meeting.
- D. The Subrecipient may appeal an adverse decision of the Director of Pierce County

Community Connections to the Pierce County Executive, 930 Tacoma Avenue South, Room 737, Tacoma, Washington, 98402. The appeal must be received in writing by the Pierce County Executive within five (5) working days of the Subrecipient's receipt of the Director's decision. Upon receipt of a formal written appeal, the Pierce County Executive or designee will schedule a meeting with the Subrecipient within fifteen (15) working days of receipt of the appeal. The Pierce County Executive or designee will issue a written decision within fifteen (15) working days following completion of the meeting.

- E. In the event that any subsequent litigation should arise concerning this Agreement, the venue of such litigation shall be in the courts of Pierce County. This Agreement shall be governed by the laws of the State of Washington.
- F. All mailings by and to the County required in this section of the Agreement shall be by certified mail with return receipt requested to the Subrecipient's address of record.

16. SUSPENSION, TERMINATION, AND CLOSEOUT

- A. For Convenience – Either the Subrecipient or the County may terminate this Agreement for convenience or without cause by providing written notice at least sixty (60) calendar days prior to the effective date of the termination. If this Agreement is so terminated, the County and Subrecipient shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.
- B. For Cause – The County may, upon written notice to the Subrecipient, immediately suspend or terminate this Agreement in whole or in part, or withhold any payment of funds in whole or in part, when the County determines, in its sole discretion, that continuation of the Agreement is detrimental to the County's interest, including, without limitation, the occurrence of any one or more of the following:
 - 1. Expected or actual funding from the state, federal government, or other source(s) is withdrawn, reduced, or limited in any manner after the effective date of this Agreement and prior to its normal completion; or
 - 2. Performance of this Agreement is rendered unfeasible or impossible for any reason; or
 - 3. Subrecipient fails to comply with any of the terms or conditions of this Agreement or when the Subrecipient fails to substantiate Subrecipient's compliance with this Agreement when requested to do so by the County; or
 - 4. Subrecipient uses Agreement funds ineffectively, improperly, or illegally; or
 - 5. Subrecipient provides materials, information, reports, or documentation which are incomplete, incorrect, or false, either knowingly or negligently; or
 - 6. Subrecipient fails to provide services, information, reports, or documentation required by this Agreement in a timely and reasonable manner; or
 - 7. Subrecipient fails to resolve in a timely fashion audit findings associated with this Agreement which could materially impact performance of this Agreement; or
 - 8. Subrecipient is unable to carry out the terms and conditions of this Agreement in compliance with applicable local, state, or federal law; or
 - 9. The health, welfare, or safety of clients or patients associated with this Agreement is at

risk by actions or inaction of the Subrecipient; or

10. Any illegal act by the Subrecipient.
- C. The County's forgiveness of the Subrecipient's nonperformance of any provision of this Agreement in one instance does not constitute a waiver of any provision of this Agreement, nor of future nonperformance of the same provision.
- D. If the Subrecipient receives a notice of termination from the County for either convenience or cause or issues a notice of termination to the County, the Subrecipient shall:
1. Stop work on the date and to the extent specified;
 2. Place no further orders or agreements for goods, services, or facilities to complete the work now terminated;
 3. Assign to the County all of the Subrecipient's rights, title, and interest under the orders and agreements placed by the Subrecipient to complete the work now terminated;
 4. Deliver or convey title to:
 - a) Any property produced by the work terminated;
 - b) Any usable personal property in which the County has a secured interest;
 - c) Any usable property carried on the County's inventory; or
 - d) Any real property in which the County, or any entity named by the County, has a secured interest; and
 - e) Send a final billing for the work now terminated to the County within thirty (30) calendar days of the date of termination.
- E. If the County receives a notice of termination from the Subrecipient, or if the County issues a notice of termination to the Subrecipient, the County:
1. Will arrange to take delivery of property or the right, title or interest of real property conveyed by the Subrecipient in conjunction with this Agreement; and
 2. Will make final payment upon receipt of final billings for all authorized services, if the Subrecipient has provided documentation that the County's interests are fully protected.
- F. The rights and remedies provided to the County and the Subrecipient in this section are in addition to any other rights and remedies provided by law or under this Agreement. Termination of this Agreement by the County at any time during the term of the Agreement shall not constitute a breach of contract by the County. The Subrecipient may request a reconsideration of the County's decision to terminate this Agreement in accordance with Resolution of Disputes Section listed above.

17. LOBBYING CERTIFICATION

The Subrecipient certifies that, to the best of its knowledge and belief:

- A. No appropriated funds have been paid, or will be paid by, or on behalf of the Subrecipient, or officers or employees, to any person for influencing, or attempting to influence an officer or employee of any governmental agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any contract, the making of any grant, the making of any loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any contract, grant, loan or cooperative agreement.
- B. If federal appropriated funds have been paid, or will be paid, to any person for influencing, or attempting to influence, an officer or employee of any governmental agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federally funded agreement, the Subrecipient shall complete and submit to the County, a federal Standard Form-LLL, "Disclosure Form To Report Lobbying" in accordance with its directions. The form is available from the County on request.
- C. The Subrecipient shall require that the language of this certification be included in all agreements issued to their subcontractors, and that all recipients certify and disclose accordingly.
- D. For federally funded Agreements, this certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, and U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

18. GENERAL COMPLIANCE

- A. Subrecipients with contracts in excess of \$25,000 and with a Contract duration of longer than one hundred twenty (120) calendar days that are not specifically exempted under PCC 2.106.022, shall enroll in the Federal E-Verify Program. The requirement extends to every subcontractor meeting the same criteria. The Subrecipient must provide certification of enrollment in the Federal E-verify program to the County before execution of this Agreement. The Subrecipient will remain enrolled in the program for the duration of this Agreement. The Subrecipient is responsible for verification of every applicable subcontractor. The County reserves the right to require a copy of the Memorandum of Understanding between the Subrecipient or any Subcontractor and the Department of Homeland Security upon request at any time during the term of this Agreement. Failure to provide this document may result in termination of this Agreement.
- B. 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.

19. SURVIVABILITY

The terms and conditions contained in the Agreement that by their sense and context are intended to

survive the expiration of this Agreement shall so survive. Surviving terms include, but are not limited to: Client Confidentiality/Disclosure of Information, Resolution of Disputes, Defend, Hold Harmless and Indemnification, Right to Inspection, Records and Reports, and Treatment of Assets.

20. PROPRIETARY SOFTWARE APPLICATIONS

In the event that the Subrecipient accesses the County's proprietary software applications to perform any work under this Agreement, the Subrecipient shall read and agree to the terms and conditions of the software license agreement, and shall not violate the terms and conditions of the software license agreement including, but not limited to:

- A. The use of the software application shall be restricted to employees or subcontractors;
- B. The Subrecipient shall not "pirate" or reverse engineer the software application; and/or
- C. Otherwise use the application in any way that may harm the County.

21. LICENSING AND ACCREDITATION STANDARDS

The Subrecipient agrees to comply with all applicable local, state, and federal licensing standards, all applicable accrediting or certification standards, and any other standards or criteria established by the County to ensure quality of services, and to supply proof of said compliance upon demand.

22. TREATMENT OF SUBRECIPIENT ASSETS

- A. Title to all property furnished by the regulating authority shall remain with the regulating authority; and title to all property furnished by the County shall remain with the County.
- B. The Subrecipient shall obtain prior written approval by the County when purchasing non-expendable personal property if the cost of the personal property is to be reimbursed as a direct item of cost under this Agreement. This approval may be accomplished by inclusion in the Agreement Budget.
- C. Title of all non-expendable personal property purchased by the Subrecipient, the cost of which the Subrecipient is reimbursed as a direct item of cost under this Agreement, shall pass to and vest in the County upon acceptance of such property by the Subrecipient.
- D. Non-expendable personal property purchased by the Subrecipient under the terms of this Agreement, in which title is vested in the County, shall not be rented, loaned, or otherwise passed to any person, partnership, corporation, association, or organization without the prior express written approval of the County.
- E. Any non-expendable personal property furnished to, or purchased by, the Subrecipient, title to which is vested in the County shall, unless otherwise provided herein or approved by the County, be used only for the performance of this Agreement.
- F. As a precedent to reimbursement for the purchase of non-expendable personal property, title to which shall be vested in the County, the Subrecipient agrees to provide all necessary information and documents in order for the County to execute such security agreements and other documents as shall be necessary for the County to protect its interest in such property in accordance with the Uniform Commercial Code as codified in Article 9 of Title 62A RCW.
- G. The Subrecipient will furnish to the County by the fifteenth (15th) day of October (unless otherwise stated), an inventory of any and all property purchased with funds provided by the

County for use under the terms of this Agreement. The inventory list shall include all non-expendable personal property (including small and attractive items) purchased with funds provided by the County under the terms of this Agreement. For the purposes of this clause, conducting and providing an inventory consists of sighting, tagging or marking, describing, recording, and reporting the property involved.

- H. The Subrecipient shall be responsible for any loss or damage to property of the County (including all expenses resulting from such loss or damage) which results from negligence, willful misconduct, or lack of good faith on the part of the Subrecipient, or which results from the failure on the part of the Subrecipient to maintain and administer the property in accordance with sound management practices. Furthermore, the Subrecipient shall ensure that all County property in its possession, when returned to the County, shall be in a like condition to that in which it was when furnished to the Subrecipient or the condition in which the property was when acquired by the Subrecipient through purchase, except that in all cases, reasonable wear and tear shall be allowed.
- I. Within three (3) calendar days of discovery of loss or destruction of or damage to County property, the Subrecipient shall notify the County in writing and include appropriate documentation (i.e., police, fire, or accident reports). The Subrecipient shall take all reasonable steps to protect that property from further damage.
- J. Within five (5) working days after termination, or completion of this Agreement, unless otherwise mutually agreed in writing between the Subrecipient and the County, the Subrecipient shall surrender to the County all property of the County.
- K. The County may, at its discretion, abandon in place any property in which title is vested in the County under the terms of this Agreement insofar as permitted by law, rule, or regulation.
- L. Non-expendable personal property acquired by the Subrecipient, the cost of which is reimbursed by the County or the Subrecipient with funds provided through this Agreement, shall be subject to the same constraints, procedures, treatment, handling, disposition, and other matters as specified above. The Subrecipient shall take all steps necessary to ensure that the interest of the County in such property shall be protected and safeguarded.
- M. The Subrecipient will maintain property record cards and property identification tabs as may be directed by the County. This applies only to property purchased with federal, state, and/or County funds specifically designated for such purchase.

Exhibit A

Applicable Definitions

1. DEFINITIONS

Many terms used throughout this Agreement are defined in Title 388 Washington Administrative Code (WAC), as subsequently amended, and have the meanings indicated in that title. Additionally, the following terms shall have the following definitions:

"Acquisition Cost" shall mean that amount expended for property, excluding interest, plus, in the case of property acquired with a trade-in, the book value (acquisition cost less amount depreciated through the date of trade-in) of the property traded in. Non-expendable personal property, the value of which was expended when acquired, has a book value of zero (0) when traded in.

"Budget, Accounting, and Reporting System for Counties and Cities and Other Local Governments" will be referred to as BARS.

"Business Entity" means any person, or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood, whether for profit or not for profit with the County. The term business entity shall include, but not be limited to partnerships, corporations, Subrecipients, and subcontractors doing business with the County.

"Client", "Consumer", "Participant", "Patient", or "Recipient" shall mean any individual applying for or receiving services under this Agreement.

"CFR" means Code of Federal Regulations. All references in this Agreement to CFR chapters or sections shall include any successor, amended, or replacement regulation. The CFR may be accessed at <http://www.gpoaccess.gov/CFR/>

"Contract" shall mean the Agreement, and any Scope of Work and Exhibits that are attached to and incorporated by reference to the Agreement.

"Contract Budget" shall mean the budget incorporated in this Agreement, identifying a plan for the expenditure of contracted funds.

"Debarment" means an action taken by a federal official to exclude a person or business entity from participating in transactions involving certain federal funds.

"E-Verify" shall mean the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, Pub. L. No. 104-208, Division C, Title IV s. 403(a), as amended, and operated by the United States Department of Homeland Security, or a successor electronic verification of work authorization program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees pursuant

to the Immigration Reform and Control Act of 1986, Pub. L. No. 99-603.

"Independent Auditor" shall mean either a certified public accounting firm or a certified public accountant.

"Information Technology (IT) Purchases" include, but are not limited to, computers, software, desk telephones, and cellular telephones, but do not include keyboards and mice.

"Non-expendable Personal Property" shall mean tangible personal property having a useful life of more than one (1) year and an acquisition cost of \$5,000 or more per unit.

"PCC" means Pierce County Code.

"Personal Property" shall mean property of any kind, including small and attractive items and IT equipment, except real property.

"RCW" means the Revised Code of Washington. All references in this Agreement to RCW chapters or sections shall include any successor, amended, or replacement statute. The RCW can be accessed at <http://apps.leg.wa.gov/RCW/>

"Real Property" shall mean any interest in land.

"Small and Attractive Items" means those items with a value of \$300 or more that are particularly vulnerable to loss. Examples of these items include, but are not limited to, communication equipment, cameras, IT accessory equipment such as scanners, office equipment, televisions, cellular telephones, and VCRs.

"Subcontract" shall mean any agreement between the Subrecipient and a Subcontractor or between a Subcontractor and another Subcontractor that is related to this Agreement, provided that the Subcontract does not include the purchase of:

- A. supplies; or
- B. support services that do not directly affect the funded services.

The terms Subcontract and Subcontracts shall mean Subcontract(s) in any tier.

"Subcontractor" shall mean any person, partnership, corporation, association, or organization, not in the employment of the Subrecipient, who is performing part of the contract or Subcontract from a Subcontractor. The terms Subcontractor and Subcontractors shall mean Subcontractor(s) in any tier.

"Subrecipient" shall mean a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency. Characteristics indicative of a federal award received by a subrecipient are when the organization:

- A. determines who is eligible to receive what federal financial assistance;
- B. has its performance measured against whether the objectives of the federal program are met;
- C. has responsibility for programmatic decision making;

- D. has responsibility for adherence to applicable federal program compliance requirements;
- E. uses the federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity;
- F. operates on the basis of allowable costs no payment above cost is allowed; and
- G. may be required to match or share costs of the program.

"Substantial Completion" is the stage in the progress of construction work when the Project or designated portion thereof is sufficiently complete in accordance with the Construction Contract Documents and issuance of a Certificate of Occupancy so that the Subrecipient can occupy or utilize the Project for its intended use.

"Useful Life" of non-expendable personal property shall mean that useful service life as based upon the United States Department of Treasury, Internal Revenue Service, policies on depreciation for tax purposes, unless the Subrecipient or Subcontractor documents in writing some different period that the County agrees to in writing.

"Vendor" shall mean a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a federal program. These goods or services may be for an organization's own use or for the use of beneficiaries of the federal program.

Characteristics indicative of a payment for goods and services received by a vendor are when the organization:

- A. provides the goods and services within normal business operations;
- B. provides similar goods or services to many different purchasers;
- C. operates in a competitive environment;
- D. provides goods or services that are ancillary to the operation of the federal program;
- E. is not subject to compliance requirements of the federal program; and
- F. the scope of work to be performed is defined by the awarding agency (the awarding agency identifies what it is "buying").

"WAC" means the Washington Administrative Code. All references in this Agreement to WAC chapters or sections shall include any successor, amended, or replacement regulation. The WAC can be accessed at <http://apps.leg.wa.gov/wac/>

"Washington State Department of Social and Health Services" shall be referred to as DSHS.

"Work Order" is a document attached to and incorporated by reference to the Agreement which states the goods, services, and/or benefits to be delivered, and any other terms and conditions that apply to the work.

Exhibit B

Scope of Work

This Agreement is between PIERCE COUNTY, through its Department of Community Connections, Community Development Division (identified in this document as the "County" or "DCC") and City of Fife (identified in this document as the "Subrecipient"), for the project identified as the 47th Ave Sidewalks & Storm Sewers project, which is a federally funded project through the Community Development Block Grant ("CDBG") B-2011-UC-53-0002 from the U.S. Department of Housing and Urban Development, CFDA number 14.218. The parties agree to abide by the terms of this Agreement and to faithfully perform the services set forth in this Agreement. The Agreement shall be effective **July 1, 2011** and, as set forth in this Agreement, shall be completed no later than **December 31, 2013**, unless extended in writing.

1. SCOPE

The intent of this Agreement is to provide partial financial support to install sidewalks, inlets and piping on 47th Avenue East from Pacific Highway East to 15th Street East and continuing on the south side of 15th Street East to 46th Avenue East, as described in the Subrecipient's funding application. The project will serve a low- and moderate-income neighborhood area within the City of Fife upon completion.

Milestone Schedule:

Task	Completion Date
Relocation Notifications (if applicable)	N/A
Title Search	N/A
Environmental Review Complete (NEPA)	12/2012
Design Begun	1/2013
Design Completed	2/2013
Bid Specs Submitted to Pierce County for Review/Approval (allow 10 days after submittal)	2/2013
Bid Specs Approved by Pierce County	2/2013
Bid Advertised via Small Works Roster	3/2013
Bid Opening	3/2013
Bid Award	3/2013
Pre-construction Conference	3/2013
Notice to Proceed	3/2013
Project 50% Complete	4/2013
Construction Complete/Occupancy	6/2013
Accept Project & Release Retainage	7/2013

2. CLIENT ELIGIBILITY

To accomplish the intent of this Agreement, the Subrecipient shall comply with all noted regulations, requirements, and conditions of the Agreement. The activities will meet the HUD National Objective

Area Benefit 570.208(a)(1). Upon completion the project will serve census tract and block group 070900/3 that has been determined to be low- and moderate-income as documented in the application file for this project.

3. EVIDENCE OF CONTRACT PERFORMANCE AND COMPLIANCE

- A. Subrecipient shall plan, administer and implement the project in compliance with applicable local, state, and federal laws and regulations. Unless specifically noted to the contrary, the Subrecipient, its consultants and contractors shall obtain all permits and approvals necessary to lawfully implement the project.
- B. Failure to lawfully plan, administer, and implement the project or to demonstrate substantial progress within ninety (90) days of the effective date of this Agreement, or to meet Milestone tasks within ninety (90) days of stated completion date, shall cause the County to re-evaluate the need for, and methods of the project, and/or terminate of the Agreement in accordance with this Agreement. In addition, the result of such re-evaluation may necessitate restructuring of the project, redefining of goals and objectives, amendment of this Agreement, and/or termination of the Agreement.
- C. Payments are contingent upon meeting or exceeding the above milestones. This requirement may be waived at the sole discretion of the County with satisfactory written explanation of how the milestone tasks will be met by completion of the contract period.
- D. Significant deviation from the Exhibit B, Scope of Work and Exhibit C, Compensation and Financial Requirements requires written concurrence by the County and amendment to this Agreement. The Subrecipient must submit their request in writing prior to making changes to this Agreement.

4. REPORTING

- A. The Subrecipient or assigned Contractor will provide the County with weekly written progress reports and construction schedules as applicable to the project.
- B. In accordance with 24 CFR 570.503 (b) (2), the Subrecipient shall submit quarterly progress reports by the 15th of the month following the end of the each quarter, or ten (10) days after Notice to Proceed has been issued, whichever is earlier throughout the term of the Agreement, and maintain these records for six (6) years after the term of the Agreement. This report may also include an entry to establish if the beneficiaries have new or improved access or now receive a service or benefit that is no longer substandard. CDBG funded projects that are not for public infrastructure must provide beneficiary data for occupants at completion documenting client eligibility and that a National Objective has been met. For CDBG funded projects that are not occupied at completion, quarterly reporting of client beneficiary data will be required for the year following completion of the project verifying client eligibility and that a National Objective has been met. Required reports will be provided electronically.
- C. The Subrecipient shall provide information as required by the County to demonstrate compliance with regulations, eligibility, goals and objectives to support the County's annual Consolidated Annual Performance Evaluation Report (CAPER) to HUD, and provide such other financial or performance reports, as may be required by the County.

The Subrecipient must submit separate reports for each Subrecipient Agreement.

The Subrecipient will provide financial and demographic information for the County's Consolidated Annual Performance Evaluation Report (CAPER) including:

- 1) Number of clients (individuals or families) served by the Subrecipient, as well as the cumulative totals.
 - 2) Race/Ethnicity.
 - 3) Income status.
 - 4) A list of all funds and funding sources used with CDBG/ESG monies for programs.
- D. The Subrecipient will provide weekly certified payroll reports including all subcontractors working on the site to comply with federal Davis-Bacon regulations.
- E. The Subrecipient will provide monthly written project status reports, upon execution of this Agreement, which details work efforts accomplished for the prior month, including identifying any potential problems that may arise and possible resolutions.
- F. The Subrecipient will maintain records that support performance measurement requirements of the Department of Housing and Urban Development for a minimum of six (6) years following the expiration of the reversion of assets clause noted in this Agreement.
- G. In accordance with Guidelines for the *Inadvertent Discovery of Human Skeletal Remains on Non-Federal and Non-Tribal Lands in the State of Washington*, any person engaging in ground disturbing activity that encounters skeletal human remains must cease all activity which may cause further disturbance to the remains, make a reasonable effort to protect the area from further disturbance, and report the presence and location of those remains to the county coroner and local law enforcement, (RCW 27.44; 68.50; 68.60). Pierce County Department of Community Connections staff must then be contacted.
- H. In the event that any potentially archaeological or historic materials are discovered during project activities, work in the immediate vicinity must stop, the area must be secured, and Pierce County Department of Community Connections staff must be contacted. Thereafter, DCC staff must make contact with the concerned tribe's cultural staff and cultural committee and notify the Washington State Department of Archaeology and Historic Preservation.
- I. Other information required supporting weekly, monthly and quarterly reports, annual CAPER, and other reports as required shall be provided as requested.

5. MONITORING/ASSESSMENT PROCEDURES

- A. The County will conduct annual monitoring and performance assessments of all services provided under this Agreement, in the manner and at reasonable times, with reasonable notice, as the County considers appropriate.
- B. Monitoring and assessment activities include, but are not limited to, review of service and financial reports, including all books, records, documents, and other data, facilities, activities, and on-site visits by County staff or their designee, state, or federal representatives.
- C. Unless the County elects to terminate this Agreement for cause, when findings from monitoring efforts or audits show that there are apparent violations of the terms or conditions of this Agreement, the Subrecipient and the County shall negotiate a mutually agreeable plan

of action to address the identified problem. If the parties are unable to come to agreement, the Subrecipient may file a complaint, as specified in this Agreement.

6. COUNTY RESPONSIBILITIES

To accomplish the intent of this Agreement, the County shall:

- A. Provide administrative and financial oversight and direction in accordance with established laws and regulations.
- B. Provide technical assistance to the Subrecipient, its contractors and consultants, particularly regarding compliance with federal and local laws and regulations, and in development of processes and procedures to assure attainment of project goals and objectives.
- C. Monitor and evaluate program performance against performance criteria noted above.
- D. Pay, on a timely basis, all requests for payment which are eligible and appropriate for payment, and which are supported by sufficient financial documentation. Payment is contingent upon the timely receipt of required performance reports.

Exhibit C

Compensation and Financial Requirements

1. COMPENSATION

In consideration of the mutual promises given and the benefit to be derived from this Agreement, the County agrees to provide CDBG funds in the amount of: **\$119,150 (One hundred nineteen thousand, one hundred fifty and no/100 dollars)**, to accomplish the scope of services described in Exhibit B, Scope of Work. The project budget and financial requirements are provided below.

BUDGET SUMMARY							
2011 - 47th Ave Sidewalks & Storm Sewers							
IDIS Project #: 2011-28 2466 BARS # 134.900.CG11.55952.63.0110							
Eligible Categories	CDBG Award	HOME, ESG or HOPWA	Federal	State and/or Local	Private	Other	Project Total
Design & Inspection (Engineering & Architecture)	\$ 38,790	\$0	\$0	\$ 2,610	\$0	\$0	\$ 41,400
Consultants (Contract Services)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Permits & Fees	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Environmental Review	\$0	\$0	\$0	\$ 1,440	\$0	\$0	\$ 1,440
Land Acquisition	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Utilities (Water, Sewer, Electrical)	\$0	\$0	\$0	\$35,640	\$0	\$0	\$ 35,640
Roads & Sidewalks (Concrete & Paving)	\$ 68,445	\$0	\$0	\$32,355	\$0	\$0	\$100,800
Building Renovation (Accessibility)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Additional (Specify) *	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Contingency (10%)	\$ 11,915	\$0	\$0	\$ 8,005	\$0	\$0	\$ 19,920
Grand Total (Including Applicable Sales Tax)	\$119,150	\$0	\$0	\$80,050	\$0	\$0	\$199,200
*Additional:							

2. FINANCIAL REQUIREMENTS - PAYMENTS

A. Applicable Regulations and Restrictions

It is understood that where applicable, CDBG funds provided by this Agreement and program income generated by the project are federal funds administered by the County and are subject to those regulations and restrictions normally associated with federal programs including: OMB Circular A-21, A-87, A-110, A-122, and A-133 (as appropriate), OMB's *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*, the Washington State BAR's Manual, and other such uniform administrative requirements for grants-in-aid now in effect or which hereafter may be made applicable by local, state or federal laws or regulations. All of the above are incorporated in this Agreement by reference.

B. Approved Uses, Grant Funds

1. It is expressly understood that CDBG funds may only be used for cost included in the attached approved project budget, and may not be used for the general administration or operation of the Subrecipient, and may not replace non-federal funds in any jointly funded project.
2. Adjustment of funds between individual line items of the project budget will be accomplished by a written Change Order or Amendment approved by the County.
3. During the period of performance the total budget (grant) value or project scope may only be modified by written amendment to this Agreement.
4. Unexpended funds not subject to a request for payment will be returned to the County.

C. Inappropriate Funds Obligation

CDBG funds shall not be obligated for:

1. Costs incurred prior to the effective date of this Agreement or after Agreement expiration.
2. Any action subsequent to written notification from the county suspending or terminating the Agreement, except as authorized by the County.
3. Any payment or partial payment expended by the Subrecipient, its contractors or consultants which is subsequently found to be ineligible, inappropriate or illegal.

The Subrecipient shall refund to the County any payment or partial payment expended by the Subrecipient, its Contractors or Consultants which is subsequently found to be ineligible, inappropriate or illegal.

D. Request for Payment

1. Request for payment will not be approved unless Subrecipient submits timely performance reports and all information necessary to demonstrate compliance with regulations, eligibility, goals and objectives.
2. Request for payment by the Subrecipient shall be on the Subrecipient's letterhead and shall include only request for payment or reimbursement of cost actually incurred per

the approved budget and supported by documentation. **All requests for payment must be accompanied by copies of substantiating receipts, pay stubs, invoices or other proof of incurred costs and must be signed by the authorized agency representative.**

3. The Subrecipient is prohibited from submitting request for payment in excess of actual requirements for carrying out the project.
4. At a minimum, Subrecipient shall submit a request for payment at least once during any month following a month in which the Subrecipient has expenditures.
5. Payment requests shall be submitted by the fifteenth (15th) of each month following the month in which the expenditures were incurred.
6. Exceptions to these procedures must be requested in writing and agreed upon between the parties.

E. Multiple Agency Funding

Projects funded by multiple agencies or sources shall indicate in the project budget the agency or source from which the funds derive and how the funds will be utilized.

F. Program Income

In the event that program income as defined in 24 CFR Part 570.500(a) is generated from the use of CDBG funds, then any and all such income shall be identified and accounted for. With the written consent of the County, program income may be used by the Subrecipient for the same project/program for which this Agreement originally provides and under the same terms and conditions as provided in 24 CFR 570.504. Program income in the form of repayments to, or interest earned on, a revolving fund as defined in 24 CFR 570.500(b) shall be substantially disbursed from the revolving fund before additional cash withdrawals are made from the U.S. Treasury for the same activity. In the event that program income is not used in accordance with these conditions, such program income shall be returned to the County. The Subrecipient shall transfer to the County any CDBG funds on hand or any accounts receivable attributable to the use of the CDBG funds that do not meet the above requirements.

G. Unexpended Funds and Income

At the conclusion of this Agreement, all unexpended CDBG funds, any uncollected and/or unexpended program income remaining in Subrecipient's accounts, and any remaining equipment or operation supplies with a value in excess of \$5,000, shall be immediately returned to the County unless specifically authorized in writing by the County.

3. AUDIT

- A. The Subrecipient must obtain an audit of its activities which shall meet or exceed the criteria for audits of federal programs set forth in OMB Circulars A-21, A-87, A-110, A-122, and A-133 (as applicable). The Subrecipient shall be obligated to resolve findings relating to use of CDBG funds in a timely manner.
- B. Prior to commencement of the project and if the Subrecipient has recently utilized federal funds, the Subrecipient shall furnish to the County for review a copy of its latest audit, including all findings related to the use of CDBG funds, and the Subrecipient's resolution of

those findings. Similarly, within thirty (30) calendar days of the completion of any subsequent audit, the Subrecipient shall provide the same information noted above to the County. If warranted by audit findings, the Subrecipient's failure to comply with applicable laws and regulations relating to use of CDBG funds, or the Subrecipient's failure to resolve such findings in a timely manner, may cause Pierce County to apply appropriate sanctions, including the suspension or termination of this Agreement.

Exhibit D

Special Provisions

1. COMPLIANCE WITH LOCAL AND FEDERAL REGULATIONS

The Subrecipient and its consultants and contractors shall comply with the following federal laws and regulations, whenever and wherever they are applicable. The Subrecipient and its consultants and contractors shall timely obtain all permits and approvals necessary to lawfully implement the project. The Subrecipients and its contractors and consultants shall include in all contracts, subcontracts and purchase orders for this project the following list of laws and regulations and shall require compliance with such laws and requirements:

- A. Title VI of the Civil Rights Act of 1964 (P.L. 88-352) relating to non-discrimination in performance of the project and to the benefits deriving from it as implemented by HUD regulation 24 CFR 570.601 (a).
- B. Title VIII of the Civil Rights Act of 1968 (P.L. 90-284) as amended, relating to non-discrimination in housing as implemented by HUD regulation 24 CFR 570.601 (b).
- C. Executive Order 11063 relating to non-discrimination in housing as amended by Executive Order 12259 and as implemented by HUD regulation 24 CFR 570.601 (c).
- D. Section 109 of the Housing and Community Development Act of 1974 as amended, dealing with non-discrimination in program benefits because of race, religion, color, age, national origin, sex or disability as implemented by HUD regulation 24 CFR 570.602.
- E. The construction labor standards and wage rates set forth in Section 110 of the Housing and Community Development Act of 1974 as amended and as implemented by HUD regulation 24 CFR 570.603.
- F. The Davis-Bacon Act (DBA) and Related Acts or HUD-assisted (DBRA) (40 U.S.C. 276a-276a-5) provides that contracts to which federal funding is applied for the construction, alteration, and/or repair, including painting and decorating, or of public buildings or public works, which involve the employment of laborers and/or mechanics, shall contain provisions with respect to minimum wages, fringe benefits, payments without deductions or rebates, withholding funds from contractors to ensure compliance with wage provisions, and termination of the contract or debarment for failure to adhere to the required provisions.
- G. Any construction performed as a part of this agreement is considered a public work project and subject to the Prevailing Wages on Public Works Act (Chapter 39.12 RCW). All bid specifications and contracts for public work projects must contain a provision stating the required prevailing rates of pay and stipulate that all workers shall receive no less than the higher of either the Davis-Bacon or Washington State prevailing rate of wage for work performed. All contractors and subcontractors working on this project are required to fully comply with these regulations.
- H. Per RCW 39.04.370 (EHB 2805, 2010 legislative session) all none WSDOT or local transportation projects over \$1 million are required to report out-of-state prefabrication of items made specifically for the public work project. The contractor reporting is required to use the Affidavit form F700-164-000.

- I. Executive Order 11246 dealing with non-discrimination in employment as amended by Executive Orders 11375 and 12086 and as implemented by HUD regulation 24 CFR 570.607 (a).
- J. The relocation, acquisition and displacement requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as implemented by HUD regulation 24 CFR 570.606.
- K. During the performance of this Agreement, the Subrecipient agrees as follows:
 - 1. The Subrecipient will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Subrecipient will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not 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 apprenticeship. The Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
 - 2. The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
 - 3. The Subrecipient will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Subrecipient's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - 4. The Subrecipient will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 - 5. The Subrecipient will furnish all information and reports, required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for the purpose of investigation to ascertain compliance with such rules, regulations, and orders.
 - 6. In the event of the Subrecipient's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be canceled, terminated or suspended in whole or in part and the Subrecipient may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies involved as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 - 7. The Subrecipient will include the provisions of paragraphs (1) through (7) in every

subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or Vendor. The Subrecipient will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Subrecipient becomes involved in, or threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Subrecipient may request the United States to enter into such litigation to protect the interest of the United States.

- L. Section 3 of the Housing and Community Development Act of 1974 as amended, dealing with employment and training of County low-income residents as employees and trainees and utilization of Pierce County business as contractors, subcontractors, and suppliers as implemented by HUD regulations 24 CFR 570.607 (b):
1. The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low- income persons, particularly persons who are recipients of HUD assistance for housing.
 2. The parties to this Agreement agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this Agreement, the parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
 3. The Subrecipient agrees to send to each labor organization or representative of workers with which the Subrecipient has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Subrecipient's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
 4. The Subrecipient agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provide in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The Subrecipient will not subcontract with any subcontractor where the Subrecipient has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
 5. The Subrecipient will certify that any vacant employment positions, including training positions, that are filled (1) after the Subrecipient is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the Subrecipients obligations under 24 CFR Part 135.

6. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contact for default, and debarment or suspension from future HUD assisted contracts.
 7. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7 (b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of Section 3 and Section 7 (b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).
- M. Executive Order 11988 relating to evaluation of flood hazards and the flood hazard and insurance protection requirements of Section 102(a) and 202(a) of the Flood Disaster Protection Act of 1973 (P.L. 93.234) as implemented by HUD regulation 24 CFR 570.605.
 - N. The relocation, acquisition and displacement requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as implemented by HUD regulation 24 CFR 570.606.
 - O. The Lead Based Paint Poisoning Prevention Act (43.US.C. 4801 et seq.) as implemented by HUD regulation 24 CFR 570.608.
 - P. The regulations, policies, guidelines and uniform administrative requirements of OMB Circulars A-21, A-87, A-110, A-122 and A-128 as they relate to the acceptance and use of Federal funds as implemented by HUD regulation 24 CFR 570.610.
 - Q. The National Environmental Policy Act of 1969 and other statutory environmental requirements as implemented by HUD regulation 24 CFR 570.604.
 - R. Executive Orders 11625, 12138 and 12432, and Public Law 98-507, dealing with the use of minority and women owned business enterprises as implemented by HUD regulation 24 CFR 85.36(e).
 - S. The provisions of the Hatch Act limiting political activities of government employees.
 - T. Executive Order 1288 relating to prevention, control and abatement of water pollution.
 - U. HUD Regulations for implementing the Community Development Block Grant Program contained in 24 CFR 570.
 - V. The Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282).
 - W. The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) and regulations set forth at 24 CFR Part 21.

Note: Copies of applicable laws and regulations are available upon request from the Department of Community Connections. A listing of these applicable laws and regulations are to be incorporated in each contract, subcontract and consultant agreement issued by Subrecipient or its contractors.

2. TAXES AND LICENSES

The Subrecipient shall pay throughout the term of this Agreement, all applicable taxes and licenses.

3. ADDITIONAL INSURANCE REQUIREMENTS: CONSTRUCTION, PERFORMANCE, PAYMENT AND FIDELITY BONDS

- A. Each construction contractor on the project shall be required to maintain, throughout the life of any construction contract, a one hundred percent (100%) performance bond or fifty percent (50%) retainage in lieu of bonding.
- B. Each construction contractor shall also maintain, throughout the life of any construction contract, a payment bond, guaranteeing payment to subcontractors and suppliers in an amount equal to the total amount of work and materials to be subcontracted and/or purchased.
- C. Throughout the life of this Agreement the Subrecipient shall maintain an annual Fidelity or Performance Bond in an amount not less than twenty five percent (25%) of the value of this Agreement. Proof of insurance against employee dishonesty in an amount approved by the County may be substituted in lieu of bond if approved by the County.

4. PROJECT ELIGIBILITY

All projects authorized under the Block Grant program must meet one (1) of three (3) National Objectives.

The project must:

- Principally benefit low-moderate income individuals (or families), or
- Eliminate slums and/or blight, or
- Meet an urgent need.

Detailed definitions of these objectives are set forth in HUD regulations.

5. PUBLIC WORKS AND PREVAILING WAGE REQUIREMENTS

Any construction performed as a part of this agreement is considered a public work and subject to the Prevailing Wages on Public Works Act (Chapter 39.12 RCW). The Director of the Department of Labor & Industries shall arbitrate all disputes of the prevailing rate of wage under State law as applicable.

Construction must be publicly bid and bid specifications must include:

- A. A provision stating the required prevailing rates of pay and stipulate that workers shall receive no less than the prevailing rate of wage. Those bid and contract documents must also contain:
 1. A list of the applicable prevailing wage rates, or
 2. The URL to the Department of Labor & Industries prevailing wage rates pages (currently: <http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp>), and
 - a) Identify the exact wage publication date to use (e.g., "Use October 14, 2010 rates."),

- b) State that the county in which the public works project is located is Pierce County,
- c) Specify that a copy of the applicable wage rates is available for viewing in your office, and,
- d) Explain that your agency will mail a hard copy of the applicable wage rates upon request.

NOTE: Whether you use method 1 or 2 above, be sure to retain a printed version of the rates as part of your records.

- B. A provision stating that for projects where both the state prevailing wage law and the federal Davis-Bacon and related Acts apply, contractors and subcontractors must pay the higher of the state or federal wage rates, on a classification-by-classification basis.
- C. Verify that the any contractors or subcontractors are not listed on the *Department of Labor and Industries Prevailing Wage Section Contractors Not Allowed to Bid on Public Works Projects* list prior to award of any contracts or subcontracts.

6. PROCUREMENT AND SUBCONTRACTS

The Subrecipient may, upon the County's prior review and specific written approval of the contract instrument, enter into any contract or procurement action authorized or necessary for the successful completion of this Agreement (other than contracts for incidental procurements not directly related to the accomplishment of the project which do not require County approval). All procurement actions and contracts other than incidental procurements shall be structured in accordance with applicable state and federal law relating to contracting by public agencies.

7. REVERSION OF ASSETS

- A. Where the Subrecipient is a city or a town that is a member of the Pierce County Urban County Consortium CDBG program, real property acquired or improved with CDBG funds in conjunction with this Agreement is subject to reversion of assets limiting the Subrecipient's right to dispose of said property or to use it for a purpose other than that specified in this Agreement until five (5) years after Pierce County is no longer a CDBG entitlement recipient.

Where the Subrecipient is not either a city or a town that is a member of the Pierce County Urban County Consortium for the CDBG program, real property acquired or improved with CDBG funds in conjunction with this Agreement is subject to a reversion of assets limiting the Subrecipient's rights to dispose of said property or to use it for a purpose other than that specified in this Agreement for a period of thirty (30) years after project completion.

Additional Block Grants received during an active 'length of interest', or an increase in the value of this grant by Amendment to the Agreement, shall be cumulative when determining the 'Value of Grant' and the County's 'Length of Interest' and shall increase the length of that interest. The Deed of Trust may be revised accordingly. Such Interest begins with the project completion date and will terminate on the thirtieth (30th) of June thirty (30) years from project completion.

- B. This provision will be implemented through the execution of a:

1. Deed of Trust in favor of the County, placed on the property at the time this Agreement is entered into or at such later time as may be acceptable to the County. Such right will be equivalent to the percentage share of Block Grant funds provided in relation to the worth of the real property at the time of initiation of the projects(s).
 2. Secured Promissory Note in the amount of this Agreement.
 3. Subrecipient's Covenant Agreement for the length of the period of interest.
 4. Any combination of the above documents.
- C. Disposition of real property acquired in whole or in part with Block Grant funds shall be subject to approval by the County and shall be at current appraised fair market value. The property may be disposed of for lesser value, including donations, if the disposition at the lesser value is necessary to meet one of HUD's National Objectives and is permissible under state and local law, and is approved by the County. When disposition is recommended by the Subrecipient for a lesser value, or if the County should determine that disposition for such lesser value is in the best interest of the program, those reasons shall be fully documented.
- D. Non-expendable equipment, materials, operating supplies and other assets other than real property, purchased in whole or in part with CDBG funds, whose per unit fair market value (or total value for supplies) at the time of completion of use is in excess of \$5,000, are the property of the County and are to be utilized, maintained, inventoried, controlled and disposed of, pursuant to applicable federal regulations.
- E. The Subrecipient shall be responsible for loss or damage to all such equipment, materials, operating supplies and other assets in its care and, after completion of use shall return all such equipment, materials and assets to the County for disposition within thirty (30) days following completion of the project(s), unless otherwise specified.
- F. If such equipment, materials, operating supplies or other assets are partially funded from other sources, the County shall share any funds received as a result of said disposition, at a percentage of value received equal to the percentage of the original costs provided by the individual funding sources.
- G. Any equipment, materials, operating supplies and other assets with per unit fair market value (or total value for supplies) at the time of completion of use of less than \$5,000, may be retained or disposed of by the Subrecipient. The County retains no financial interest in these items.

Note: Any assets whose fair market value is in question should be referred to the County for decision before any disposition action is taken by the Subrecipient.

8. CLIENT ASSETS AND RECORDS

Except as otherwise provided by court order the Subrecipient shall ensure that any client shall have unrestricted access to his or her personal property. The Subrecipient shall not interfere with the client's ownership, possession, or use of such property. Upon termination of the agreement, the Subrecipient shall immediately release to the client all of the client's personal property.

The Subrecipient shall maintain all project records required by applicable federal, state and county regulations, which are incorporated herein by reference. Project records must be retained for a period of at least six (6) years after completion or termination of the project. The public shall be granted

reasonable access to all "public records".

The Subrecipient shall maintain records and files for this project containing the following items:

- A. Notice of Grant Award.
- B. Motions, resolutions, or minutes documenting Board or Council actions.
- C. A copy of this Scope and the County's notice to proceed on this project.
- D. Correspondence regarding budget revision requests.
- E. Copies of all invoices and reports submitted to the County for this project.
- F. Copies of approved invoices and warrants.
- G. Records documenting that costs reimbursed with funding provided under this Scope are allowable in accordance with OMB Circular A-21 for educational institutions, Circular A-87 for local governments and A-122 for nonprofit organizations. Such records include, but are not limited to:
 - 1. For personnel costs, payroll time sheets for actual salary and fringe benefit costs. Time sheets must be signed by a supervisor and annotated to document percent of time charged against this project. Direct salaries and wages of employees chargeable to more than one grant program or other cost objective(s) must be supported by time distribution records. Timesheets should contain an after the fact determination of the actual activity of each employee and be annotated to document the time charged to the project if daily hours being paid for by the respective CDBG award are not noted.
 - 2. For staff travel, documentation of mileage charges for private auto use must include: a) destination and starting location, and b) purpose of trip; and
 - 3. For copy machine use, postage, telephone use, and office supplies when these costs are shared with other programs and no invoice is available, log sheets or annotated invoices.
- H. Documentation of the solicitation process used to select vendors and subcontractors with original purchase orders and subcontracts.
- I. Documentation required by this Agreement if any funds provided under this Agreement are used to acquire equipment.
- J. Documentation of client income, demographics and eligibility as required in the Exhibit B, Scope of Work.

9. CONFLICT OF INTEREST AND CODE OF CONDUCT

The Subrecipient covenants that no person who presently exercises any functions or responsibilities in connection with the Community Development Block Grant (CDBG) Program has any personal financial interest, direct or indirect, in this Agreement. The Subrecipient further covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Subrecipient further covenants that in the performance of this Agreement, no person having any conflicting interest will be

employed. Any interest on the part of the Subrecipient or its employees must be disclosed to the County.

No officer, employee or agent of the Subrecipient shall participate in the selection, award, or administration of activity funded in whole or in part with CDBG funds if a conflict of interest, real or apparent, would exist, nor shall their families, or those with whom they have business ties, so benefit.

In addition to the above, no official, employee or agent of any federal, state, or local government for the area in which the project is located, nor members of their families, nor those with whom they have business ties, have or acquire any interest, direct or indirect, in any contract or subcontract or its proceeds for work accomplished in support of this Agreement, nor shall they have or acquire any interest, direct or indirect, in the project area which would conflict in any manner or degree with the project.

10. AFFIRMATIVE ACTION

If the Subrecipient has an established Affirmative Action Plan in place, it shall furnish a copy to the County as part of this Agreement. Where the Subrecipient has no existing Affirmative Action Plan, it must complete and abide by an Affirmative Action Plan approved by the County and incorporated as part of this Agreement. When new full-time or part-time employees or trainees are hired, the Subrecipient should make a "good faith" effort to hire woman, minorities, and low and moderate income Pierce County residents for all positions to be filled.

11. RELIGIOUS ACTIVITY

The First Amendment to the Constitution of the United States of America prohibits Congress from enacting any laws respecting the establishment of religion. Subsequent interpretations have resulted in a policy of separation of church and state. To ensure compliance with that constitutional prohibition, regulations have been established for the Community Development Block Grant Program addressing involvement with religious organizations. For reference, see 24CFR 570.200(j).

12. ACCESSIBILITY FOR PERSONS WITH DISABILITIES

To meet the requirements of Section 504 of the Rehabilitation Act of 1973 pertaining to program accessibility for persons with disabilities, and implementing HUD regulations, each Subrecipient is required to assess its capability for compliance therewith, and for compliance with the Americans with Disabilities Act of 1990. Each Subrecipient is required to complete, and submit for review with the signed Agreement, the enclosed Section 504 Checklist, and such of its attachments as may be appropriate. The County will review and evaluate each Checklist, and will inform the Subrecipient of any areas of apparent concern.

Pierce County
Agreement Signature Page

Agreement # 90827

IN WITNESS WHEREOF, the parties have executed this Agreement on the days indicated below:

SUBRECIPIENT:

Dave Zabell 2/19/13
Signature of Corporate Officer Date

DAVE ZABELL City Manager
Print Name and Title of Authorized Signer

City of Fife
Print Name of Subrecipient

Mailing Address:
5411 - 23rd St. East
Fife, WA 98424-2061

Contact Name: Ken W. Gill, PE

Contact Phone Number: (253) 896-8208

UBI # 276-036-117
Federal Tax ID # 9160112977
DUNS # 024990111

Federal Filing Status:
 Corporation Partnership Sole Proprietor

PIERCE COUNTY:

Reviewed By:

Shirley Grinnard 2.4.13
Deputy Prosecuting Attorney (As to form Only) Date

Budget & Finance Date

Approved By:

Helen P. Howell Date
Director, Community Connections

County Executive (\$250,000 or more) Date