



**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS
CONSENT AGENDA REQUEST**

TO: Board of County Commissioners
Mark McCauley, County Administrator

FROM: Pinky Feria Mingo, Environmental Health and Water Quality Director
Amanda Christofferson, Environmental Health Specialist II

DATE: April 3, 2023

SUBJECT: Motion to approve the CDBG Septic Cost Share Agreement template as well as delegate authority for signature of said contracts to the Director of Public Health.

CDBG Contract Number: 22-62210-021 Septic System Cost Share Program;
August 8, 2022- January 31, 2026

STATEMENT OF ISSUE:

Jefferson County Public Health, requests Board approval of the CDBG Septic Cost Share Agreement template, included in Appendix A. This agreement is needed in order for Jefferson County property Owners (Owners) to access the grant funds from the Septic Cost Share Program funded by the Department of Commerce CDBG Grant via Jefferson County (County).

In addition, JCPH is requesting delegation of authority from the BoCC to sign the CDBG Septic Cost Share Agreements on behalf of the County.

ANALYSIS/STRATEGIC GOALS/PRO'S and CON'S:

The Cost Sharing Agreement is between the Owners and County and identifies the rights and responsibilities of each party. The CDBG Septic Cost Share Agreement has been reviewed by risk and legal and approved by the county's Chief Civil Deputy Prosecuting Attorney.

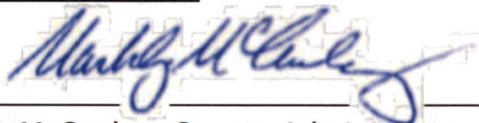
Program staff estimates that fifteen such contracts will be signed during the period of the grant. Delegating signature authority is to reduce the burden on the BoCC. Properly functioning OSS has benefits to both the human health, the environment, and long-term habitation of homes in our county. The public facing website can be found here: [Septic Cost Share Program | Jefferson County, WA](#).

FISCAL IMPACT/COST BENEFIT ANALYSIS:

The fiscal impact of the CDBG Septic Cost Share Program is zero, as the funding comes from grant money and is at no cost to the County. The work completed under this contract will be funded by a grant from the Washington State Department of Commerce via CDBG Contract Number: 22-62210-021 Septic System Cost Share Program - Effective August 8, 2022 (the Grant).

RECOMMENDATION:

Motion to approve the CDBG Septic Cost Share Agreement template and delegate authority to the Public Health Director, to sign the homeowner contracts in Appendix A.

REVIEWED BY:

Mark McCauley, County Administrator

03/30/23

Date

COST SHARING AGREEMENT

1. PARTIES:

This cost sharing agreement ("this Agreement") is made this _____, between _____ ("Owner(s)") and Jefferson County, Washington ("County") for the property located at _____ ("Property"). The Owner(s) and the County are individually referred to as a "party" and are collectively referred to as "the parties."

2. EFFECTIVE DATE AND DURATION:

This agreement is effective the date that all parties sign it. This Agreement shall be valid for one (1) year from the date that all parties sign it.

3. PURPOSES AND BACKGROUND:

- a. The County has a public health and environmental interest in having functioning residential on-site sewage systems ("OSS"). Failing residential OSS present a public health and environmental risk to the County, its residents, environments, businesses, and visitors.
- b. This agreement provides cost share funding by the County to low- and moderate-income County property owner(s) to design, and repair or replace their failing residential OSS. The design, and repair or replacement is referred to as the "Project".
- c. The County and the Owner(s) desire to repair or replace the OSS serving the Property. The Property's County Parcel ID(s) is _____. The Property's legal description is attached as Exhibit "A".
- d. The County representative for this Agreement is: Pinky Feria Mingo, Director, Environmental Health and Water Quality, 615 Sheridan Street, Port Townsend, WA, (360) 385-9444.
- e. The Project shall be divided into the following phases: (1) design phase; and (2) installation, repair, or replacement phase. This Agreement may include both the design phase and the installation, repair, or replacement phase, or just one phase.
- f. In light of the mutual promises and obligations, and in exchange for valuable consideration, the parties agree to the mutual covenants and promises contained within this Agreement.

4. TERMS:

- a. The County has verified, prior to entering into this Agreement, that the Owner(s) are low- or moderate-income and otherwise meet all requirements for the cost share

program and grant. Owner(s) agree that the information provided to qualify for the program is truthful, accurate, and that the County was fully disclosed of all relevant information.

b. This Project includes the following phases (check all that apply):

☐ Design.

☐ Installation, repair, or replacement.

- c. The County agrees to contribute ____ percent (____%) of the total Project cost for OSS design, and repair or replacement, but not to exceed \$_____.
- d. The Owner(s) agree(s) to contribute _____ percent (____%) of the total Project cost for OSS design, and repair or replacement, plus_____.
- e. The County shall not contribute any cost share towards any required County permits. The Owner(s) shall be responsible for paying all County permitting fees.
- f. The County shall not contribute any cost share towards the design phase, until the County has received a complete OSS permit application for the Project, and the designer or engineer submits a true and correct invoice documenting that the Owner has paid their share.
- g. The County shall not contribute any cost share towards the installation, repair, or replacement phase, until the certified installer submits a true and correct invoice documenting that the Owner has paid their share. The County will pay properly documented invoices for materials purchase by the certified installer, and will pay the balance of the County's share only after the OSS permit has received final approval.
- h. The Owner(s) shall use a Washington State licensed designer or professional engineer for the design phase of the Project.
- i. The Owner(s) shall use a County certified installer for the installation, repair or replacement phase of the Project. The County certified installer may work in conjunction with or as an associate of a Washington State licensed designer or professional engineer.
- j. The licensed designer or professional engineer for the design phase and the County approved installer for the installation, repair or replacement phase collectively are referred to as "Contractor(s)".

- k. The OSS Design Contractor(s) is _____, with their principal place(s) of business located at _____. The Contractor(s) is not a party to this Agreement; however, the Contractor(s) is a third-party beneficiary as discussed in Section 6.q.i.
- l. The OSS Installation Contractor(s) is _____, with their principal place(s) of business located at _____. The Contractor(s) is not a party to this Agreement; however, the Contractor(s) is a third-party beneficiary as discussed in Section 6.q.i.
- m. Upon completion of the OSS repair or replacement, the Owner(s) agree to operate the OSS in full compliance with the conditions of the County permit and maintain the OSS as required by the conditions of the County permit, Chapter 8.15 of the Jefferson County Code ("JCC") (On-Site Sewage Code) and applicable state laws or regulations.
- n. The owner agrees not to commence work until they receive written documentation from Department of Health that a cultural review has been complete or a cultural review is not applicable to the project. If work commences without the cultural review and the Department of Health determines a review is necessary, the owner will be responsible for the entire cost of the project.

5. PAYMENT:

- a. The County shall not pay any cost share towards the design phase, until the County has received a complete OSS permit application for the Project, and the designer/engineer submits a true and correct invoice that details the county share and documents that the owner share has been paid.
 - b. The County shall not pay any cost share towards the installation, repair, or replacement phase, until the certified installer submits a true and correct invoice that details the county share and documents that the owner share has been paid. The County will pay properly documented invoices for materials purchase by the certified installer, and will pay the balance of the County's share only after the OSS permit has received final approval.
 - c. The County shall pay its share directly to the Contractor(s) within thirty (30) days of receipt of the Contractor's invoice demonstrating that the Owner(s) share for the phase has been paid directly to the Contractor(s).
 - d. The County shall not be responsible for any balance or amount due to the Contractor(s) above the County's share described in Section 4.d.
- The County may not pay any late penalty fees to the Contractor(s).

6. BASIC CONTRACT TERMS:

- a. Contractor Requirements.

i. Independent Contractor.

1. The Contractor(s) are an independent contractor of the Owner(s) and not a County employee.
2. No subcontractor, employee, agent or representative of the Contractor(s) will be or be deemed to be, or act or purport to act, as an employee, agent or representative of the County.

ii. Contractor(s) Owns Contract Performance. The Owner(s) are responsible for ensuring that they and the Contractor meet all terms and conditions of this Agreement. Failure of performance by the Contractor(s) or any subcontractor is no defense to breach of this Agreement. The County is not responsible for the actions and quality of services performed by any Contractor(s) or any subcontractor.

iii. Licensed and Insured Contractors.

1. The Owner(s) shall select and use a Washington State licensed designer or professional engineer for the design phase of the Project.
2. The Owner(s) shall select and use a County certified installer for the installation, repair, or replacement phase of the Project.

iv. Contractor, Subcontractor, and Owner(s) Disputes. Any dispute arising between the Contractor(s), any subcontractors, between subcontractors, or between the Contractor(s) or any subcontractors and the Owner must be resolved without involvement of any kind on the part of the County.

b. Legal and Regulatory Compliance.

- i. The Owner(s) are responsible for ensuring that their Contractor(s) meet all applicable state and County licensing and insurance requirements.
- ii. The Owner(s) shall furnish all available invoices, reports, and other information to determine compliance with laws, regulations, this Agreement, and applicable grant requirements.

c. Access to the Property and Project. The Owner(s) shall allow the County access to the Property and Project for purposes of inspections and to determine compliance with laws, regulations, this Agreement, and applicable grant requirements. The County must provide at least 24 hours-notice. It is understood and agreed that failure of the Owner(s) to provide access to the Property and the Project constitutes a material breach of this Agreement.

- d. Controlling Law. It is understood and agreed that this Agreement is entered into in the State of Washington. This Agreement shall be governed by and construed in accordance with the laws of the United States, the State of Washington, and the County of Jefferson.
- e. Litigation, Jurisdiction, and Venue.
 - i. Should either party bring any legal action, each party in such action shall bear the cost of its own attorney's fees and court cost.
 - ii. The venue for any legal action shall be solely in the appropriate state court in Jefferson County, Washington, subject to the venue provisions for actions against counties in RCW 36.01.050.
 - iii. Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.
- f. Termination.
 - i. Termination by the County.
 - 1. Should the Owner(s) materially breach any of its provisions, the County may terminate this Agreement upon ten (10) days written notice to the Owner(s).
 - 2. The Owner(s) shall have the right and opportunity to cure any such material breach within the ten (10) day period.
 - 3. The County may terminate this Agreement upon immediate notice to the Owner(s) if the funding for the project ceases or is reduced in amount to making this Agreement unfunded by the State of Washington through the Community Development Block Grant Program – General Purpose Contract Number 22-62210-021.
 - ii. Termination by the Owner(s).
 - 1. Should the County, its staff, employees, agents, or representatives default in the performance of this Agreement or materially breach any of its provisions, the Owner(s), at its option, may terminate this Agreement by giving ten (10) days written notice to the County representative.
 - 2. The County shall have the right and opportunity to cure any such material breach within the ten (10) day period.

- iii. Termination Without Cause. This Agreement may be terminated without cause at any time by either party subject to a thirty (30) day advance written notice of such termination to the other party.
- g. Dispute Resolution. The parties agree to use their best efforts to prevent and resolve disputes before they escalate into claims or legal actions.
 - i. Resolving Disputes through Negotiation. The parties agree to use their best efforts and good faith negotiations to resolve disputes arising out of or related to this Agreement. To that end the parties shall engage in the following dispute resolution process should any such disputes arise:
 - 1. Level One: The County representative shall meet with parties shall meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within fifteen (15) business days after the referral of that dispute to Level One, either party may refer the dispute to Level Two.
 - 2. Level Two: The County Administrator or his designee shall meet with Owner(s) to discuss and attempt to resolve the dispute in a timely manner.
 - 3. In the event a dispute is referred to Level Two but is not resolved at Level Two within fifteen (15) business days after that referral, then either party may terminate this Agreement or institute a legal proceeding consistent with this Section.
- h. Entire Agreement. This Agreement is the entire agreement of the parties. The parties agree that:
 - i. No representation or promise not expressly contained in this Agreement has been made;
 - ii. They are not entering into this Agreement based on any inducement, promise or representation, expressed or implied, which is not expressly contained in this Agreement; and,
 - iii. This Agreement supersedes all prior or simultaneous representations, discussions, negotiations, and agreements, whether written or oral, within the scope of this Agreement.
- i. Indemnity.
 - i. The Owner(s) shall defend, indemnify and hold the County, its officers, officials, employees, agents and volunteers harmless (and their marital

communities) from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Owner(s) in performance of this Agreement, except for injuries and damages caused by the sole negligence of the County.

- ii. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Owner(s) and the County, its officers, officials, employees, agents and volunteers (and their marital communities), the Owner(s)' liability, including the duty and cost to defend, hereunder shall be only to the extent of the Owner(s)' negligence.
- iii. The provisions of this Section shall survive the expiration or termination of this Agreement.

j. General Insurance Requirements.

- i. The Owner(s) shall maintain a homeowner's insurance policy while this Agreement is in effect with at least a basic liability limit of one hundred thousand dollars (\$100,000). Owner shall provide the County with a certificate of insurance as proof.
- ii. Failure of the Owner(s) to take out or maintain any required insurance shall not relieve the Owner(s) from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification of the County.
- iii. The Owner(s)' insurers shall have no right of recovery or subrogation against the County (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so affected shall protect all the parties and shall be primary coverage for all losses covered by the above described insurance.
- iv. Insurance companies issuing the Owner(s)' insurance policy or policies shall have no recourse against the County (including its employees and other agents and agencies) for payment of any premiums or for assessments under any form of insurance policy.
- v. All deductibles in the Owner(s)' insurance policies shall be assumed by and be at the sole risk of the Owner(s).
- vi. Any coverage for third party liability claims provided to the County by a "Risk Pool" created pursuant to Ch. 48.62 RCW shall be non-contributory

with respect to any insurance policy the Owner(s) shall provide to comply with this Agreement.

- vii. The County may, upon the Owner(s)' failure to comply with all provisions of this Agreement relating to insurance, withhold payment or compensation that would otherwise be due to the Contractor(s).
- viii. The owner shall provide a copy of all insurance policies specified in this Agreement.
- ix. Written notice of cancellation or change in the Owner(s)' insurance required by this Agreement shall reference the project name and agreement number and shall be mailed to the County at the following address: Jefferson County Risk Management, P.O. Box 1220, Port Townsend, WA 98368.
- x. The Owner(s)' liability insurance provisions shall be primary and noncontributory with respect to any insurance or self-insurance programs covering the County, its elected and appointed officers, officials, employees, and agents.
- xi. Any failure to comply with reporting provisions of the insurance policies shall not affect coverage provided to the County, its officers, officials, employees, or agents.
- k. Section Headings. The headings of the sections of this Agreement are for convenience of reference only and are not intended to restrict, affect, or be of any weight in the interpretation or construction of the provisions of the sections or this Agreement.
- l. Limits of Any Waiver of Default. No consent by either party to, or waiver of, a breach by either party, whether express or implied, shall constitute a consent to, waiver of, or excuse of any other, different, or subsequent breach by either party.
- m. No Oral Waiver. No term or provision of this Agreement will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing signed on behalf of the party against whom the waiver is asserted. Failure of a party to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default.
- n. Severability. Provided it does not result in a material change in the terms of this Agreement, if any provision of this Agreement or the application of this Agreement to any person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and the application this Agreement shall not be affected and shall be enforceable to the fullest extent permitted by law.

- o. Binding on Successors, Heirs and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties' successors in interest, heirs and assigns.
- p. No Assignment. The Owner(s) shall not sell, assign, or transfer any of rights obtained by this Agreement without the express written consent of the County Representative.
- q. Third-Party Beneficiaries.
 - i. The Contractor(s) is a third-party beneficiary to this Agreement and is entitled to enforce the rights and benefits granted to the Contractor(s) under this Agreement.
 - ii. Except is provided in Section 6.q.i., the parties do not intend and nothing in this Agreement shall be construed to mean that any provision of this Agreement is for the benefit of any other person or entity who is not the Owner(s) or County,
- r. Modification of this Agreement. This Agreement may be amended or supplemented only by a writing that is signed by the County representative, and the Owner(s) or the Owner(s)' duly authorized representatives.
- s. Signature in Counterparts. The parties agree that separate copies of this Agreement may be signed by each of the parties and this Agreement shall have the same force and effect as if all the parties had signed the original.
- t. Facsimile and Electronic Signatures. The parties agree that facsimile and electronic signatures shall have the same force and effect as original signatures.
- u. Arms-Length Negotiations. The parties agree that this Agreement has been negotiated at arms-length.
- v. Public Records Act. Any electronic, audio, paper, or other media, defined as a public record under the Washington Public Records Act, Chapter 42.56 RCW, transmitted to the County or used in conjunction with this Agreement may be subject to production.
- w. Representations and Warranties. The parties represent and warrant that:
 - i. That each is fully authorized to enter into this Agreement;
 - ii. That the making and performance of this Agreement will not violate any provision of law or of any party articles of incorporation, charter, or by-laws; and,

- iii. That each party has read this Agreement in its entirety and know the contents of this Agreement, that the terms of this Agreement are contractual and not merely recitals, and that they have signed this Agreement.

Jefferson County Representative

Owner(s)

Appalachia Martine Date
Public Health Director

OWNER'S NAME Date

APPROVED AS TO FORM:

Philip C. Hunsucker
Chief Civil Deputy Prosecuting Attorney

OWNER'S NAME Date

Exhibit A

Property's Legal Description