

**Business of the Ruston City Council
 Ruston, WA**

Subject: Resolution #703 – Authorizing Execution of Agreement With Pierce County for the Low Income Energy Assistance Program

Proposed Council Action:

Pass Resolution #703.

Dept. Origin: Utilities Department

Prepared by: Jennifer Robertson
 City Attorney

For Agenda of: June 18, 2019

Exhibits: Resolution #703 with Attached Agreement

Initial & Date

Concurred by Mayor: _____

Approved/form by City Atty: 6-5-18/ 

Approved by _____ Director: _____

Approved by Department Head: _____

INFORMATION / BACKGROUND

Pierce County Department of Community Connections provides assistance to low income people living within Pierce County in accordance with 42 U.S.C. Section 8264, the Low Income Energy Assistance Act of 1981 (“the Act”). These assistance payments are made directly to the electricity vendor to be credited to the account of the electricity customer. Because the City of Ruston provides electricity services to people and properties located within the City limits, it is a “vendor” under the Act. In order to comply with this Act, Pierce County must ensure that electricity vendors whose customers receive these assistance meet the requirements of the Act. This requires an agreement between the entity providing the assistance (in this case Pierce County) and the Vendor (the City).

The City has had an agreement with Pierce County for these purposes for many years but the current Agreement is expiring at the end of September. Therefore, in order for people living in Ruston to be eligible for receipt of funds from the energy assistance program, the City must renew the agreement with Pierce County. The proposed agreement will run from October 1, 2019 through September 30, 2020. But unlike prior agreements which were only for two years, this Agreement will automatically review from year-to-year for up to a 5 year period. Therefore, this Agreement will run through September 30, 2024 unless either party terminates it upon 30 days written notice. (Sections 3, 14.)

FISCAL CONSIDERATION

This agreement will facilitate the County providing energy assistance to low income customers of the City of Ruston. Those payments will go directly to the City and be credited to the accounts of those customers.

RECOMMENDATION / MOTION

Pass Resolution #703.

MOTION: I move to approve Resolution #703 authorizing the Mayor to execute the Agreement for the Low Income Energy Assistance Program with Pierce County.

RESOLUTION NO. 703

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RUSTON, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH PIERCE COUNTY FOR PROVISION OF LOW INCOME ENERGY ASSISTANCE FOR CUSTOMERS OF THE CITY OF RUSTON.

WHEREAS, in accordance with RCW 39.34.080, the City may contract with another government entity to perform any function which each agency is authorized by law to perform; and

WHEREAS, the City of Ruston provides electricity services to people and properties located within the City of Ruston; and

WHEREAS, Pierce County Department of Community Connections provides assistance to low income people living within Pierce County in accordance with 42 U.S.C. Section 8264, the Low Income Energy Assistance Act of 1981; and

WHEREAS, in order to comply with this Act, Pierce County must ensure that electricity providers whose customers receive these assistance meet certain requirements; and

WHEREAS, the City has an Agreement with Pierce County for these purposes but that Agreement is set to expire on September 30, 2019; and

WHEREAS, in order for people living in Ruston to be eligible for receipt of the energy assistance, the City must have a current agreement with Pierce County, therefore, it is in the interests of the City to renew this agreement for October 1, 2019 through September 30, 2020, thereafter it will automatically renew from year-to-year unless terminated by either party with the total contract period not to exceed 5 years; and

WHEREAS, the City Council finds it in the public interest to authorize the Mayor to execute the proposed Agreement for the Low Income Energy Assistance Program in substantially the form that is attached to this Resolution as Exhibit “1”;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RUSTON, WASHINGTON, DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Authorization of Agreement. The Mayor is hereby authorized to execute the Low Income Energy Assistance Program Vendor Agreement with Pierce County in substantially the form attached hereto as Exhibit “1”.

Section 2. Posting on Website Required. Pursuant to RCW 39.34.040, once this Agreement has been executed by both Ruston and Pierce County, the City Clerk is directed to post a copy of this Agreement on the City’s website.

RESOLVED this 18th day of June, 2019.

APPROVED:

Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:

Judy Grams, City Clerk

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
RESOLUTION NO.: 703

EXHIBIT “1”

Interagency Agreement

between

Ruston and Pierce County

for

Low Income Energy Assistance Program

PIERCE COUNTY HUMAN SERVICES
LOW INCOME HOME ENERGY ASSISTANCE PROGRAM
MULTI-VENDOR AGREEMENT

This Agreement, effective as of October 1, 2019, is entered into by and between PIERCE COUNTY HUMAN SERVICES (hereinafter, referred to as the "County") and City of Ruston (hereinafter, referred to as the "Energy Vendor or Vendor") of the Low-Income Home Energy Assistance Program (LIHEAP).

1. PURPOSE

Funding for LIHEAP payments is governed by Federal Law 42 U.S.C. 8624: Low-Income Home Energy Assistance Act of 1981, and subsequent amendments. This act requires that certain assurances be satisfied before energy assistance payments are made on behalf of eligible individuals, to suppliers of home heating energy. This Agreement defines the conditions that the Energy Vendor must agree to so that the County can make energy assistance payments to the Energy Vendor on behalf of eligible households.

2. DEFINITIONS

For purposes of this Agreement, the following definitions shall apply:

- a) "County" shall mean the Pierce County through its' Department of Human Services;
- b) "Supplier of home energy" shall mean the Energy Vendor receiving LIHEAP payments from the County for eligible households;
- c) "Current heating seasons" shall be defined as October 1 through June 30 of the following year; and
- d) "Eligible household" or "eligible customer" shall mean a customer who qualifies for energy assistance as determined by the County under LIHEAP; and
- e) "Program year" shall be defined as October 1 through September 30 of the following year.

3. TERM OF THE AGREEMENT

This Agreement is effective October 1, 2019 and shall remain in effect for a period of one year from and after its effective date and shall automatically be renewed on a year-to-year basis thereafter unless either party hereto serves notice upon the other party of its intention to cancel at least 30 days in advance of the termination of the first year, or during any yearly renewal thereof. Notice during each renewal term may occur at any time during the course of such term.

The decision to extend this Agreement is subject to the availability of funding. Total contract period not to exceed 5 years.

4. COMPENSATION

The maximum consideration of this Agreement shall not exceed the maximum LIHEAP direct service funds allowed, per the Contract between the Washington State Department of Commerce and Pierce County Human Services, for each fiscal year.

5. PERIOD OF PAYMENT

The County will make payments to the Vendor on behalf of customers who have been determined eligible by the County for the term of the Agreement (LIHEAP payments). All payments are contingent upon appropriation and allocation of funds in accordance with federal, state, and local law.

6. COUNTY RESPONSIBILITIES

The County shall:

- a) Accept and review applications and determine eligibility of household for LIHEAP payments;
- b) Follow procedures that minimize the time elapsing between the receipt of LIHEAP funds and the disbursement to the Energy Vendor;
- c) Make payments in a timely manner to the Energy Vendor on behalf of eligible households for the term of this Agreement;
- d) Follow sound fiscal management policies, including, but not limited to segregation of LIHEAP funds from other operating funds of the County;
- e) Notify customer and/or the Energy Vendor of the customer's eligibility and total LIHEAP benefit amount;
- f) Incorporate policies that assure the confidentiality of eligible household's energy usage, balance, and payments; and
- g) Upon request from the Energy Vendor, provide a statement verifying income of an eligible household for the sole purpose of determining moratorium eligibility, within the statutory guidelines of confidentiality.

7. ENERGY VENDOR RESPONSIBILITIES

The Energy Vendor shall:

- a) Notify the County if the Vendor receives more than one energy assistance payment for a customer between October 1 and September 30 of the following year;

- b) Immediately apply the LIHEAP pledge to the customer's current/past due bill, deposit/reconnect requirements, or delivery of fuel to eliminate the amount owed by the customer for a period determined by the amount of the LIHEAP payment;
- c) Apportion the LIHEAP payment over several billing periods to reduce the amount owed by the customer until the benefit is exhausted;
- d) Establish a line of credit for the customer to be used at the discretion of the customer until the LIHEAP benefit is exhausted;
- e) Notify the customer of the amount of LIHEAP payment applied to the customers billing;
- f) Keep customer records confidential;
- g) Maintain records for six (6) years from the end of the Federal Fiscal year in which energy assistance is provided;
- h) Not treat adversely, or discriminate against any household that receives LIHEAP payments, in either the cost of the goods supplied, or the services provided;
- i) Upon request of the County, provide eligible customer's energy consumption history for the sole purpose of determining customer LIHEAP benefit;
- j) Comply with the provisions of the State law regarding winter disconnects and pertinent provisions of the Washington Administrative Code related to the winter moratorium, if governed by that ruling; and
- k) Make records available for review by authorized staff of the County, Washington State Department of Commerce, and the U.S. Department of Health and Human Services.

8. DATA COLLECTION

The Energy Vendor shall keep records showing the following:

- a) Name and address of households who received LIHEAP payments;
- b) Amount of assistance accrued to each household; and
- c) Amount of the household's credit balance when the LIHEAP payment establishes a line of credit. This credit balance also needs to show on all customer billing documents.

9. CREDIT BALANCES

In the event that a customer has a credit balance and no longer needs service from the Energy Vendor, the Energy Vendor shall:

- a) Forward a check in the amount of any remaining credit balance directly to the customer, or, if directed by the customer, forward a two-party check for this balance to the customer in the customer's name and the name of the new home heating Energy Vendor;

- b) If the customer dies leaving a credit balance resulting from a LIHEAP payment, the remaining credit becomes part of the customer's estate; and
- c) The Energy Vendor shall dispose of all unclaimed credit balances according to customary procedures or applicable Washington State law.

10. INSURANCE REQUIREMENTS

The Vendor shall, at the Vendor's own expense, maintain, with an insurance carrier licensed or eligible under RCW Chapter 48.15 to do business in the State of Washington, with minimum coverage as outlined below, commercial automobile liability insurance, and commercial general liability insurance:

Commercial Automobile Liability

Bodily Injury Liability and Property Damage Liability

Insurance-\$1,000,000.00 each occurrence OR combined single limit coverage of \$2,000,000.00, 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 \$2,000,000.00, with no greater than a \$1,000.00 deductible.

Pierce County shall be named as an additional insured on all required policies, and such insurance carried by the Vendor shall be primary over any insurance carried by Pierce County. The Vendor shall provide a certificate of insurance to be approved by the County Risk Manager prior to contract execution, which shall be attached to the contract.

Pierce County shall have no obligation to report occurrences unless a claim is filed with the Pierce County Auditor; nor shall Pierce County have an obligation to pay premiums.

In the event of nonrenewal or cancellation of, or material change in the coverage required, thirty (30) days written notice will be furnished by the County prior to the date of cancellation, change or nonrenewal, and such notice is to be sent to the Pierce County Risk Manager, 955 Tacoma Avenue South, Suite 303, Tacoma, WA 98402.

11. INDEMNIFICATION, BIND AND CONVEY

- a) The Vendor and its officers, agents, employees, subcontractors and/or consultants agree to defend, Indemnify, and save harmless Pierce County and Washington State Department of Commerce (DOC) and their 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 DOC, and their elected or appointed officials or employees, for damages because of personal or bodily injury, including death, at any time resulting there from, 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 Vendor, its officers, agents, employees, subcontractors, and/or consultants, successor or assigns, or the County and DOC, or their 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 DOC, or their appointed or

elected officials or employees. The Vendor's obligation to indemnify, defend, and hold harmless shall not be eliminated by any actual or alleged concurrent negligence of the County or DOC, or their agents, agencies, employees, and officers, except as provided below.

- b) The following paragraph applies to all work in connection with or collateral to, a contract or agreement relative to construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including moving and demolition in connection therewith, or to 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 DOC the County's or DOC's agents or employees, and the Vendor 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 Vendor's negligence.

- c) The Vendor agrees that the obligation "to indemnify, defend, and hold the County and DOC harmless as provided above extends to any claim brought on behalf of any employee of the Vendor and its subcontractors or consultants". The Vendor 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.
- d) The Vendor agrees to be bound by the General Terms and Conditions of the Washington State Department of Commerce Low-Income Home Energy Assistance Program (LIHEAP) contract, which is available upon request.

12. INDEPENDENT CONTRACTORS

In the performance of this Agreement the Energy Vendor, its agents and employees, is acting as an independent contractor and not as an agent or employee of the County, Department of Commerce, the State of Washington, or the United States Government.

13. DEBARMENT

The Energy Vendor 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 Energy Vendor certifies that the Energy Vendor 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 Energy Vendor shall complete a Certification Debarment, Suspension, Ineligibility, and Voluntary Exclusion form.

14. TERMINATION

This Agreement may be terminated by either party with a thirty (30) day written notice to the other party. Termination shall not extinguish authorized obligations incurred during the term of the Agreement. If LIHEAP funding is withdrawn, reduced, or eliminated by the Washington State Department of Commerce, the County has the right to terminate this Agreement immediately.

15. ASSIGNMENT OF AGREEMENT

Neither party may assign the Agreement or any of the rights, benefits and remedies conferred upon it by this Agreement to a third party without the prior written consent of the other party, which consent shall not be unreasonably withheld.

16. REGULATIONS AND REQUIREMENTS

This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington, and to any other provisions set forth in this Agreement.

17. VENUE AND CHOICE OF LAW

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Pierce. This Agreement shall be governed by the law of the State of Washington.

18. DISPUTES

Differences between the Vendor and the County, arising under and by virtue of the Agreement shall be brought to the attention of the County Director at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken.

19. ENTIRE AGREEMENT

This written contract represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

**PIERCE COUNTY
AGREEMENT SIGNATURE PAGE**

Agreement No: SC-106793

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) indicated below:

CONTRACTOR:

Contractor Signature Date

Signer's Name/Title:

Company Name:

Address:

Mailing Address:

Contact Name:

Contact Phone:

UBI No.:

Federal Tax ID:

or

Social Security No:

Federal Filing Status:

Corporation Partnership Sole Proprietor

PIERCE COUNTY:

Reviewed By:

Deputy Prosecuting Attorney Date
(as to form only)

Budget and Finance Date

Approved By:

Aaron Vanvalkenburg Date
Acting Director, Human Services

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