

CONTRACT FOR SERVICES

Between
PACIFIC COUNTY, WASHINGTON
And
THE PORT OF ILWACO

THIS CONTRACT is made between Pacific County – P O Box 187, South Bend, Washington, 98586-0187 (the “COUNTY”), and The Port of Ilwaco – P O Box 307, Ilwaco, WA 98624 (the “RECIPIENT”).

WHEREAS, to foster and retain economic viability of the Pacific County community, the RECIPIENT desires to complete the Halton Property Development; and

WHEREAS, the RECIPIENT’S Halton Property Development meets the definition of a project eligible for public facility funding as defined by Chapter 82.14.370 RCW; and

WHEREAS, the RECIPIENT’S Halton Property Development implements the economic development purposes identified in Chapter 82.14.370 RCW by expanding economic development opportunities and promoting job creation and retention in Pacific County; and

WHEREAS, the RECIPIENT’S Halton Property Development will require substantial financial support from multiple sources; and

WHEREAS, the RECIPIENT’S Halton Property Development is listed on the Pacific County WACERT project ranking list and/or the Overall Economic Development Plan; and

WHEREAS, RCW 82.14.370 provides statutory authority for rural (distressed) counties to impose sales and use taxes to finance public facilities in rural counties as deductions from the tax otherwise required to be collected or paid over to the state department of revenue under chapters 82.08 or 82.12 RCW; and

WHEREAS, finding Pacific County to be a rural “distressed county” in need of public facilities, the Board of Pacific County Commissioners enacted Ordinance No. 148 which imposed a sales and use tax under RCW 82.14.370(1) for twenty-five (25) years at the rate of four one-hundredths percent (0.04%) effective July 1, 1998, and established the Public Facilities Improvements Fund No. 126 within the COUNTY treasury to finance public facilities within Pacific County; and

WHEREAS, finding Pacific County a “rural county” in need of additional “public facilities” financing, the Board of County Commissioners enacted Ordinance No. 148-A increasing the locally retained sales and use tax rate under Ordinance No. 148 to eight one-hundredths percent (0.08%) effective August 1, 1999, and subsequently the Board of County Commissioners enacted Ordinance No. 148-B further increasing the locally retained sales and use tax rate under Ordinance No. 148A to nine one-hundredths percent (0.09%) effective August 1, 2007; and

WHEREAS, the COUNTY has the statutory authority under RCW 82.14.370 to assist with financing public facilities throughout Pacific County; and

WHEREAS, the COUNTY desires to financially assist the RECIPIENT with its Project; and

WHEREAS, the COUNTY has authorized expenditure of funds retained from sales and use taxes as per RCW 82.14.370 on this project following a public review process, and

WHEREAS, the Pacific County Council of Governments has reviewed applications for public facility funding, and has recommended that this project be provided with public facility financial assistance from the County; and

WHEREAS, the RECIPIENT wishes to enter into this CONTRACT to perform these services on behalf of Pacific County.

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

1. **FUNDING**

Twenty-five thousand dollars (\$25,000) for one year beginning January 1, 2015 through December 31, 2015 has been pledged within Pacific County Public Facilities Improvement Fund No. 126 to assist the RECIPIENT with this “public facilities” improvement. Said amount shall constitute the maximum reimbursement the RECIPIENT is eligible to receive from the COUNTY under this CONTRACT. These funds are to be dispersed on a cost reimbursement basis.

2. **USE OF FUNDS**

The RECIPIENT shall use these COUNTY funds solely for the Halton Property Development for grading, rocking and construction of concrete pads for boat repair and storage. The RECIPIENT shall comply with all applicable public works and competitive bidding laws, and shall provide documentation thereof. The RECIPIENT shall also comply with all applicable local, state and/or federal laws or regulations that assure quality of the services being performed, including standards for licensing, certification and operation of facilities, and any other standards or criteria herein described.

3. **SCOPE OF WORK**

Reimbursement shall only be for expenses incurred for the Halton Property Development as specified in Attachment A.

4. **LOCAL FUNDING**

The RECIPIENT affirms its pledge to use its own funds and grant and loan funds in support of the Project as needed to complete the project.

5. **PAYMENT PROVISIONS**

The COUNTY, from the Pacific County Public Facilities Improvement Fund (No. 126), has pledged twenty five thousand dollars (\$25,000) for one year beginning January 1, 2015, through December 31, 2015 to assist the RECIPIENT to complete this project. These funds shall be disbursed to the RECIPIENT as per the terms listed within Section 1. Funding by warrant within forty five (45) days of billing.

As a provision for receiving reimbursement, the RECIPIENT shall provide the following information to the COUNTY in a final project report:

- Project expenditure details, and
- Identification of the economic benefits to the ports and Pacific County resulting from the project, including the projected number of jobs preserved and/or created.

Said final project report is to be submitted to the County with the final request for reimbursement.

6. **EVALUATION AND MONITORING**

- A. The RECIPIENT shall maintain books, records, documents and other evidence and accounting procedures and practices that sufficiently and properly reflect the performance of this CONTRACT. The RECIPIENT will retain all books, records, documents and other material relevant to this CONTRACT for six (6) years after expiration of the CONTRACT, or from the date final payment hereunder is made, whichever is later.
- B. The COUNTY or the State Auditor and any of their representatives shall have full access to and the right to examine during normal business hours and as often as the COUNTY or the State Auditor may deem necessary, those books, records, documents and other evidence retained by the RECIPIENT with respect to all matters covered in this CONTRACT. Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials, payrolls, and records of matters covered by this CONTRACT. These rights shall last for six (6) years after expiration of the CONTRACT, or from the date final payment hereunder is made, whichever is later.
- C. The COUNTY will use reasonable security procedures and protections to assure that related records and documents provided by the RECIPIENT are not erroneously disclosed to third parties. To the extent chapter 42.56 RCW permits, pertinent records and other documents in any medium furnished by the RECIPIENT will remain its property unless otherwise agreed. The COUNTY will not disclose or make this material available to anyone other than those authorized by/in the above paragraph without first providing notice to the RECIPIENT and giving the RECIPIENT a reasonable opportunity to respond.
- D. The RECIPIENT shall cooperate with and freely participate in any other monitoring or evaluation activities pertinent to this CONTRACT that the COUNTY needs to have conducted.

7. **RECAPTURE PROVISION**

- A. In the event the RECIPIENT fails to expend these funds in accordance with state law and/or the provisions of this CONTRACT, the COUNTY reserves the right to recapture funds in an amount equivalent to the extent of noncompliance.
- B. Such right of recapture shall exist for six (6) years after expiration of this CONTRACT or final payment hereunder, whichever occurs later. Repayment by the RECIPIENT of funds under this recapture provision shall occur within twenty (20) days of demand. In the event the COUNTY is required to institute legal proceedings to enforce this recapture provision, the COUNTY shall be entitled to its costs thereof, including reasonable attorney's fees.

8. **NONDISCRIMINATION**

The RECIPIENT shall comply with all federal and state nondiscrimination laws, including, but not limited to chapter 49.60 RCW – Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq. – the Americans with Disabilities Act (ADA) as amended.

9. **NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**

In the event the RECIPIENT fails or refuses to comply with any nondiscrimination law, regulation, or policy, this CONTRACT may be rescinded, canceled, or terminated in whole or in part, and the RECIPIENT may be declared by the COUNTY ineligible for further Public Facilities Improvement Funds. The RECIPIENT shall be given a reasonable time in which to cure any such noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

10. **EMPLOYMENT RELATIONSHIPS**

The RECIPIENT, its employees or agents performing under this CONTRACT are not deemed to be employees of the COUNTY nor agents of the COUNTY in any manner whatsoever. No officer, employee or agent of the RECIPIENT will hold themselves out as, or claim to be, an officer, employee or agent of the COUNTY by reason hereof, nor will they make any claim, demand or application to or for any right or privilege applicable to an officer, employee or agent of the COUNTY.

11. **INSURANCE**

Without limiting the RECIPIENT'S indemnification of COUNTY, and prior to commencement of this CONTRACT, RECIPIENT shall obtain, provide and maintain during the term of this Contract, policies or insurance of the type and amounts described below and in a form satisfactory to the COUNTY.

1. **General Liability Insurance.** RECIPIENT shall maintain commercial general liability insurance with at least as broad as Insurance Services Office form CG 00 0, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability.
2. **Professional Liability (Errors & Omissions) Insurance.** RECIPIENT shall maintain professional liability insurance that covers the services to be performed in connection with this Contract, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this CONTRACT and RECIPIENT agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this Contract.
3. **Workers' Compensation Insurance.** RECIPIENT shall, at its own expense, maintain Workers' Compensation Insurance (statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).
4. **Waiver of Subrogation.** All insurance coverage maintained or procured pursuant to this Contract shall be endorsed to waive subrogation against COUNTY, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow RECIPIENT or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. RECIPIENT hereby waives its own right of recovery against COUNTY, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

12. **INDEMNIFICATION**

In accepting this CONTRACT, the RECIPIENT, including its successors and assigns, does hereby covenant and agree to indemnify and protect and save harmless the COUNTY and its officers and employees from all claims, actions, or damages of every kind and description which may accrue to or be suffered by any person, partnership, corporation, or other entity of any kind that arise in whole or in part from intentional tort(s), or negligent act(s) or omission(s), or strict liability of the RECIPIENT or its employees, agents, successors, or assigns. If the above sentence applies and any suit or action is brought against the COUNTY, its officers, its employees, or any combination thereof, the RECIPIENT, including its successors or assigns, shall defend the suit or action at his or her or their sole cost and expense and shall fully satisfy any judgment that is rendered against the COUNTY, its officers, its employees, or any combination thereof.

13. **ENTIRE CONTRACT**

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

14. **CONTRACT MODIFICATIONS**

The COUNTY and the RECIPIENT may, from time to time, request changes in services being performed with these funds. Any such changes that are mutually agreed upon shall be incorporated herein by written amendment to this CONTRACT. It is mutually agreed and understood that no alteration or variation of the terms of this CONTRACT shall be valid unless made in writing and signed by the parties hereto, and that any oral understanding or agreements not incorporated herein shall not be binding. For example and without limitation, an amendment to this CONTRACT must be approved in writing by the COUNTY prior to the RECIPIENT expending funds for the items covered within that amendment. Costs incurred by the RECIPIENT in contravention of this Paragraph are the sole responsibility of the RECIPIENT.

15. **CONTRACT PERIOD**

The terms of this CONTRACT and the performance of the parties hereto shall be deemed to have commenced the 1st day of January, 2015. It will continue in effect through the 31st day of December 2015, unless sooner terminated or extended as provided herein.

16. **TERMINATION OF CONTRACT**

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

- C. The COUNTY may unilaterally terminate all or part of this CONTRACT, or reduce the Scope of Work, if the Public Facilities Improvements funds are reduced as a result of a reduction or loss of the rural sales and use taxing authority or a substantial reduction in taxable activity.

17. **SPECIAL PROVISION**

The failure of the COUNTY to insist upon the strict performance of any provision of this CONTRACT or to exercise any right based upon breach thereof or the acceptance of any performance during such breach shall not constitute a waiver of any right under this CONTRACT.

18. **SEVERABILITY**

In the event any provision, or any portion thereof, contained in this CONTRACT is held to be unconstitutional, invalid or unenforceable, said provision(s) or portion(s) thereof shall be deemed severed and the remainder of this CONTRACT shall not be affected and shall remain in full force and effect. Furthermore, if such an event occurs, the parties agree to negotiate a modification to replace the unacceptable provision(s) as soon as possible.

19. **DISPUTE RESOLUTION**

Except as otherwise provided in this CONTRACT, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute hearing. The parties shall select a dispute resolution team to resolve the dispute. The team shall consist of a representative appointed by the COUNTY, a representative appointed by the RECIPIENT and a third party mutually agreed upon by both parties. This team shall attempt, by majority vote, to resolve the dispute. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

20. **GOVERNING LAW AND VENUE**

This CONTRACT shall be construed and enforced in accordance with, and its validity and performance governed by, the laws of the state of Washington. The superior court of Pacific County, Washington shall be the venue for any suit between the parties arising out of this CONTRACT.

21. **PUBLIC RECORDS ACT**

This CONTRACT and all public records associated with this CONTRACT shall be available from the COUNTY for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the “Act”). To the extent that public records then in the custody of the RECIPIENT are needed for the COUNTY to respond to a request under the Act, as determined by the COUNTY, the RECIPIENT agrees to make them promptly available to the COUNTY. If the RECIPIENT considers any portion of any record provided to the COUNTY under this CONTRACT, whether in electronic or hard copy form, to be protected from disclosure under law, the RECIPIENT shall clearly identify any specific information that it claims to be confidential or proprietary. If the COUNTY receives a request under the Act to inspect or copy the information so identified by the RECIPIENT and the COUNTY determines that release of the information is required by the Act or otherwise appropriate, the COUNTY’s sole obligations shall be to notify the RECIPIENT (a) of the request and (b) of the date that such information will be released to the requester unless the RECIPIENT obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the RECIPIENT fails to timely obtain a court order enjoining disclosure, the COUNTY will release the requested information on the date specified.

The COUNTY has, and by this section assumes, no obligation on behalf of the RECIPIENT to claim any exemption from disclosure under the Act. The COUNTY shall not be liable to the RECIPIENT for releasing records not clearly identified by the RECIPIENT as confidential or proprietary. The COUNTY shall not be liable to the RECIPIENT for any records that the COUNTY releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

22. **ADMINISTRATION**

The following individuals are designated to co-administer this CONTRACT. They shall also serve as their respective party’s contact person for any and all communications relative to this CONTRACT.

For the COUNTY: Kathy Spoor, County Administrative Officer
Dept. of General Administration
P.O. Box 6
South Bend, WA 98586-0006
Telephone: 360/875-9334

For the RECIPIENT: Guy Glenn Jr, Port Manager
Port of Ilwaco
P O Box 307
Ilwaco, WA 98624
Telephone: 360/642-3143

IN WITNESS WHEREOF, representatives of both the RECIPIENT and the COUNTY executed this CONTRACT the date(s) so noted below.

RECIPIENT (Port of Ilwaco)

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

Guy Glenn, Manager Date

Steve Rogers, Chair

ATTEST:

Frank Wolfe, Commissioner

Name, Title Date

Lisa Ayers, Commissioner

ATTEST:

Clerk of the Board Date

Pacific Council of Governments
Meeting Minutes
October 23, 2013
1:00 p.m., Wednesday
PUD Auditorium
Long Beach, WA

Attendance:

Mike Cassinelli, City of Ilwaco
Bob Jungar, City of Raymond
Frank Wolfe, Pacific County
Dale Little, City of South Bend

Jim Neva, Port of Ilwaco
Kim Patten, WSU
Chuck Whiteman, Port of Chinook
Doug Miller, PUD

Cathy Russ, PCEDC
Mary DeLong, Port of Peninsula
Lisa Ayers, Pacific County
Melissa Hebish, PCOG Staff

Not in Attendance:

Representative, Timberland Lib.
Dawn King, Port of WH

Gene Miles; City of Long Beach

Tim Russ, Pacific Transit

1. Call to Order and Introductions

Doug Miller called the meeting to order at 1:02 pm and circulated the sign-in sheet. Doug asked for any changes or additions to the Agenda, items 6 TAC Update was removed.

2. Approval of the September 2013 Meeting Minutes

Jim Neva made the motion to accept the September 2013 minutes as submitted. Bob Jungar seconded and the motion carried by voice vote.

3. Correspondence

Doug reported the following correspondence:

- 9/27/2013- Amy Asher - Grant money available for land acquisition projects.
- 10/18/2013 - Matt Herman - Reminder that the Transportation Alternatives Program (TAP) applications are due by October 25, 2013.
- 10/21/2013 - Ray Bucheger - Small Ports and Other Stakeholders from Around the U.S. Send Letter to Congress. Pacific Council of Governments was listed as one of the signators to the letter.

4. Payment of September 2013 Bills.

Doug reviewed the bills for September.

Mike Cassinelli made the motion to approve payment of the September 2013 bills as submitted. Mary DeLong seconded and the motion carried by voice vote with one abstention.

5. Review of the 2013 Y-T-D Budget Report through August

Doug reviewed the Y-T-D Budget.

6. TAC Update

None.

7. Discussion on PCOG 10% STP Funds

Jim Neva, Port of Ilwaco, explained that they would like to apply for STP funding as a match for the Elizabeth Street Upgrade. The Port of Ilwaco submitted the enclosed request letter concerning this item.

Mary DeLong made the motion to award Port of Ilwaco STP funding in the amount of \$26,653 as a match for the Elizabeth Street Upgrade. Cathy Russ seconded and the motion carried by voice vote with one abstention.

8. Port of Ilwaco 0.09% Request

Jim explained that the Port of Ilwaco was awarded a 0.09% grant in the amount of \$25,000 for engineering of the Halton Property Development. The Port has requested permission to use the \$25,000 for actual construction. A letter describing this request is enclosed.

Kim Patten made the motion to allow the Port of Ilwaco to use the 0.09% grant in the amount of \$25,000 for actual construction rather than engineering. Mike Cassinelli seconded and the motion carried by voice vote.

9. Executive Session - Personnel

Administrative Assistant six month review began at 1:18 pm and concluded at 1:28 pm.

Jim Neva made the motion to make a salary adjustment for Melissa Hebish, Administrative Assistant, in the amount of \$1.00 per hour effective October 15, 2013, based on approval of the EDC Board. Lisa Ayers seconded and the motion carried by voice vote.

10. PCOG 2014 Draft Budget

Doug reviewed the 2014 Draft Budget. He noted there was an increase in the salaries for the Administrative Assistant and the Executive Director. He also noted there would be some changes to the STP budget and possibly the lease. An updated budget would be voted on at the November 20, 2013 meeting.

11. Other Business

Cathy Russ announced that the Pacific County EDC has received notice from Mike Plato that they have to move. Cathy discussed some places she has been looking at and that rent and utilities would probably go up. The EDC may have to charge PCOG more to help cover costs.

Cathy informed the Board that interviews for the new Executive Director would be held on October 24, 2013. There are five candidates being interviewed and she hopes to have the new Executive Director start by December 1, 2013.

Doug reminded the Board that elections would take place at the November 20, 2013 meeting.

12. Adjournment

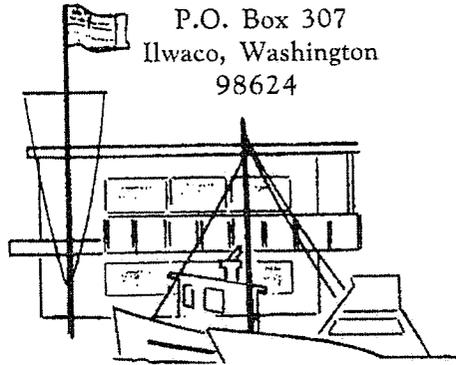
The meeting was adjourned at 2:02 pm.

**The next meeting will be November 20, 2013
Pacific County Courthouse Annex
South Bend, WA**

Commissioners

Dick Siefert
Dave Nichols
Les Swensen

PORT OF ILWACO



P.O. Box 307
Ilwaco, Washington
98624

Jim Neva
Manager

Area Code 360
Phone 642-3143
FAX 642-3148
www.portofilwaco.org

Pacific Council of Governments
530 Commercial St.
Raymond, WA 98577

RE: Port of Ilwaco \$25K Award for Engineering

Ladies & Gentlemen:

The Port of Ilwaco was awarded a 0.09 grant in the amount of \$25,000 for engineering of the Halton Property development. Part of that project included the construction of additional concrete pads for boat repair, as well as additional fenced-in boat storage. We would like to request that the grant which was awarded be used for grading, rocking and the actual construction of these pads and boat storage. This is an immediate need, due to the fact that our boatyard and boat storage are at capacity and the busy season for this facility is just approaching. These funds would immediately go to local contractors and have an immediate financial return to the port. The Port of Ilwaco would match any grant money used for this project with port cash. The engineering of the total project would then be the responsibility of the port.

Sincerely,

A handwritten signature in black ink that reads "Jim". The signature is written in a cursive, slightly slanted style.

Jim Neva,
External Affairs/Public Relations
PORT OF ILWACO