

CONTRACT FOR SERVICES

Between
PACIFIC COUNTY, WASHINGTON
And
THE PORT OF CHINOOK

THIS CONTRACT is made between Pacific County – P.O. Box 187, South Bend, Washington, 98586-0187 (the “COUNTY”), and The Port of Chinook – 743 Water Street/P O Box 185, Chinook, Washington 98614 (the “RECIPIENT”).

WHEREAS, to foster and retain economic viability of the Pacific County community, the RECIPIENT desires to complete a two phase construction project at the marina. Phase One will consist of constructing a pile supported dock that will add to their current boat hoist; and

WHEREAS, the RECIPIENT’S Boat Hoist Dock Construction project meets the definition of a project eligible for public facility funding as defined by Chapter 82.14.370 RCW; and

WHEREAS, the RECIPIENT’S Boat Hoist Dock Construction project 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 Boat Hoist Dock Construction project will require substantial financial support from multiple sources; and

WHEREAS, the RECIPIENT’S Boat Hoist Dock Construction project is listed on the Overall Economic Development Plan for Pacific County; 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 One thousand dollars (\$21,000) has been pledged within Pacific County Public Facilities Improvement Fund No. 126 to assist the RECIPIENT with this “public facilities” improvement beginning June 1, 2015 through December 31, 2016. 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 Boat Hoist Dock Construction by constructing a pile supported dock that will add to the existing boat hoist. 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 Boat Hoist Dock Construction as specified in the 2015 Port of Chinook Infrastructure Funding Application (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**

Funds shall be disbursed to the RECIPIENT by warrant within forty five (45) days of billing as per the terms listed within Section 1.

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.

- A. **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.
- B. **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.
- C. **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).
- D. **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.

The RECIPIENT must name the COUNTY as an additional insured. The RECIPIENT agrees that its liability insurance shall be primary and non-contributory to the COUNTY's and that RECIPIENT's liability insurance policy shall so state.

12. **INDEMNIFICATION/HOLD HARMLESS**

- A. **Indemnification by RECIPIENT.** To the fullest extent permitted by law, the RECIPIENT agrees to indemnify, defend and hold the COUNTY and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which 1) are caused in whole or in part by any action or omission, negligent or otherwise, of the RECIPIENT, its employees, agents or volunteers or RECIPIENT's subcontractors and their employees, agents or volunteers; or 2) are directly or indirectly arising out of, resulting from, or in connection with performance of this Contract; or 3) are based upon the RECIPIENT'S or its subcontractors' use of, presence upon or proximity to the property of the COUNTY. This indemnification obligation of the RECIPIENT shall not apply in the limited circumstance where the claim, damage, loss or expense is caused by the sole negligence of the COUNTY. This indemnification obligation of the RECIPIENT shall not be limited in any way by the Washington State Industrial Insurance Action RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the RECIPIENT hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the RECIPIENT are a material inducement to COUNTY to enter into the Contract, are reflected in the RECIPIENT's compensation, and have been mutually negotiated by the parties.

- B. **Participation County – No Waiver.** The COUNTY reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of RECIPIENT's indemnity obligations under the Contract.
- C. **Survival of RECIPIENT's Indemnity Obligations.** The RECIPIENT agrees all RECIPIENT's indemnity obligations shall survive the completion, expiration or termination of this Contract.

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 June, 2015. It will continue in effect through the 31st day of December, 2016, 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. **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.

20. **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: John Demase, Port Manager
Port of Chinook
743 Water Street/P O Box 185
Chinook, WA 98614
Telephone: 360/777-8797

21. **ATTORNEY'S FEES/COST OF SUIT AND VENUE**

If either party files suit to enforce this Contract, parties agree that the prevailing party in any such action shall be entitled to collection costs, reasonable attorney's fees, and costs of suit. The parties agree that any suit pertaining to this Contract shall be filed in the Pacific County Superior Court.

1. **Disputes.** Differences between the RECIPIENT and the COUNTY, arising under and by virtue of this Contract, shall be brought to the attention of the COUNTY at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due RECIPIENT shall be decided by the COUNTY'S Contract representative or designee. All rulings, orders, instructions and decisions of the COUNTY'S contract representative shall be final and conclusive, subject to their right to seek judicial relief pursuant to **Choice of Law, Jurisdiction and Venue.**

2. **Choice of Law, Jurisdiction and Venue.** This Contract has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each party hereto that this Contract shall be governed by the laws of the State of Washington, both as to its interpretation and performance.

Any action at law, suit in equity, or judicial proceeding arising out of this Contract shall be instituted and maintained only in any of the courts of competent jurisdiction in Pacific County, Washington.

3. **Severability.** If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

If any provision of this Contract is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

Should the COUNTY determine that the severed portions substantially alter this Contract so that the original intent and purpose of the Contract no longer exists, the COUNTY may, in its sole discretion, terminate this Contract.

22. **PUBLIC RECORDS ACT**

This Agreement and all public records associated with this Agreement 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 Agreement, 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.

RECIPIENT agrees to indemnify and, to the greatest extent legally possible, to hold harmless the COUNTY in any action by a third party due to the negligence, recklessness or intentional actions by the RECIPIENT relating to its performance of this contract. This includes any lawsuit filed by a third party for the COUNTY's allegedly improper release of confidential or proprietary information pursuant to a public records request.

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

RECIPIENT (Port of Chinook)

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

John Demase Date

Steve Rogers, Chair

ATTEST:

Name, Title Date

Frank Wolfe, Commissioner

Lisa Ayers, Commissioner

APPROVED AS TO FORM

ATTEST:

Mark McClain Date
Pacific County Prosecutor

Clerk of the Board Date

Search Results

Current Search Terms: Port* of chinook*

Notice: This printed document represents only the first page of your SAM search results. More results may be available. To [print your complete search results, you can download the PDF and print it.](#)

No records found for current search.

Glossary

Search Results

Entity

Exclusion

Search Filters

By Record Status

By Functional Area - Entity Management

By Functional Area - Performance Information

SAM | System for Award Management 1.0

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Public Facilities Improvements (Fund 126)

Total Budget: Expenditure Overview By Category

Category	Historical Data					2015		2016		
	2011 Actual \$	2012 Actual \$	2013 Actual \$	2014 Actual \$	4-yr. Avg. \$	Total Budget \$ Including All Amendments	Actual \$ Through 9-30-2015	Baseline \$	Dept. Request \$	Budget \$
Personnel	-	-	-	-	-	-	-	-	-	-
Operating	218,375.81	302,030.47	149,417.88	215,416.12	221,310	286,418	105,354.00	294,418	294,418	294,418
Capital	-	-	-	-	-	-	-	-	-	-
Debt Service	-	-	-	-	-	-	-	-	-	-
Grand Total	218,375.81	302,030.47	149,417.88	215,416.12	221,310	286,418	105,354.00	294,418	294,418	294,418

Existing Long-Term Commitments	FY2016 Budget \$	Project Total \$	Project Duration	FY2016 Commitments (Short & Long-Term) Budget \$
City of Ilwaco - Community Building Renovation #2	18,979	284,685	2008-2022	196,418
City of Ilwaco - Fire Station Reconstruction	25,000	375,000	2008-2022	52,000
City of South Bend - Domestic Water Storage Tank Project	12,000	204,000	2007-2023	25,000
City of South Bend - Wastewater Treatment Plant	24,000	456,000	2005-2023	21,000
Personnel for Economic Development Council Targeted Marketing	8,000	24,000	2015-2017	
Port of Ilwaco - Commercial Dock Refurbishment	7,733	77,330	2007-2016	
Port of Ilwaco - Howerton Way Water and Sewer Lines Upgrade	7,500	274,400	2003-2021	
Port of Peninsula - Nahcotta Boat Basin	5,000	100,000	2005-2024	
Port of Peninsula - Nahcotta Boat Basin Commercial Pier Project	14,706	280,000	2007-2023	
Port of Willapa Harbor - South Fork Infrastructure Improvements	17,500	350,000	2002-2021	
Port of Willapa Harbor - Taylor Industrial Park Electrical Upgrade	6,000	60,000	2007-2016	
Port of Willapa Harbor - Taylor Industrial Park Infrastructure Upgrade	25,000	75,000	2015-2017	
Port of Willapa Harbor - Tokeland Marina Redevelopment	25,000	75,000	2014-2016	
Total	196,418	2,605,415		294,418