

DRAFT

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 – 3311 275th Street, Ocean Park , Washington 98640 (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**

Ten thousand dollars (\$25,000) for one year beginning July 1, 2014 through June 30, 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 to connect the beach to the bay via separated multi-modal non-motorized trail, which runs parallel to Bay Avenue and runs approximately 2,400 feet west, finally terminating just short of Mean High Tide at the Pacific Ocean. 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 the 2013 Port of Ilwaco 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**

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, 2014, through December 30, 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.

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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. **INDUSTRIAL INSURANCE COVERAGE**

The parties agree that the COUNTY will not be responsible for the payment of any industrial insurance premiums or related claims or other benefits that may arise during the performance of services under this CONTRACT for any RECIPIENT employee, or for any consultant, contractor or subcontractor, or employee(s) thereof retained by the RECIPIENT.

12. **INDEMNIFICATION**

In accepting this Agreement, 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 30th 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 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.

PACIFIC COUNTY
RURAL ECONOMIC DEVELOPMENT
INFRASTRUCTURE FUNDING APPLICATION

Annual

27,000
Project Title: Halton Property Development
Long-term

Applicant: Port of Ilwaco

Contact: Name Jim Neva

Address: P.O. Box 307

City, state, zip: Ilwaco, WA 98624

Phone #: 360.642.3143 E-Mail: jneva@portofilwaco.org

Name of person authorizing submittal (print or type): Jim Neva

Signature of person authorizing submittal: 

1. Is project listed in the County's Comprehensive Economic Development Strategy (WA-CERT List) or with your city's or county's comprehensive plan? **(Attach copy of WA-CERT list or comprehensive plan). If no, do not submit application.**
Yes.
2. Briefly describe your project: The Port of Ilwaco purchased a piece of waterfront property from Halton Tractor adjacent to and south of our boatyard for future expansion. We now propose to retain an engineering firm to develop a plan for this property, including the design of a wharf to accommodate large commercial fishing vessels that deliver product to Jessie's Ilwaco Fish and re-supply, make repairs, etc. We have noticed a growing demand for moorage for these large vessels. We would also look at expanding our boatyard, since we have experienced a dramatic growth in this line of business at the port. We currently have the only self-service boatyard with two buildings that allow a vessel owner to work on their boat in a building on the coast and it has become very popular with the commercial fleets, attracting vessels from outside the area, as well as serving our local fleet.

3. Describe the current status of your project: (Include work completed or in progress) We have purchased the property and have begun clearing it.
4. State why this project meets the standard of HB2660 passed during the Washington State 1999 Legislative Session: This project will support Jessie's Ilwaco Fish by allowing larger vessels to call and it will support the variety of vendors who repair boats, as well as the local businesses who supply boat repair activity.
5. Total project cost: \$ 1,356,460
6. Yearly amount requested from this funding: \$ 27,000
7. Number of years funding is requested: 1
8. Is this a phased project? Yes No (Describe) Phase 1 is the engineering design and permitting. Phase 2 is the actual construction. This application is for the balance of the phase 1 funding.
9. List all other approved funding sources and amounts and describe why this funding request is necessary to complete the "funding package": The Port of Ilwaco will allocate \$50,000 toward Phase 1, which has a total cost of \$77,000.
10. Have you applied for any other sources to complete your funding? Yes No (List)

Source	Amount	Status
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We plan to apply to CERB for construction funding, once the plan is complete, engineered and permitted.

11. Describe project specific employment benefits as follows:

Additional FTE During Construction
 Additional FTE Employed by Facility when complete
 Additional FTE hired as a direct result of this project
 Retained FTE as a direct result of this project

Explain in detail the basis for the numbers of FTEs and provide any supporting documentation from employers. Employment generated is unknown at this time, but there will be short term employment during construction and the need for more local boat repair business over the long term. This could also generate

additional business for Jessie's Ilwaco Fish and support their current staffing, as well as the commercial fishing fleet and the local charter fleet, both of whom are strong users of the boatyard.

Additional _____ Businesses Created by Facility when complete
Retained _____ Businesses as a direct result of this project

12. What quantifiable outcomes are you going to track to measure the success of this project: The number of 100' vessels that use the new wharf and the occupancy of the additional boatyard pads.

13. Describe any other economic benefits of this project: Our boatyard supports not only local boat repair businesses, but parts suppliers, grocery stores, restaurants, hotels, the fuel dock and local gas stations.

14. List any other information you feel is pertinent to this application: The Ilwaco Boatyard activity has continued to grow for several years and is becoming more and more popular with commercial and charter boat owners up and down the coast. It is a unique facility, not found elsewhere and shows all signs of being a growth industry for Ilwaco.

PACIFIC COUNCIL
of **GOVERNMENTS**

530 Commercial St.
Raymond, WA 98577

June 27, 2013

RECEIVED
PACIFIC COUNTY

JUN 28 2013

Pacific County Commissioners
PO Box 187
South Bend, WA 98586

GENERAL ADMINISTRATION
BOARD OF COMMISSIONERS

RE: Recommended 0.09% Local Sales Tax Funds Allocations

Dear Commissioners:

The Pacific Council of Governments included, as part of our June 26, 2013 regular Board meeting, discussion on the Short-Term and Long-Term Priority Rankings for the 0.09% Local Sales Tax Funds Allocation for 2013. The following recommendations were passed by the PCOG Board in the following order and are being submitted to you for consideration and possible approval.

Short Term Projects

1. Port of Ilwaco – Halton Property Development
Requesting \$25,000 for one year

Long Term Projects

1. Port of Willapa Harbor – Tokeland Marina Redevelopment
Requesting \$25,000 annually for three years for a total of \$75,000

In making this recommendation, the Board agreed to the following:

- a) Shorten the Industrial Log Yard/Sawmill Stormwater Improvement Project (awarded in 2010) term from 20 years down to 17 years with a new annual amount at \$23,530, and
- b) Take the \$20,000 annual amount, obligated for this project in the first three years and use for the Port of Willapa Harbor - Tokeland Marina Redevelopment Project in each of the next three years, and
- c) Take \$5,000 out of the 0.09% Local Sales Tax Funds for each of the next three years to make the total amount awarded to the Port of Willapa Harbor Tokeland Project at \$25,000 per year.

Enclosed is the 0.09% Local Sales Tax Funds Ranking Sheet. Please contact me at (360) 942-2411 or at doug@pacificpod.org if you have any questions with the above recommendations.

Sincerely,



Doug Miller
Chair

0.09% Allocation Ranking Scores
2013

Short Term Projects

RANKING

1. Port of Ilwaco - Halton Property Development
Requesting \$27,000 for one year 1st
2. City of Ilwaco – First Avenue Sanitary Sewer Improvement
Requesting \$25,000 for one year 2nd
3. City of Ilwaco – Elizabeth Avenue Improvement
Requesting \$15,000 for one year 3rd
4. City of Ilwaco – School Road Reconstruction and Brumbach Avenue Overlay
Requesting \$25,000 for one year 4th

Long Term Projects

RANKING

1. Port of Willapa Harbor – Tokeland Marina Redevelopment
Requesting \$25,000 per year for three years 1st