

CONTRACT FOR SERVICES

Between
PACIFIC COUNTY, WASHINGTON
And
THE PACIFIC COUNTY ECONOMIC DEVELOPMENT COUNCIL

THIS CONTRACT is made between Pacific County – P.O. Box 187, South Bend, Washington, 98586-0187 (the “COUNTY”), and The Pacific County Economic Development Council, 530 Commercial Street, Raymond, Washington 98577 (the “RECIPIENT”).

WHEREAS, to foster and retain economic viability of the Pacific County community, the RECIPIENT desires to conduct Economic Impact Analysis (EIA) for Pacific County; and

WHEREAS, the RECIPIENT’S Economic Impact Analysis (EIA) project meets the definition of a public facility funding eligible activity as defined by Chapter 82.14.370 RCW; and

WHEREAS, the RECIPIENT’S Economic Impact Analysis (EIA) 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 Economic Impact Analysis (EIA) project will require financial support from multiple sources; 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 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**

Up to four thousand dollars (\$4,000) 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 reimbursement basis.

2. **USE OF FUNDS**

The RECIPIENT shall use these COUNTY funds solely for the completion of an Economic Impact Analysis (EIA) for the ports within Pacific County. The Economic Impact Analysis (EIA) project will provide current data which can be immediately used in further funding discussions. 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**

Funding shall only be used for expenses incurred for completing the Economic Impact Analysis (EIA) for Pacific County as specified in the June 12, 2013 letter (Attachment A).

4. **LOCAL FUNDING**

The RECIPIENT affirms its pledge to obtain funds from Pacific County ports to the complete the Economic Impact Analysis (EIA) for Pacific County.

5. **PAYMENT PROVISIONS**

The COUNTY, from the Pacific County Public Facilities Improvement Fund (No. 126), has pledged up to four thousand dollars (\$4,000) 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 funding, 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 Pacific County resulting from the project, including the projected number of jobs preserved and/or created.

Said final project report(s) are to be submitted to the County by the 31st of September, 2013.

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. **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/HOLD HARMLESS**

- A. It is understood and agreed that this CONTRACT is solely for the benefit of the parties hereto and gives no right to any other party. No joint venture or partnership is formed as a result of this CONTRACT.
- B. 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 25th day of June 2013. It will continue in effect through the 30th day of September 2013 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. **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:

Cathy Russ, Director
Pacific County EDC
530 Commercial Street
Raymond, WA 98577
Telephone: 360/875-9330

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

RECIPIENT
Pacific County EDC

BOARD OF COUNTY COMMISSIONERS
PACIFIC COUNTY, WASHINGTON

Name Title

Lisa Ayers, Chair

ATTEST:

Name Title Date

Steve Rogers, Commissioner

APPROVED AS TO FORM:
DR. DAVID J. BURKE
Pacific County Prosecuting Attorney

Frank Wolfe, Commissioner

ATTEST:

By: _____

Clerk of the Board Date

EDC

PACIFIC COUNTY ECONOMIC DEVELOPMENT COUNCIL

"Facilitators of Economic Development"

2013 Board of Directors

Randy Dennis, President
Dennis Company

Nancy Gorshe
Vice-Pres. — South
The Depot Restaurant

Bob Jungar
Vice-Pres. — North
City of Raymond

Dian Barker-Sayce
Treasurer
The Bank of the Pacific

Lisa Ayers
Pacific County Commissioner

Doug Miller
PUD #2

Tim Russ
Pacific Transit System

Kim Patten
WSU Coop Extension

Mike Johnson
Pioneer Grocery

Steve Arnold
Weyerhaeuser

Jeff Harrell
Peninsula Pharmacies

Doug Ross
Jessie's Ilwaco Fish, Co.

Gerri Marcus
Ocean Beach Hospital

Nancy Campiche
Campiche Studios

Donna Rew
Port O'Ceil Ilwaco

Jan Kampbell
CenturyLink

Tim Morris
Coast Oyster

Erin Frasier
Grays Harbor College

Matt Winters
The Chinook Observer

Kirk Church
City of South Bend

Bob Andrew
City of Long Beach

Mike Cassinelli
City of Ilwaco

Chuck Whiteman
Port of Chinook

Mary DeLong
Port of Peninsula

Rebecca Chaffee
Port of Willapa Harbor

Jim Neva
Port of Ilwaco

Toni Williams
Security State Bank

Honorary Directors
Gary Dennis
Evelyn Wilson
Sid Snyder
1926-2012

June 12, 2013

Lisa Ayers, Chair
Pacific County Commissioners
PO Box 127
South Bend, WA 98577

RE: Fund 126

Dear Lisa:

As you are aware, the Ports of Pacific County continually face the issue of maintenance channel dredging. It appears there will be no funds available in 2013 for this effort and 2014 is not looking any better.

These Ports are critical to the economic vitality of Pacific County. Between commercial fishing and the shellfish industry over 2,000 jobs exist. The shellfish industry jobs alone are responsible for over \$12 million in personal income. In an effort to demonstrate their economic value, it is time to look at completing an Economic Impact Analysis (EIA). This EIA will provide current data which will provide a strong, solid voice and can be immediately used in funding discussions.

Responding to their request and recognizing the immediate need to complete an EIA in a swift manner and as the Pacific Council of Government's 0.09% process has concluded for 2013 and the Ports cannot wait until 2014, the Pacific County Economic Development Council (PCEDC) is asking the Commissioners to review Fund 126 for availability of up to \$4,000 to assist with the completion of a Phase One EIA. The PCEDC will ask the Ports for \$2,000 to assist with this effort.

The PCEDC appreciates your prompt review and decision, as we can immediately begin the EIA and conclude by mid-July.

Sincerely,



Cathy Russ
Director

cc: Pacific Council of Governments
Pacific County Ports

RECEIVED
PACIFIC COUNTY

JUN 12 2013

GENERAL ADMINISTRATION
BOARD OF COMMISSIONERS