

CONTRACT

Between
PACIFIC COUNTY, WASHINGTON
And
THE CITY OF ILWACO
WATER TREATMENT PLANT - SCADA COMMUNICATION SYSTEM
UPGRADE PROJECT

THIS CONTRACT is made between Pacific County – P O Box 187, South Bend, Washington, 98586-0187 (the “COUNTY”), and the City of Ilwaco, P O Box 548, Ilwaco, Washington, 98624 (the “RECIPIENT”).

WHEREAS, the RECIPIENT’S Water Treatment Plant - SCADA Communication System Upgrade Project (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 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 PROJECT is listed on the Pacific County Overall Economic Development Plan as adopted by Resolution No. 2022-042; 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. 302 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 RECIPIENT wishes to enter into this CONTRACT for expenditures related to its PROJECT as listed in Section 3. Scope of Work.

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

1. **FUNDING**

A total of One Hundred Thousand Dollars (\$100,000) has been pledged within the Pacific County Public Facilities Improvement Fund No. 302 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 only as provided in Section 4. Payment Provisions.

2. **USE OF FUNDS**

The RECIPIENT shall use these COUNTY funds solely for expenses to complete Section 3, Scope of Work.

3. **SCOPE OF WORK**

Upgrade of the SCADA communication system for a domestic water facility as described in the Rural Economic Development Infrastructure Funding Application (see Attachment A).

4. **PAYMENT PROVISIONS**

Funds shall be disbursed to the RECIPIENT by warrant within forty-five (45) days of billing.

As a provision for receiving reimbursement, the RECIPIENT shall provide the COUNTY the following:

- An invoice with backup documentation detailing expenditures in support of the PROJECT specified in Section 3. Scope of Work.

5. **CONTRACT PERIOD**

The term of this CONTRACT and the performance of the parties hereto shall commence the 1st day of January, 2023. It will continue in effect through the 15th of December, 2023 unless sooner terminated or extended as provided herein.

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. **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 Act 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. **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.

16. **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.

17. **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.

18. **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.

18. **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.

19. **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 CONTRACTOR are needed for the COUNTY to respond to a request under the Act, as determined by the COUNTY, the CONTRACTOR agrees to make them promptly available to the COUNTY. If the CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR (a) of the request and (b) of the date that such information will be released to the requester unless the CONTRACTOR obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the CONTRACTOR 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 CONTRACTOR to claim any exemption from disclosure under the Act. The COUNTY shall not be liable to the CONTRACTOR for releasing records not clearly identified by the CONTRACTOR as confidential or proprietary. The COUNTY shall not be liable to the CONTRACTOR for any records that the COUNTY releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

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: Paul Plakinger, County Administrative Officer
Pacific County General Administration
P O Box 187
South Bend, WA 98586-0006
Telephone: (360) 875-9334

For the RECIPIENT: Mike Cassinelli, Mayor
City of Ilwaco
P O Box 548
Ilwaco, WA 98624
Telephone: (360) 642-3145

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

SIGNATURE BLOCK ON THE FOLLOWING PAGE

RECIPIENT
City of Ilwaco

BOARD OF COUNTY COMMISSIONERS
PACIFIC COUNTY, WASHINGTON

Mike Cassinelli, Mayor Date

Lisa Olsen, Chair

Frank Wolfe, Commissioner

Mike Runyon, Commissioner

APPROVED AS TO FORM

APPROVED AS TO FORM

Prosecutor's Office WSBA#

Amanda Bennett Date
Clerk of the Board

**PACIFIC COUNTY
RURAL ECONOMIC DEVELOPMENT
INFRASTRUCTURE FUNDING APPLICATION**

ATTACHMENT A

Project Title: Annual

Applicant: City of Ilwaco

Contact: Holly Beller

Address: PO Box 548

City, state, zip: Ilwaco, Wa 98624

Phone #: (360) 642-3145 E-Mail: treasurer@ilwaco-wa.gov

Name of person authorizing submittal (print or type): Mike Cassinelli

Signature of person authorizing submittal:



1. Is project listed in the County's Comprehensive Economic Development Strategy (OEDP List, formerly called WA-CERT) or with your city's or county's comprehensive plan? (Attach copy of OEDP list or comprehensive plan). If not, do not submit application.

OEDP application submitted 3/23/22, previously listed as "System-wide SCADA improvements"

2. Briefly describe your project:

Upgrade of the SCADA communication system for a domestic water facility.

3. Describe the current status of your project: (Include work completed or in progress)

The city has authorized the upgrade of the radio equipment at the Water Treatment Plant and six remote pump stations to be completed this summer at a cost of \$35,737.00 The city has also received and will authorize a quote for the purchase of a new computer to serve the upgraded SCADA system at a cost of \$4,000.00. Upgrades to the wastewater plant were completed in 2021.

4. State why this project meets the standard of HB2260 passed during the Washington State 1999 Legislative Session:

The Ilwaco WTP serves the needs of an array of economic sectors, including local government such as the City and Port of Ilwaco and state and federal services such as Cape Disappointment State Park and the Coast Guard Motor Lifeboat School. We also serve the water needs for the Ocean Beach Hospital, Physical Therapy, Medical Clinic, Ilwaco High, and Hilltop Middle Schools. The city is a broad supporter of the new school levy which will centralize all three of the OBSD schools into our limits, and the development of the Dylan Jude Harrell Community Center at the Port of Ilwaco.

5. Total project cost: **\$140,000**

6. Yearly amount requested from this funding: **\$100,000**

7. Number of years funding is requested: **One**

8. Is this a phased project? Yes No (Describe)

Upgrading the SCADA and radio communications for both the water and wastewater plants has been a phased project because of financial constraints, however this should be considered as a stand-alone project. Other phases are not required for the successful completion of this specific work.

9. List all other approved funding sources and amounts and describe why this funding request is necessary to complete the "funding package":

The city has budgeted \$40,000 for the completion of the radio portion of the upgrade. This will complete the overall project by installing the new SCADA and PLC.

10. Have you applied for any other sources to complete your funding? No (List)

Source Amount Status

11. Describe project specific employment benefits as follows:

Additional **0** FTE During Construction

Additional **0** FTE Employed by Facility when complete

Additional **0** FTE hired as a direct result of this project

Retained **2** 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. **This project will not directly increase FTE for the city as it will allow for greater flexibility in physical bodies present at the plant. However, it does carry significant weight for additional business created and retained via the distribution of the domestic water supply.**

Additional **25** Businesses Created by Facility when complete

Retained **100** Businesses as a direct result of this project

12. What quantifiable outcomes are you going to track to measure the success of this project: **Continued reduction of lead and contaminants. Immediate ability to monitor the distribution system to ensure sufficient water is available for emergencies.**

13. Describe any other economic benefits of this project: **Continued service of the domestic water supply to Ilwaco customers will encourage business and housing growth.**

14. List any other information you feel is pertinent to this application: **The WTP SCADA has been identified by the city within the Capital Facilities Plan since 2014.**

**CITY OF ILWACO
RESOLUTION NO. 2021-05**

**A RESOLUTION OF THE CITY OF ILWACO, WASHINGTON, ADOPTING THE
SIX-YEAR CAPITAL FACILITIES PLAN FOR THE PERIOD 2022 THROUGH 2027**

WHEREAS, the City of Ilwaco is required to prepare a capital facilities plan by the Washington State Growth Management Act (RCW 36.70A.070); and

WHEREAS, capital facilities plan's aid cities in developing the needed financing for capital expenditures and the construction of public facilities, and in the application for grants and loans from state and federal programs; and

WHEREAS, it is the intention of the City Council to revise the Six-Year Capital Facilities Plan on an annual basis and ensure it agrees with other related plans; and

WHEREAS, the City Council held a public hearing on the review of the 2022–2027 Capital Facilities Plan on the 13th day of September 2021; and

WHEREAS, all comments to the 2022–2027 Capital Facilities Plan for capital expenditures and construction of public facilities within its jurisdictional boundaries were considered.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ILWACO,
WASHINGTON, DOES RESOLVE AS FOLLOWS:**

The City Council of the City of Ilwaco, Washington, approves and adopts the revised and extended Six-Year Capital Facilities Plan for the period 2022 through 2027 referenced as Exhibit A and to be updated annually.

Effective Date. This resolution, being an exercise of power specifically delegated to the city legislative body, is not subject to referendum and shall take effect five (5) days after passage by the City Council.

**PASSED BY THE CITY COUNCIL OF THE CITY OF ILWACO AND SIGNED IN
AUTHENTICATION OF ITS PASSAGE THIS 13TH DAY OF SEPTEMBER 2021.**



Gary Forner, Mayor

ATTEST:



Holly Beller, Treasurer

VOTE	Cundiff	Bageant	Quittner	Lessnau	Mathison	Fornier
Ayes	X	X	X	X	X	
Nays						
Abstentions						
Absent						

EFFECTIVE: September 18, 2021

EXHIBIT A TO RESOLUTION NO. 2021-05

CFP YEAR 2022

Department	Project Title	Cost	Funding Source(s)
Water	SCADA Improvements	\$ 165,000	City
Water	Water System Plan Update	\$ 100,000	City
Parks	Paradise Point	\$ 100,000	City
Parks	Community Park Phase 2	\$ 230,000	RCO/City

CFP YEAR 2023

Department	Project Title	Cost	Funding Source(s)
Streets	Hilltop School Route	\$ 644,540	TIB/City
Water	Watershed Protection	\$ unknown	DOE/USDA/City
Stormwater	Pearl Street NE	\$ 99,000	DOE/City
Stormwater	Willow/Elizabeth/Willow NE	\$ 390,500	DOE/City
Streets	Seaview To Ilwaco Connector	\$ 4,518,300	TIB

CFP YEAR 2024

Department	Project Title	Cost	Funding Source(s)
General	Community Building Roof	\$ 220,000	City
Water	Port Hydrants/Loop System	\$ unknown	DOH/Port/City
Parks	Community Park Phase 3	\$ 255,000	RCO/City

CFP YEAR 2025

Department	Project Title	Cost	Funding Source(s)
Streets	Adelia Ave/Spruce St Cutoff	\$ 1,057,320	TIB/City
General	Community Building Paint	\$ 200,000	City
Water	Adelia/Lake Water Main	\$ 446,600	unknown
Stormwater	Lake Street-Pearl to Advent	\$ 110,000	unknown

CFP YEAR 2026

Department	Project Title	Cost	Funding Source(s)
Streets/Parks	Discovery Trail extension	\$ 3,250,730	TIB/Port/City
Streets	Howerton Overlay	\$ 711,260	TIB/Port/City
Stormwater	Brumbach retention pond	\$ unknown	unknown
Stormwater	Brumbach Avenue	\$ 35,000	unknown
Stormwater	Second Street	\$ 154,000	unknown

CFP YEAR 2027

Department	Project Title	Cost	Funding Source(s)
Streets	Misc. Street Rehab NE	\$ 259,800	TIB/City
Streets	Misc. Street Rehab SE	\$ 318,770	TIB/City
Streets	Vandalia - Capt. Gray Dr	\$ 1,056,940	TIB/City
Stormwater	Vandalia	\$ 2,200,000	City
Streets	Cooks Hill Intersection	\$ 743,470	TIB/City
Water	Cooks Hill Rd Waterline	\$ 663,000	unknown

CFP YEAR 2027 – Cont.

Department	Project Title	Cost	Funding Source(s)
Stormwater	Cooks Rd NE/Iris Ave	\$ 379,500	DOE/City
Sewer	Baker Bay Force Main	\$ 2,832,500	unknown
Water	Stringtown Loop	\$ unknown	Developer
Water	China Hill Improvements	\$ unknown	LID
Water	Old Railroad Loop	\$ unknown	Developer