

8E



Meeting Date: March 22, 2021
 Agenda Item No:

| <u>Kitsap County Board of Commissioners</u> | | | |
|--|--|---|----------------------------------|
| Office/Department: | | Public Works-Sewer Utility | |
| Staff Contact: | | Stella Vakarcs 360-337-4896 | |
| Agenda Item Title: | | KC-143-21 - Port of Silverdale Interlocal Agreement (ILA) | |
| Recommended Action: Motion to approve and execute KC-143-21 - Port of Silverdale Interlocal Agreement (ILA) | | | |
| Summary: | Interlocal Agreement between the County and the Port of Silverdale for the Silverdale Waterfront Improvement and Pump Station 3 Upgrade. | | |
| Attachments: | 1. Contract Review Sheet 2. Interlocal Agreement 3. Exhibit A | | |
| Fiscal Impact for this Specific Action | | | |
| Expenditure required for this specific action: | \$0 | | |
| Related Revenue for this specific action: | \$0 | | |
| Cost Savings for this specific action: | \$0 | | |
| Net Fiscal Impact: | \$0 | | |
| Source of Funds: | Sewer Utility | | |
| Fiscal Impact for Total Project | | | |
| Project Costs: | \$0 | | |
| Project Costs Savings: | \$0 | | |
| Project Related Revenue: | \$0 | | |
| Project Net Total: | \$0 | | |
| Fiscal Impact (DAS) Review | | | |
| Office/Departmental Review & Coordination | | | |
| Office/Department | Elected Official/Department Director | | 22 March 2021 |
| Public Works-Sewer Utility | David A. Tucker, P.E. | | |
| Contract Information | | | |
| Contract Number | Date Original Contract or Amendment Approved | Amount of Original Contract Amendment | Total Amount of Amended Contract |
| KC-143-21 | Pending | | |
| | | | |



Kitsap County
CONTRACT REVIEW SHEET
 (Chapter 3.56 KCC)

A. CONTRACT INFORMATION

1. Contractor Port of Silverdale

2. Purpose ILA between the County and Port of Silverdale for the Silverdale Waterfront Improvement and PS 3 Upgrade

3. Contract Amount 0 Disburse Receive

4. Contract Term _____

5. Contract Administrator Stella Vakarcs Phone 360-337-4896

Approved: Andrew B. Nelson, P.E. Date February 23, 2021
 Department Director

B. AUDITOR – ACCOUNTING INFORMATION

1. Contract Control Number KC-143-21

2. Fund Name Sewer Utility

3. Payment from-Revenue to CC/Account Nbr _____

4. Encumbered By Dave Schureman Date 2/24/2021

C. AUDITOR'S ACCOUNTING – GRANTS REVIEW
Signature required only if contract is grant funded

1. Approved Not Approved
 Reviewer NA Date NA

2. Comments: _____

D. ADMINISTRATIVE SERVICES DEPARTMENT – RISK MANAGER REVIEW

1. Approved Not Approved
 Reviewer Timothy M. Perez Date 3/4/2021

2. Comments: _____

E. ADMINISTRATIVE SERVICES DEPARTMENT – BUDGET MANAGER REVIEW
Signature required only if contract is for \$50,000 or more, OR it will be signed by board of commissioners (regardless of dollar amount)

1. Approved Not Approved
 Reviewer Aimée Campbell Date 02/25/2021

2. Comments: _____

F. PERSONNEL DEPARTMENT – PERSONNEL DIRECTOR REVIEW
Signature required only if union or employment contract

1. Approved Not Approved
 Reviewer _____ Date _____

2. Comments: _____

G. PROSECUTING ATTORNEY

1. Approved as to Form Not Approved as to Form
 Reviewer Elizabeth Doran Date 02-24-2021

2. Comments: _____

H. CERTIFICATION BY CONTRACT ADMINISTRATOR: THIS CONTRACT IS READY FOR CONSIDERATION BY THE AUTHORIZED CONTRACT SIGNER.
(For contract signing authority, see KCC 3.56.075)

Date Approved by Authorized Contract Signer: _____ Date 3-22-21
 RETURN SIGNED ORIGINALS TO: _____ Karla Castillo @ MS- 27

**INTERLOCAL AGREEMENT
BETWEEN
KITSAP COUNTY AND PORT OF SILVERDALE
FOR JOINT FACILITY DESIGN**

This Agreement is made and entered into by and between KITSAP COUNTY ("County"), a political subdivision of the State of Washington, and the PORT OF SILVERDALE ("Port"), established as a Port District under Title 53 RCW, collectively known as the "Parties". This Agreement is made pursuant to the Interlocal Cooperation Act of 1967, Chapter 39.34 RCW.

1. Background

The Parties entered into Memorandum of Understanding, KC-250-19, dated June 24, 2019, attached as Exhibit A, in which they agreed that the County's future upgraded sewer pump lift station ("PS3") could be relocated away from the Silverdale waterfront and integrated into the Port's proposed Waterfront Recreation Center ("WRC") facility located on Port property, Exhibit A. The combined PS3 and WRC shall be referred to for the purposes of this Agreement as the "Joint Facility."

In the MOU, the Parties also agreed that the Joint Facility will be designed with a pleasing appearance and public amenities, such as a viewing platform. The Parties then agreed that respective access rights and responsibility for funding and managing design, construction, maintenance, operation and repair would be agreed to at a later date.

2. Purpose

The Parties enter into this Interlocal Agreement to plan and coordinate the design phase of the County and Port Joint Facility. The Parties intend that the rights and responsibilities for funding and managing the construction of the Joint Facility and the ultimate maintenance, operation and repair of the Joint Facility will be addressed by a subsequent agreement or by amendments to this ILA.

3. Term

This Agreement is effective upon execution and shall remain in force and effect until the design work has reached 100% completion as specified in Section 3.C. or until this Agreement is terminated as provided in Section 10.

4. Parties' Design Responsibilities

A. Design of Joint Facility. The County is responsible for the interior design, layout and related infrastructure of the PS3 building only. The Port is responsible for overall exterior design of the Joint Facility including the design and layout of the WRC building and related infrastructure. The Parties agree to coordinate the individual design plans to ensure that the designs for the two portions of the Joint

Facility do not interfere or otherwise impede the purpose and function of the Joint Facility. The Joint Facility will be located on the Port's real property. The Parties will agree to the proposed location and layout of the Joint Facility and prepare a preliminary site map by August 1, 2021.

B. Port RFQ for Design Services. The Port prepared and circulated a Request for Qualifications (RFQ) for basic design services for the WRC buildings and associated waterfront site work. The County participated in issuing the Port's RFQ and reviewing responses for the Port to select a qualified design team. The Port will retain final authority for selecting and contracting with the design team under their RFQ. The County will separately contract for basic design services for the PS3 building. The Port will provide site access to the County's design team upon request.

C. County Deadlines for Design. The County will start technical design for the PS3 portion of the Joint Facility and related elements in March 2021 and finish the engineering design technical plans and specifications within eighteen months (by September 1, 2022). The County will furnish the relevant PS3 design specifications to the Port's selected project design team for inclusion in the overall design of the Joint Facility. The Port's project design team will work with the County's design team to achieve a mutually agreeable design of the Joint Facility by December 31, 2022. The Port and the County design teams will share design documents at 80% and 100% of completion. Any disputes over design will be resolved as described in Section 12.

D. Easements.

i. After the location and design of the Joint Facility is finalized, the County will draft legal descriptions and easements for the PS3 portion of the Joint Facility for review by the Port. These easements will include, but not be limited to, easements for the PS3 building and the related infrastructure's physical location; for the construction, easements for ongoing operation and maintenance of the PS3 building and related infrastructure; easements for access and egress to these structures for County staff, consultants, contractors, and agents; and any easements required by any funding source. Once approved by the Port, the Port will grant, convey, and record the easements.

ii. In exchange for the easements granted by the Port to the County set forth in Section 4.D.i, the County shall extinguish the utility easement benefiting the County and located within the Port property, as identified in Exhibit B. However, the County will not extinguish the easement until after removal of the above-grade structures occupied by the existing PS3 facility, as provided in Section 4.G, has been completed.

E. Permitting Requirements. Except as provided in Section 4.F., the Port shall be responsible for obtaining all necessary permits to construct the Joint Facility. The County will assist in preparing any application documents related to the PS3 and related infrastructure. The County shall be responsible for obtaining permits necessary to remove the existing PS3 facility, as provided in Section 4.G. Permitting will be addressed in more detail when the design responsibilities of the Parties are complete, and the Parties enter a Construction Agreement for the permitting and construction phase of the Joint Facility.

F. Construction Timing. If the Port is not ready to start construction of its portion of the Joint Facility by January 1, 2023, the County retains the right to construct the PS3 portion of the Joint Facility within the easement described in Section 4.D. with the goal of beginning construction as soon as all land use and environmental permit requirements have been met. If the County is not ready to start construction of the PS3 portion of the Joint Facility by January 1, 2023 the Port retains the right to construct the WRC portion of the Joint Facility. If either party constructs their portion of the Joint Facility early as allowed under this Section, that party will continue to work cooperatively with the other in the completion of the entire Joint Facility.

G. Removal of Existing Pump Station. Upon construction and final completion of the Joint Facility, the County will demolish and remove the above-grade structures now occupied by the existing PS3 facility. The Parties will collaborate on the timing and need to remove any sub-surface infrastructure that may exist, including but not limited to utilities. The County is responsible for restoration of the area, including but not limited to soil preparation, clean-up, landscaping and utilities, after removal of the above-ground structure.

5. Changes, Modifications, Amendments, and Waivers.

This Agreement may be changed, modified, amended, or waived only by written agreement executed by the Parties hereto. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

6. Manner of Financing.

Each Party shall be responsible for all costs associated with the design work procured and performed by that Party. There will be no joint funding of the Joint Facility.

7. Administration.

No new or separate legal or administrative entity is created to administer the provisions of this Agreement. This Agreement shall be administered jointly by the Parties. The following individuals are designated as representatives of the respective Parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such

representatives are changed, the Party making the change shall notify the other Party within ten (10) business days of the change.

For Port:
PO Box 310
Silverdale, WA 98383
(360) 698-4918

For County:
Public Works Director
614 Division St., MS-26
Port Orchard, WA 98366
(360) 337-4866

8. Treatment of Assets and Property.

No fixed assets or personal or real property will be jointly or cooperatively acquired, held, used, or disposed of pursuant to this Agreement. Ownership of the Joint Facility and all associated responsibilities associated with ownership of the Joint Facility will be addressed in future agreements between the Parties.

9. Indemnification

A. Indemnification by the Port. The Port shall defend, indemnify, and hold harmless the County and its elected and appointed officials, officers, employees, and agents (collectively "Indemnitees") from and against all claims, liabilities, damages, costs, and expenses, including attorneys' fees, for personal injury, bodily injury (including death) or property damage arising from any negligent or wrongful act or omission of Port or Port's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees on or around the Premises, Building or Property, or arising from any breach of this Agreement by the Port. The Port shall use legal counsel reasonably acceptable to the County in defense of any action within Port's defense obligation.

B. Indemnification by the County. The County shall defend, indemnify and hold harmless the Port and its elected and appointed officials, officers, employees, and agents (collectively "Indemnitees") against all claims, liabilities, damages, costs, and expenses, including attorneys' fees, for personal injury, bodily injury (including death) or property damage arising from any negligent or wrongful act or omission of the County or the County's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees on or around the Premises, Building or Property, or arising from any breach of this Agreement by County. The County shall use the Office of the Kitsap County Prosecutor in defense of any action within the County's defense obligation.

C. Claim. "Claim" means all losses, claims, suits, actions, liabilities, damages, demands, judgments, settlements, expenses, fines, or other liabilities of any kind or nature whatsoever, including without limitation, all costs including costs of Claim processing, investigation, reasonable attorneys' fees, consequential damages, punitive damages, for any personal or bodily injury, sickness, disease, disability or death, or loss

or damage to tangible or intangible business or property, including the loss of use. Claim includes any infringement, violation, or misappropriation of copyright, patent, trademark, or other proprietary rights of any third parties.

10. Termination.

Either Party may terminate this Agreement, in whole or in part without penalty for convenience with 90 days prior written notice. Either Party may terminate this Agreement if funding is not available, withdrawn, reduced or limited in any way. Either Party may terminate this Agreement if the other Party fails to comply with the terms and conditions of this Agreement or fails to make satisfactory progress in satisfying the terms and conditions of this Agreement. In the event this Agreement is terminated, all work commenced shall cease, the Parties shall retain ownership of their original properties and their design plans, the County shall not extinguish its easement, the Port shall be responsible for disposal of any of its construction work and materials remaining on County property, and the County shall be responsible for disposal of any of its construction work and materials remaining on Port property.

11. Public Records.

The Parties acknowledges this Agreement and all public records associated with this Agreement shall be available for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW ("Act").

12. Disputes.

In the event of a dispute between the Parties during the term of this Agreement, the following terms and conditions shall apply:

A. The Port and the County shall each designate a representative and may agree to an additional third person ("Designated Representatives") to confer and resolve any dispute that may arise. Either Party may request a dispute resolution meeting. The Designated Representatives shall use their best efforts to resolve any dispute that may arise.

B. In the event the Designated Representatives are unable to resolve a dispute, the Parties agree to meet with respective legal counsel to resolve outstanding issues prior to engaging in mediation. If the Parties enter mediation, the cost shall be split equally between the Parties.

13. Governing Law. This Agreement has been made in the State of Washington and shall be construed in accordance with the laws of the State of Washington. Venue for any action arising out of this Agreement shall lie in Kitsap County Superior Court.

14. No Third-Party Beneficiary. No provision of the Agreement is intended to, nor will it be construed to, create any third-party beneficiary or provide any rights or benefits to any person or entity other than the Parties.

15. Severability. If any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition, or application. To this end, the terms and conditions of this Agreement are declared severable.

16. Survival. Those provisions of this Agreement that by their sense and purpose should survive expiration or termination of the Agreement shall so survive. Those provisions include but are not limited to: Sections 4 (Parties' Responsibilities), 9 (Indemnification), 11 (Public Records) and 12 (Disputes).

17. Entire Agreement. This Agreement contains all the terms and conditions agreed upon by the Parties. All items incorporated herein by this reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind any of the Parties hereto.

18. Filing. Executed copies of this Agreement shall be filed as required by RCW 39.34.040 or listed by subject on the Party's website.

19. Headings. The headings and subheadings contained in this instrument are solely for the convenience of the Parties and are not to be used in construing this Agreement.

20. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement.

21. Authorization. Each party signing below warrants to the other party, that they have the full power and authority to execute this Agreement on behalf of the party for whom they sign.

[Continued on next page]

22. **Recording.** Pursuant to RCW 39.34.040, this Agreement shall be filed with the Kitsap County Auditor.

Executed this 18th day of March 2021

PORT OF SILVERDALE


ED SCHOLFIELD, Commissioner


RANDY HUNT, Commissioner



CALEB REESE, Commissioner

Executed this 22 day of MARCH 2021

BOARD OF COUNTY COMMISSIONERS
Kitsap County, Washington


ROBERT GELDER, Chair


EDWARD E. WOLFE, Commissioner


CHARLOTTE GARRIDO, Commissioner

ATTEST:


Dana Daniels, Clerk of the Board

