JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS

CONSENT AGENDA REQUEST

TO: **Board of County Commissioners**

FROM: **Mark McCauley, County Administrator**

DATE: **March 6, 2023**

SUBJECT: **Request for Board of County Commissioners approval of a Revised and Simplified 5-Way Agreement with EDC Team Jefferson (EDC), the City of Port Townsend, the Port of Port Townsend and Jefferson County Public Utility District No. 1**

STATEMENT OF ISSUE: Currently the County is a party to three financing agreements involving the EDC. One is the current 5-Way Agreement with the above listed parties. The second is a Community Services Agreement with the EDC. The third is a Public Infrastructure Fund agreement to finance economic development personnel.

In an effort to reduce the complexity of having to manage three separate agreements each with substantial reporting requirements a revised 5-Way Agreement has been drafted with the help of the EDC and the City of Port Townsend.

ANALYSIS: The new agreement absorbs the Community Services Agreement which will become null and void with the adoption of the new 5-Way Agreement. It also increases the annual funding by the four local governments by $10,000 per year. It further provides for a five-year time horizon with a renewal review in year three which will allow the EDC to qualify for philanthropical grants. Finally, it eliminates staffing and budget information that rapidly becomes obsolete.

The new agreement will reduce the administrative burden on the EDC as it works to develop the local economy which is its fundamental mission.

FISCAL IMPACT: This request increases the County's contribution by $10,000 per year. These funds will be paid using Non-Departmental funds in the General Fund.

RECOMMENDATION: That the Board of County Commissioners approve the attached agreement.

REVIEWED BY:

Mark McCauley, County Administrator — Date 2/28/23

Clear Form

CONTRACT REVIEW FORM

(INSTRUCTIONS ARE ON THE NEXT PAGE)

CONTRACT WITH: EDC Team Jefferson Contract No: EDC 2023

Contract For: Economic Development Services Term: Through December 31, 2027

COUNTY DEPARTMENT:	County Administrator
Contact Person:	Mark McCauley
Contact Phone:	360-385-9130
Contact email:	mmccauley@co.jefferson.wa.us

RECEIVED
FEB 27 2023
JEFFERSON COUNTY COMMISSIONERS

AMOUNT: $91,563 with a 3% annual escalator

Revenue:	N/A
Expenditure:	$91,563 w/3% escalator
Matching Funds Required:	N/A
Sources(s) of Matching Funds	N/A
Fund #	001
Munis Org/Obj	001-270

PROCESS:

- [ ] **Exempt from Bid Process**
- [ ] **Cooperative Purchase**
- [ ] **Competitive Sealed Bid**
- [ ] **Small Works Roster**
- [ ] **Vendor List Bid**
- [ ] **RFP or RFQ**
- [ ] **Other:**

APPROVAL STEPS:

STEP 1: DEPARTMENT CERTIFIES COMPLIANCE WITH JCC 3.55.080 AND CHAPTER 42.23 RCW.

CERTIFIED: [■] **N/A:** [ ] Signature 2/27/23 Date

STEP 2: DEPARTMENT CERTIFIES THE PERSON PROPOSED FOR CONTRACTING WITH THE COUNTY (CONTRACTOR) HAS NOT BEEN DEBARRED BY ANY FEDERAL, STATE, OR LOCAL AGENCY.

CERTIFIED: [■] **N/A:** [ ] Signature 2/27/23 Date

STEP 3: RISK MANAGEMENT REVIEW (will be added electronically through Laserfiche):

Electronically approved by Risk Management on 2/27/2023.

STEP 4: PROSECUTING ATTORNEY REVIEW (will be added electronically through Laserfiche):

Electronically approved as to form by PAO on 2/27/2023.
Signature pages are sideways (in landscape format).

STEP 5: DEPARTMENT MAKES REVISIONS & RESUBMITS TO RISK MANAGEMENT AND PROSECUTING ATTORNEY(IF REQUIRED).

STEP 6: CONTRACTOR SIGNS

STEP 7: SUBMIT TO BOCC FOR APPROVAL

AGREEMENT FOR ECONOMIC DEVELOPMENT SERVICES

EDC TEAM JEFFERSON, JEFFERSON COUNTY, PORT OF PORT TOWNSEND, CITY OF PORT TOWNSEND, AND JEFFERSON COUNTY PUBLIC UTILITY DISTRICT #1

This Agreement for Economic Development Services ("this Agreement") is entered into between Jefferson County, having its principal offices at P.O. Box 1220, Port Townsend, WA 98368 ("County"), the Port of Port Townsend, having its principal offices at 2701 Jefferson Street, Port Townsend, WA 98368 ("Port"), the City of Port Townsend, having its principal offices at 250 Madison Street, Port Townsend, WA 98368 ("City"), Jefferson County Public Utility District No. 1, having its principal offices at 210 4 Corners Rd, Port Townsend, WA 98368 ("PUD"), and Economic Development Council of Jefferson County (UBI Number: 603 095 546), a 501(c)(6) tax exempt organization registered with Washington State as a non-profit corporation, having its principal offices at 385 Benedict Street, Suite 2A, Port Townsend, WA 98368 ("EDC Team Jefferson"), collectively "the Parties." The County, Port, City and PUD shall collectively be called "the Government Parties."

Upon execution of this Agreement by all of the parties, EDC Team Jefferson and the County agree that the AGREEMENT FOR ECONOMIC DEVELOPMENT SERVICES EDC Team Jefferson, Years 2020-2024 between the County and EDC Team Jefferson shall terminate.

1. **TERM.** This Agreement shall commence , beginning January 1, 2023 (the "effective date") and continuing until December 31, 2027, unless amended pursuant to Section 8 or terminated earlier pursuant to Section 12. To facilitate philanthropic fund raising a review will be conducted during year three of this Agreement to determine whether a new five-year agreement should be executed.

2. **SCOPE OF SERVICES TO BE PERFORMED BY EDC TEAM JEFFERSON.** Consistent with total revenue and in-kind support, EDC Team Jefferson shall provide economic development services during the term of this Agreement as described in "**ATTACHMENT 1: SCOPE OF SERVICES,**" which is attached and is incorporated by reference.

3. **GOVERNANCE STRUCTURE.**

   A. EDC Team Jefferson Board of Directors.

   - The EDC Team Jefferson Board of Directors shall have at least 13 and up to 15 members, comprised of at least 9 business seats, and at least 4 government seats including one each for the County, Port, City and PUD. The parties agree that:

     - Each of the 4 government party seats shall be appointed by its respective legislative body;

     - The members of the EDC Team Jefferson Board appointed by the legislative body of a government party ("government board members") shall not be subject to any term limits that may otherwise be established by EDC Team Jefferson's Bylaws;

- The 9 or more remaining seats of the EDC Team Jefferson Board shall be business seats appointed by the EDC Team Jefferson Board, consistent with EDC Team Jefferson's Bylaws.

- The EDC Team Jefferson Board shall appoint the 9 or more business seats to represent diverse business sectors or experience and skills to support the mission and success of EDC Team Jefferson.

- By way of example, initial sectors on the EDC Team Jefferson Board might be drawn from, but not be limited to:

  - Marine Trades;
  - Technology;
  - Broadband/Information Technology;
  - Real estate development;
  - Entrepreneurs;
  - Healthcare;
  - Chamber of Commerce;
  - Non-profit organizations;
  - Agriculture; or,
  - Aquaculture.

- In appointing the 9 or more business seats, the EDC Team Jefferson Board shall strive for geographic diversity, and shall have at least 2 seats from each Jefferson County Commissioner District filled by individuals whose residence or place of business is in that District.

- The EDC Team Jefferson Board shall strive for racial and gender diversity in the makeup of the EDC Team Jefferson Board.

B. Public Sector Cabinet. The Government Parties shall maintain a Public Sector Cabinet, including the chief administrative officers of the Government Parties, plus the EDC Team Jefferson's Executive Director and Board President. The Public Sector Cabinet may be expanded to include other public sector entities, as may mutually be agreed by the parties.

The Public Sector Cabinet may:

- Help EDC Team Jefferson staff develop and modify work programs and economic development strategies;

- Help staff to project revenues and expenditures, and develop budget proposals;
- Make recommendations to the EDC Team Jefferson Board;
- Recommend metrics to track and report;
- Monitor the effectiveness of EDC Team Jefferson's economic development services;
- Monitor performance under this Agreement; or,
- Perform other functions as mutually agreed, or as requested by the EDC Team Jefferson Board.

EDC Team Jefferson shall provide the necessary personnel to staff the Public Sector Cabinet. The Public Sector Cabinet shall be chaired by the Jefferson County Administrator, or other government party's member of the Cabinet that the County Administrator may designate from time to time. Upon the request of any member of the Public Sector Cabinet, a meeting of the Public Sector Cabinet should be convened within 10 business days, unless scheduling conflicts require more time.

4. **METRICS, COMMUNICATION AND ACCOUNTABILITY.** The parties agree on the need for performance and outcome metrics of EDC Team Jefferson's Associate Economic Development ("ADO") and economic development work, effective communications about EDC Team Jefferson's activities and metrics, and enhanced accountability so adjustments can be timely made to strengthen EDC Team Jefferson's economic development services.

A. Metrics. EDC Team Jefferson shall track and report on a variety of metrics including those that track EDC Team Jefferson's services and their effectiveness, and another set of metrics that track the health of Jefferson County's economy over time. Metrics shall be selected and periodically adjusted in consultation with the Public Sector Cabinet. By way of example, such metrics may include a number of the following:

- Metrics on EDC Team Jefferson Activities and Effectiveness, including but not limited to:
    - Metrics reported to the Washington State Department of Commerce;
    - List and outcomes of Business Retention and Expansion ("BRE") activities;
    - List and outcomes of Business Assistance activities;
    - List and outcomes of meetings/activities with community partners;
    - List of Classes offered, attendance rates, feedback reports/rates;
    - List of Active Business Leads; and,

- Surveys of business owners/managers regarding needed services by EDC Team Jefferson, and effectiveness of services provided;

- Metrics on the health of Jefferson County's Economy, including but not limited to:

  - Special studies of Jefferson County's overall economy, or of particular business sectors, as may be commissioned by EDC Team Jefferson or others;

  - An annual Economic Vitality Index report, if available;

  - State, federal, local, and industry association data on employment, unemployment rates, historical labor force, historical employment, historical unemployed and unemployment rate, residential and commercial building permit activity, per capita personal income, taxable retail sales by sector, median resale home price, housing affordability index, etc.; and,

  - In gathering this information, particular effort shall be made to track trends in family-wage jobs, economic disparities, structural impediments to economic development (such as housing affordability, availability of childcare, infrastructure, etc.) and how the community is doing in maintaining and improving its economy, community well-being, and environmental quality.

B. Communication. EDC Team Jefferson shall periodically gather input as may be provided in its annual work program, and shall regularly report out its activities and the state of the economy as follows:

- On a semi-annual basis, or more frequently, as may be determined in consultation with the Public Sector Cabinet, EDC Team Jefferson shall provide the County, Port, City and PUD with written reports on the metrics of EDC Team Jefferson's activities as determined above and the reports shall be available to the public on the EDC's web site within 5 business days after the date they are provided to the governments, or earlier;

- EDC Team Jefferson shall provide the County, Port, City and PUD with copies of its annual report to Commerce in July of each year, and post them on EDC's web site within 5 business days after the date they are provided to the governments, or earlier;

- At least annually, and no later than November 30th, EDC Team Jefferson shall present and discuss EDC Team Jefferson's past and coming years' work programs and performance metrics to the legislative bodies of the government parties, demonstrating to the public the return on investment;

- Annually, or as requested by the Public Infrastructure Fund (PIF) Board, EDC Team Jefferson shall meet with the PIF Board Chair to present and discuss EDC Team Jefferson's past and coming years' work programs, performance metrics, and staffing (including identifying all staff financed in part with the PIF funds); and,

- EDC Team Jefferson shall provide the Public Sector Cabinet with semi-annual financial reports financial reports, including a financial statement detailing actual versus budgeted revenues and expenses and a staffing summary. These reports shall be due on July 31st for the first six months of the year and January 31st for the previous six months.

C. Accountability. EDC Team Jefferson shall be accountable for the effectiveness of its economic development services. The metrics selected, coupled with their communication, both as described above, provide regular opportunities for the government parties, and others, to give constructive feedback and to establish value for the economic investments made by the parties.

In addition, the Public Sector Cabinet shall conduct annual evaluations regarding EDC Team Jefferson's economic development strategy and services, whether staffing, structure, and budget are effective, and whether any adjustments need to be made before entering into the subsequent year.

If, despite EDC Team Jefferson's best efforts, the economic development services provided through this Agreement should prove unsatisfactory, Jefferson County retains the ability to consider designating another organization as the County's ADO.

5. **FINANCIAL SUPPORT.** The parties recognize that EDC Team Jefferson, as the ADO designated by the County to the Washington State Department of Commerce ("Commerce"), receives a limited amount of state funding under a contract with Commerce for ADO services in each year of the state's biennium. EDC Team Jefferson also receives Jefferson County Public Infrastructure Fund (PIF) funding to help finance personnel in economic development offices pursuant to RCW 82.14.370, pursues grants, and earns some revenue from class offerings and other activities. The parties recognize that, together, these funding sources are not nearly sufficient to operate an economic development organization, nor to fund an effective economic development program in Jefferson County.

It is in the interests and missions of the government parties to fund targeted, proactive and effective economic development activities to support each government's missions and services, strengthen the economic base upon which the government parties' services rely, and enhance the welfare of all people and businesses in Jefferson County. In particular, by supporting economic development programs, the PUD recognizes the possible increase in the sale of electricity, increases in efficient use of electric services, as well as gains in the efficiency and economies of scale of the PUD's services in water, wastewater and broadband. Accordingly, the parties agree local government financial support shall be provided as follows:

A. Funding for January 1, 2023 through December 31, 2023; the government parties shall provide funding to EDC Team Jefferson for economic development services under this Agreement as follows:

- County: $91,563

- Port: $40,000
- City: $40,000
- PUD: $40,000
- Funding in subsequent years will be increased by three (3) percent per year.

B. Funding by Other Local Public Entities. Additional local public entities, such as Jefferson Healthcare and others, may also provide financial support for EDC Team Jefferson and its economic development activities. This may be done by separate agreement of the additional local public entity with EDC Team Jefferson, or by negotiating the terms of a written amendment to this Agreement, executed by all of the parties.

C. Additional Funding Permitted by Local Public Entities. Nothing in this Agreement shall prevent any local public entities from offering to support the work of EDC Team Jefferson with an amount of funding greater than the amounts above, either as a one-time supplement, or as part of on-going funding, and the parties agree to amend this Agreement to reflect such increase.

D. Funding Payment Schedule. Except as otherwise provided above, each government party shall pay their respective funding amounts to EDC Team Jefferson in equal one-quarter installments, with any First Quarter payment due no later than January 31, any Second Quarter payment due no later than April 30, any Third Quarter payment due no later than July 31, and any Fourth Quarter payment due no later than October 31 of that year.

E. All Payments Are Contingent on EDC Team Jefferson's Providing Required Reports. All payments by the government parties shall be contingent on EDC Team Jefferson being current in providing the government parties with all written reports or making presentations that may be required and due pursuant to Section 4, and payment to EDC Team Jefferson may be withheld if any required written report from EDC Team Jefferson is outstanding.

6. **PROJECTED BUDGET AND STAFFING PLAN.** In July of each year, concurrent with presenting their July semi-annual report, EDC staff shall coordinate with the Public Sector Cabinet to propose a budget and staffing for the following calendar year for subsequent consideration and adoption by EDC Team Jefferson's Board of Directors.

7. **AGREEMENT REPRESENTATIVES.** As of the time of executing this Agreement, the parties' representatives for administering this Agreement are:

EDC Team Jefferson

Ben Bauermeister, President
385 Benedict Street, Suite 2A, Port Townsend, WA 98368
ben@bauermeister.com
(206) 226-3280

Jefferson County

Mark McCauley, County Administrator
P.O. Box 1220, Port Townsend, WA 98368
MMcCauley@co.jefferson.wa.us
(360) 385-9130

Port of Port Townsend

Eron Berg, Director
P.O. Box 1180, Port Townsend, WA 98368
Eron@portofpt.com
(360) 379-4969

City of Port Townsend

John Mauro, City Manager
250 Madison Street, Port Townsend, WA 98368
JMauro@cityofpt.us
(360) 379-5043

Jefferson County PUD No. 1

Kevin Streett, General Manager
191 Otto Street, Port Townsend, WA 98368
kstreett@jeffpud.org
(360) 385-8360

A party may change their representative for administering this Agreement at any time, simply by notifying all the other parties in writing.

8. **AMENDMENTS.** This Agreement may be amended at any time only by written amendment, approved and executed by the governing bodies of all parties.

9. **HOLD HARMLESS AND INDEMNIFICATION**

A. Under this Agreement, the government parties are providing funding to EDC Team Jefferson that supports EDC Team Jefferson's own economic development mission as an Associate Development Organization, and do not assume any liability for EDC Team Jefferson's work. EDC Team Jefferson shall hold harmless, indemnify and defend the government parties, their officers, officials, employees, volunteers and other agents (and their marital communities) , from and against any and all claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of EDC Team Jefferson's acts, errors or omissions in the performance of this Agreement.

B. EDC Team Jefferson's obligations under these provisions include, but are not limited to, investigating, adjusting and defending all claims alleging loss from action, error or omission, or breach of any common law, statutory or other delegated duty by EDC Team Jefferson, its employees, agents or subcontractors.

C. The requirements in this section shall survive termination of this Agreement.

10. INSURANCE

A. EDC Team Jefferson shall obtain and keep in force during the terms of this Agreement, policies of insurance as follows:

1) Worker's Compensation Insurance in an amount or amounts that are not less than the required statutory minimum(s) as established by the State of Washington.

2) Commercial Automobile Liability Insurance providing bodily injury and property damage liability coverage for all owned vehicles assigned to or used in the performance of the work for a combined single limit of not less than $1,000,000 each occurrence with each of the government parties named as additional insureds in connection with EDC Team Jefferson's performance of this Agreement.

3) General Commercial Liability Insurance in an amount not less than a single limit of one million dollars ($1,000,000) per occurrence and an aggregate of not less than two (2) times the occurrence amount ($2,000,000 minimum) for bodily injury, including death and property damage, unless a greater amount is specified in this Agreement specifications. The insurance coverage shall contain no limitations on the scope of the protection provided and include the following minimum coverage:

a. Broad Form Property Damage, with no employee exclusion;

b. Personal Injury Liability, including extended bodily injury;

c. Broad Form Contractual/Commercial Liability – including completed operations;

d. Premises – Operations Liability (M&C);

e. Independent Contractors and subcontractors; and,

f. Blanket Contractual Liability.

B. Miscellaneous Insurance Provisions.

1) Such insurance coverage shall be evidenced by one of the following methods:

- Certificate of Insurance; or,
- Self-insurance through an irrevocable Letter of Credit from a qualified financial institution.

2) Certificates of coverage as required by this section shall be delivered to the County within fifteen (15) days of the effective date.

3) Any deductibles or self-insured retention shall be declared to and approved by the County prior to the approval of this Agreement by the parties. At the option of the County, EDC Team Jefferson's insurer shall reduce or eliminate deductibles or self-insured retention or EDC Team Jefferson shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4) EDC Team Jefferson shall include all subcontractors as insured under its insurance policies or shall furnish separate certificates and endorsements for each subcontractor. All insurance provisions for subcontractors shall be subject to all of the insurance requirements stated in this Agreement.

5) Failure of EDC Team Jefferson to take out and/or maintain any required insurance shall not relieve EDC Team Jefferson from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification.

6) It is agreed by the parties that insurers shall have no right of recovery or subrogation against the government parties (including their employees, volunteers, and other agents and agencies [and their marital communities]), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the above described insurance. It is further agreed by the parties that insurance companies issuing the policy or policies shall have no recourse against the government parties (including their employees, volunteers, and other agents and agencies[and their marital communities]) for payment of any premiums or for assessments under any form of policy. It is further agreed by the parties that any and all deductibles in the above described insurance policies shall be assumed by and be at the sole risk of EDC Team Jefferson.

7) It is agreed by the parties that judgments for which any of the government parties may be liable, in excess of insured amounts provided herein, or any portion thereof, may be withheld from payment due, or to become due, to EDC Team Jefferson until such time as EDC Team Jefferson shall furnish additional security covering such judgment as may be determined by the County.

8) The County reserves the right to request additional insurance on an individual basis for extra hazardous contracts and specific service agreements.

9) Any coverage for third party liability claims provided to the any government party by a "Risk Pool" created pursuant to Ch. 48.62 RCW or by a private insurer shall be non-contributory with respect to any policy of insurance EDC Team Jefferson must provide in order to comply with this Agreement.

10) If the proof of insurance or certificate indicating a government party is an "additional insured" to a policy obtained by EDC Team Jefferson refers to an endorsement (by

number or name) but does not provide the full text of that endorsement, then it shall be the obligation of EDC Team Jefferson to obtain the full text of that endorsement and forward that full text to the County.

11) The government parties may, upon EDC Team Jefferson's failure to comply with all provisions of this Agreement relating to insurance, withhold payment or compensation that would otherwise be due to EDC Team Jefferson.

11. DISPUTES. Differences, disputes and disagreements between EDC Team Jefferson and the government parties arising under or out of this Agreement shall be brought to the attention of the Public Sector Cabinet at the earliest possible time so that the matter may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance or compensation due EDC Team Jefferson shall be decided by the consensus of the government members of the Public Sector Cabinet. All rulings, orders, instructions and decisions by the government members of the Public Sector Cabinet shall be final and conclusive.

12. TERMINATION

A. If all four government parties to this Agreement collectively determine that EDC Team Jefferson has breached any of its obligations under this Agreement, they shall notify EDC Team Jefferson in writing of the breach, and provide EDC Team Jefferson 30 days to cure the breach or to submit a plan and timeline acceptable to a majority of the government parties to cure the breach. If EDC Team Jefferson fails to cure the breach within 30 days of written notice to do so, or within the timeframe of a plan and timeline that was accepted by a majority of the government parties, the government parties may terminate this Agreement. In the event of a termination under this paragraph, each government party's financial support described in Section 5 shall be prorated to the effective date of the termination, and the prorated amount paid to EDC Team Jefferson by the date established in Section 5 of this Agreement. No costs incurred after the effective date of the termination shall be paid. Within 30 days after the effective date of the termination, EDC Team Jefferson shall account for all revenues and expenditures, and return any remaining funds to the government parties, proportionate to the financial support that each provided.

B. If EDC Team Jefferson's designation as Associate Development Organization is terminated, the parties may immediately terminate this Agreement notwithstanding any other termination provision in this Agreement. Termination under this provision shall be effective upon the date specified in the written notice of ADO designation termination sent by County to EDC Team Jefferson. Within 30 days after the effective date of the termination, EDC Team Jefferson shall account for all revenues and expenditures, and return any remaining funds to the government parties, proportionate to the financial support that each provided.

C. Any party may terminate their participation in this Agreement at its sole discretion upon giving the other parties at least 180 days' written notice. In the event of a termination under this paragraph by a government party, that party's financial support described in

Section 5 shall be prorated to the effective date of that party's termination, and the prorated amount paid to EDC Team Jefferson by the date established in Section 5 of this Agreement. Within 30 days after the effective date of a government party's termination, EDC Team Jefferson shall account for all revenues and expenditures, and return any remaining funds contributed by that party, proportionate to the financial support that party contributed. In the event of a termination under this paragraph by EDC Team Jefferson, all government parties' financial support described in Section 5 shall be prorated to the effective date of EDC Team Jefferson's termination and the prorated amount paid to EDC Team Jefferson by the date established in Section 5 of this Agreement. No costs incurred after the effective date of the termination shall be paid. Within 30 days after the effective date of EDC Team Jefferson's termination, EDC Team Jefferson shall account for all revenues and expenditures, and return any remaining funds contributed by the government parties to the government parties, proportionate to the financial support that each government party provided.

13. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

A. EDC Team Jefferson shall perform under this Agreement using only its bona fide employees, Board members, volunteers, or agents, and the obligations and duties of EDC Team Jefferson under this Agreement shall not be assigned, delegated or subcontracted to any other person or firm without first notifying the other parties to this agreement.

B. EDC Team Jefferson warrants that it has not paid, nor has it agreed to pay, any company, person, partnership or firm, other than a bona fide employee working exclusively for EDC Team Jefferson, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement.

14. INDEPENDENT CONTRACTOR

A. EDC Team Jefferson's services shall be furnished by EDC Team Jefferson as an independent contractor and not as an agent, an employee or a servant of any of the government parties.

B. EDC Team Jefferson specifically has the right to direct and control EDC Team Jefferson's own activities in providing the agreed services in accordance with the specifications set out in this Agreement.

C. EDC Team Jefferson shall perform all the services required by this Agreement.

D. No subcontractor, employee, agent or representative of EDC Team Jefferson will be or be deemed to be, or act or purport to act, as an employee, agent or representative of any of the government parties.

E. EDC Team Jefferson shall file all necessary governmental documents, including appropriate tax returns, reflecting income status as an independent contractor for services rendered under this Agreement.

F. Should any governmental agency audit any of the files and request information on any party, every other party agrees to furnish immediately the requesting party with any records, including tax returns, relating to the services rendered under this Agreement.

G. EDC Team Jefferson acknowledges that the entire compensation for this Agreement is set forth in the compensation provisions of this Agreement and no employee or volunteer of EDC Team Jefferson is entitled to any benefits from any government party, including, but not limited to: vacation pay; holiday pay; sick leave pay; medical, dental or other insurance benefits; fringe benefits; or any other rights or privileges afforded to County, Port, City or PUD employees.

H. EDC Team Jefferson shall have and maintain complete responsibility and control over all of its subcontractors, employees, agents and representatives. No subcontractor, employee, agent or representative of EDC Team Jefferson shall be or be deemed to be, or act or purport to act, as an employee, agent or representative of any of the government parties.

15. NONDISCRIMINATION. EDC Team Jefferson, its assignees, delegates or subcontractors shall not discriminate against any person in performance of services under this Agreement or in the selection and retention of employees or procurement of materials or supplies on the basis of age, sex, marital status, sexual orientation, religion, creed, race, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, unless based upon a bona fide occupational qualification.

16. PATENT/COPYRIGHT INFRINGEMENT. EDC Team Jefferson shall hold harmless, indemnify and defend all of the government parties, their officers, officials, employees, volunteers, and other agents (and their marital communities), from and against any claimed action, cause or demand brought against any of the government parties, where such action is based on the claim that information supplied by EDC Team Jefferson or subcontractor infringes any patent or copyright. EDC Team Jefferson shall be notified promptly in writing by any government party whose risk manager has received notice of any such claim.

17. CONFIDENTIALITY

The Government Parties are subject to Ch. 42.56 RCW, the Public Records Act, which requires disclosure of non-exempt documents and records possessed by local governments to a person or entity that requests such documents or records.

18. CHOICE OF LAW, JURISDICTION AND VENUE

A. It is understood and agreed that this Agreement is entered into in the State of Washington. This Agreement shall be governed by and construed in accordance with the laws of the United States, the State of Washington and the County of Jefferson, as if applied to transactions entered into and to be performed wholly within Jefferson County, Washington between Jefferson County residents. No party shall argue or assert that any

state law other than Washington law applies to the governance or construction of this Agreement.

B. Should any party bring any legal action, each party in such action shall bear the cost of its own attorney's fees and court costs.

C. The venue for any legal action shall be solely in the appropriate state court in Jefferson County, Washington, subject to the venue provisions for actions against counties in RCW 36.01.050.

19. MISCELLANEOUS

A. **No Waiver**. The parties agree that the excuse or forgiveness of performance, or waiver of any provisions of this Agreement, does not constitute a waiver of such provision or future performance, or prejudice the right of the waiving party to enforce any of the provisions of this Agreement at a later time. No term or provision of this Agreement will be considered waived by any party, and no breach excused by any party, unless such waiver or consent is in writing signed on behalf of the party against whom the waiver is asserted. Failure of a party to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default.

B. **Tax Payments**. EDC Team Jefferson shall pay all applicable federal, state and local taxes, fees (including licensing fees) and other amounts including, but not limited to, the employer's portion of any taxes that arise from compensation owed or paid to employees, agents or representatives of EDC Team Jefferson or are otherwise mandated by Title 26 U.S.C.

C. **Personnel Removal Upon Request by the Public Sector Cabinet**. EDC Team Jefferson agrees to remove within 30 days any of its subcontractors, employees, agents or representatives from assignment to perform services under this Agreement upon receipt of a written request by at least three members of the Public Sector Cabinet.

D. **Legal Compliance**. EDC Team Jefferson and its subcontractors, employees, agents and representatives shall comply with all applicable federal, state and local laws, rules and regulations in their performance under this Agreement.

E. **Records Inspection and Retention**. The government parties may, at reasonable times, inspect the books and records of EDC Team Jefferson relating to the performance of this Agreement. EDC Team Jefferson shall retain for audit purposes all Agreement-related records for at least six years after termination of this Agreement.

F. **Binding on Successors and Assigns**. The government parties, to the extent permitted by law, and EDC Team Jefferson each bind themselves, their partners, successors, executors, administrators and assigns to the other parties to this Agreement and to the partners, successors, administrators and assigns of such other party in respect to all covenants to this Agreement.

G. **Severability**. If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid or unenforceable, 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 this Agreement did not contain the particular provision held to be invalid. If any provision of this Agreement conflicts with any statutory provision of the State of Washington, the provision shall be deemed inoperative to the extent of the conflict or modified to conform to statutory requirements.

H. **Entire Agreement**. The parties acknowledge that this Agreement and its attachments is the complete expression of their agreement regarding the subject matter of this Agreement. Any oral or written representations or understandings not incorporated in this Agreement are specifically excluded. This Agreement supersedes all prior or simultaneous representations, discussions, negotiations, and agreements, whether written or oral, within the scope of this Agreement.

I. **Notices**. Any notices shall be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the addresses set out in the representatives provision of this Agreement. Notice may also be given by facsimile with the original to follow by regular mail. Notice shall be deemed to be given three days following the date of mailing, or immediately if personally served. For service by facsimile, service shall be effective at the beginning of the next working day.

J. **Modification of this Agreement Must Be in Writing**. This Agreement may be amended or supplemented only by a writing that is signed by duly authorized representatives of all the parties.

K. **Signature in Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Agreement at different times and places by the parties shall not affect the validity of this Agreement, so long as all the parties execute a counterpart of this Agreement.

L. **Facsimile and Electronic Signatures.** The parties agree that facsimile and electronic signatures shall have the same force and effect as original signatures.

M. **Arms-Length Negotiations.** The parties agree that this Agreement has been negotiated at arms-length, with the assistance and advice of competent, independent legal counsel.

N. **Public Records Act.** Notwithstanding any provisions of this Agreement to the contrary, to the extent any record, including any electronic, audio, paper or other media, is required to be kept or indexed as a public record in accordance with the Washington Public Records Act, Chapter 42.56 RCW (as may be amended), EDC Team Jefferson agrees to maintain all records constituting public records and to produce or assist the government parties in producing such records, within the time frames and parameters set forth in state law. ECD Team Jefferson also agrees that upon receipt of any written public record request potentially applicable to any government party, the it shall, within two business

days, notify the government party by providing a copy of the request per the notice provisions of this Agreement.

(SIGNATURES FOLLOW ON NEXT PAGES)

ECONOMIC DEVELOPMENT COUNCIL OF JEFFERSON COUNTY ("EDC TEAM JEFFERSON")

_____ _____

Ben Bauermeister, Board President Date

PORT OF PORT TOWNSEND

_____ _____

Eron Berg, Executive Director Date

Approved as to form only:

_____ _____

Port Attorney Date

JEFFERSON COUNTY
BOARD OF COMMISSIONERS

_____ _____
Greg Brotherton, Chair Date

Attest:

_____ _____
Carolyn Gallaway Date
Clerk of the Board

Approved as to form only:

P. C. Hunsucker February 27, 2023
_____ _____
Philip C. Hunsucker Date
Chief Civil Deputy Prosecuting Attorney

CITY OF PORT TOWNSEND

_____ _____

David Faber, Mayor Date

Attest:

_____ _____

Alyssa Rodrigues Date
City Clerk

Approved as to form only:

_____ _____

Heidi Greenwood Date
City Attorney

JEFFERSON COUNTY PUBLIC UTILITY DISTRICT NO. 1

_____ _____

Ken Collins, Chair Date

Approved as to form only:

_____ _____

Joel Paisner Date
Ascent Law Partners

ATTACHMENT 1 – SCOPE OF WORK

PHASES:

During the 2023 and in each subsequent State Biennium, and consistent with total revenue and in-kind support from the Washington State Department of Commerce ("Commerce"), Jefferson County including its Public Infrastructure Fund, the Port of Port Townsend ("Port"), Jefferson County PUD No. 1 ("PUD"), the City of Port Townsend ("City") (collectively "the government parties"), and other sources, EDC Team Jefferson shall provide services as shown and described below:

To create the vital and proactive economic development office that is desired in Jefferson County, an enhanced organization shall be built and housed. Input shall be gathered from the County's public agencies and economic stake holders to produce a well-supported and actionable economic development work program. Throughout all phases, EDC Team Jefferson shall continue to perform basic economic development services consistent with its designation and contract as Associate Development Organization with the Commerce.

Budget, Work Program, Metrics and Communications Plan

- **Annually share with Public Sector Cabinet: Budget, Workplan, Metrics & Communications Plan:** EDC Team Jefferson shall share with the Public Sector Cabinet the budget, metrics and communications plan for the upcoming year when presenting their July semi-annual report.

- **Review and Adoption of Budget, Work Program, Metrics & Communications Plan:** The EDC Team Jefferson Board shall review and adopt the final Budget, Work Program, Metrics and Communications Plan. Upon adoption, EDC Team Jefferson shall immediately begin implementation.

WORK PROGRAM ELEMENTS:

As EDC Team Jefferson performs economic development services and collaborates with the Public Sector Cabinet to develop a work program for each year, it shall design them to be consistent with and help implement the Economic Development Framework when adopted (and any successor framework or economic development strategy), to address emerging needs, and shall scale the services and work plan to fit realistically within the revenues and in-kind supports that power EDC Team Jefferson's work.

Guided by the considerations in the paragraph above, EDC Team Jefferson shall include or strive to include as many of the following elements in its scope of work as possible:

A. **Activities required by RCW 43.330.080 and by the Washington State Department of Commerce.** EDC Team Jefferson shall include the activities required by law and per the State's contract with EDC Team Jefferson as a designated Associate Development Organization, such as Business Retention and Expansion ("BRE") meetings, for example.

B. **Administer Potential COVID stimulus grants** to local businesses. If federal, state or local government grants or loans to businesses get directed through EDC Team Jefferson, EDC Team Jefferson shall include administration of the grants or loans in its work program.

C. **Business Service Target Areas:** EDC Team Jefferson's work plan should include directed efforts and measures for each of the following business service areas:

- **Entrepreneurs and Start-ups**;
- Retaining & Expanding **Existing Businesses**;
- **Business Recruitment, Marketing & Advertising**; and,
- Assistance to Businesses **Relocating** to Jefferson County.

D. **Business Classes:** Coordinate with the Chamber, CIE, and others, on an expanded portfolio of class offerings among the different organizations, to serve a variety of local business needs and opportunities.

E. **Economic Development Resources and Data Access**: Coordinate with local libraries and other organizations to provide easy access to business information resources and current local business economic data.

F. **Proactive Services.** Add proactive services in addition to existing on-demand services consistent with the Economic Development Framework when adopted, such as (but not limited to):

- **Pursue opportunities to actively attract or incubate businesses** in existing buildings or on developable land;
- Convene, encourage and support partners to pursue **developing sites and associated infrastructure** to promote economic development;
- **Identify growth impediments and growth opportunities** within different business sectors, and help find solutions;
- Proactively contact retiring or closing businesses to **help find new owners**;
- Convene related businesses to **improve local supply chains**;
- **Promote value-added processing** of local products;
- **Recommend actions that public agencies can take** to support economic development;
- **Administer & seek to expand the Local Investing Opportunities Network (LION)**, work to provide access and **expand other financing options** through banks, CRAFT 3, and others;

- **Develop & implement plans to expand business infrastructure, supports & services**;
- **Create a network with other partners** - catalyze an economic development network of organizations working in coordination with each other to foster economic development in Jefferson County; and,
- **Economic development advocacy** to local, state and federal governments.