

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONSENT AGENDA REQUEST

TO: Board of County Commissioners

FROM: Mark McCauley, County Administrator

DATE: January 22, 2024

SUBJECT: Interagency Agreement: Washington State Department of Commerce and Jefferson County for an Independent Financial Feasibility Review Prior to the Formation of a Public Facilities District; \$11,000

STATEMENT OF ISSUE: Jefferson County, the City of Port Townsend, the Jefferson Aquatic Coalition and others have been working together to advance the Healthier Together Project which proposes that the existing Mountain View Pool and Gymnasium complex be replaced with a new facility.

The project's steering committee, after much discussion and analysis, determined that creating a Public Facilities District (PFD) and seeking a voter approved two-tenths of a percent sales tax was the best approach for financing and building such a facility.

Prior to the formation of a PFD the Washington State Department of Commerce must complete an Independent Financial Feasibility Review (IFFR) of the proposed PFD in accordance with RCW 36.100.025. The cost of the review must be borne by the jurisdiction proposing to form the PFD, which in this case is Jefferson County.

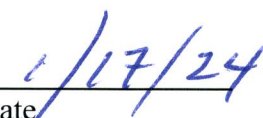
ANALYSIS: Attached is an Interagency Agreement with the Department of Commerce which will govern the completion of the IFFR.

FISCAL IMPACT: The IFFR will cost \$11,000 which will be covered using General Fund – Non-departmental. The City of Port Townsend, through an interlocal agreement, has agreed to cover half the cost.

RECOMMENDATION: That the Board approve the Interagency Agreement with the Department of Commerce.

REVIEWED BY:


Mark McCauley, County Administrator


Date

CONTRACT REVIEW FORM
(INSTRUCTIONS ARE ON THE NEXT PAGE)

Clear Form

CONTRACT WITH: Washnigton State Department of Commerce

Contract No: IFFR - 2024

Contract For: PFD - Independent Financial Feasibility Review Term: Through April 30, 2024

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

AMOUNT: \$11,000

Revenue: N/A

Expenditure: \$11,000

Matching Funds Required: N/A

Sources(s) of Matching Funds N/A

Fund # 001-270

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 ICC 3.55.080 AND CHAPTER 42.23 RCW.

CERTIFIED: ☒ N/A: ☐

Signature

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

Date

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

Electronically approved by Risk Management on 1/17/2024.

Contract negotiated with Barbara Ehrlichman's help.

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

Electronically approved as to form by PAO on 1/17/2024.

Negotiated with assistance of the PAO.

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



Interagency Agreement with

Jefferson County

through

Research Services

Public Facilities Districts Financial Feasibility Review Program

For

The Jefferson County will provide funding (\$11,000) to COMMERCE for a financial feasibility review of the Proposed Jefferson County Public Facility District project, in accordance with (RCW 36.100.025) which requires a financial feasibility review be completed prior to the formation of a new PFD, issuance of debt/bonds, or long-term lease, purchase or development of a facility.

Start date: February 1, 2024

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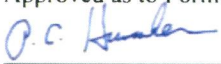
Attachment A, Scope of Work

Attachment B, Budget

FACE SHEET

Contract Number: 24-68410-001

Washington State Department of Commerce
Local Government Division
Community Assistance and Research Unit
Public Facilities District Financial Feasibility Review Program

1. COUNTY Jefferson County P.O. Box 1220 1820 Jefferson Street Port Townsend, WA 98368		2. COUNTY Doing Business As (optional)	
3. COUNTY Representative Mark McCauley County Administrator (360) 385-9100 mmccauley@co.jefferson.wa.us		4. COMMERCE Representative Angie Hong PFD Financial Feasibility Review Program Manager 360-506-1706 PFDreview@commerce.wa.gov	
5. Contract Amount \$11,000	6. Funding Source Federal: ☐ State: ☐ Other: ☒ N/A: ☐	7. Start Date February 1, 2024	8. End Date April 30, 2024
9. Federal Funds (as applicable) N/A		Federal Agency: CFDA Number	
10. Tax ID # 91-6001322	11. SWV # SWV0002430-28	12. UBI # 161-001-169	13. UEI # FGN7DDMJ7H7
14. Contract Purpose In accordance with RCW 36.100.025, Jefferson County will provide funding (\$11,000) to COMMERCE for an independent financial feasibility review of the formation of the Jefferson County PFD.			
15. Signing Statement COMMERCE, defined as the Department of Commerce, and the COUNTY, as defined above, acknowledge and accept the terms of this Contract and Attachments and have executed this Contract on the date below and warrant they are authorized to bind their respective agencies. The rights and obligations of both parties to this Contract are governed by this Contract and the following documents hereby incorporated by reference: Attachment "A" – Scope of Work, Attachment "B" – Budget.			
FOR COUNTY Kate Dean, Chair Jefferson Board of County Commissioners Date Approved as to Form:  Philip C. Hunsucker Chief Civil Deputy Prosecuting Attorney		FOR COMMERCE Mark Barkley, Assistant Director Date APPROVED AS TO FORM ONLY Sandra C. Adix, Assistant Attorney General Date:	

**SPECIAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
STATE FUNDS**

1. AUTHORITY

COMMERCE and COUNTY enter into this Contract pursuant to the authority granted by Chapter 39.34 RCW.

2. CONTRACT MANAGEMENT

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Contract.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Contract.

The Representative for the COUNTY and their contact information are identified on the Face Sheet of this Contract.

3. COMPENSATION

COUNTY shall pay COMMERCE an amount not to exceed \$11,000 for the performance of all things necessary for or incidental to the performance of work under this Contract as set forth in the Scope of Work.

4. EXPENSES

The maximum amount to be paid to the COMMERCE for authorized expenses shall not exceed \$11,000, which amount is included in the Contract total above.

5. BILLING PROCEDURES AND PAYMENT

COUNTY will pay COMMERCE upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the COUNTY upon completion of the financial feasibility review.

Payment shall be considered timely if made by COUNTY within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by COMMERCE.

6. INSURANCE

Each party certifies that it is self-insured under the State's or local government self-insurance liability program, and shall be responsible for losses for which it is found liable.

7. FRAUD AND OTHER LOSS REPORTING

COMMERCE and the COUNTY shall report in writing all known or suspected fraud or other loss of any funds or other property furnished under this Contract immediately or as soon as practicable to the Representative of the other identified on the Face Sheet.

8. ORDER OF PRECEDENCE

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Budget
- add any other attachments incorporated by reference on the Face Sheet

**GENERAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
STATE FUNDS**

1. DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Department of Commerce.
- C. "Contract" or "Agreement" means the entire written agreement between COMMERCE and the COUNTY, including any attachments, documents, or materials incorporated by reference. E-mail or facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- D. "COUNTY" shall mean Jefferson County, the entity identified on the face sheet that will provide payment upon performance of services, and shall include all employees and agents of the COUNTY.
- E. "County Representative" shall mean the County Administrator, Mark McCauley.
- F. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- G. "State" shall mean the state of Washington.

2. ALL WRITINGS CONTAINED HEREIN

This Contract contains all the terms and conditions agreed upon 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 of the parties hereto.

3. AMENDMENTS

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

4. ASSIGNMENT

Neither this Contract, work thereunder, nor any claim arising under this Contract, shall be transferred or assigned by either party without the prior written consent of the other.

5. CONFIDENTIALTY AND SAFEGUARDING OF INFORMATION

- A. "Confidential Information" as used in this section includes:
 - i. All material provided to the COUNTY by COMMERCE that is designated as "confidential" by COMMERCE;
 - ii. All material provided to COMMERCE that is designated as "confidential" by the COUNTY; and
 - iii. All personal information in the possession of the COUNTY that may not be disclosed under state or federal law.
- B. The COUNTY and COMMERCE shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The parties acknowledge that they are public entities subject to the Public Records Act, Chapter 42.56 RCW, and that the Independent Financial Feasibility Review to be produced under this Agreement is intended to be, and must be, a public document and must be submitted to the governor, the state treasurer, the state auditor, the public facility [facilities] district and participating local political subdivisions, and appropriate committees of the legislature.

**GENERAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
STATE FUNDS**

6. COPYRIGHT

Unless otherwise provided, all Materials produced under this Contract shall be owned by COMMERCE and COMMERCE shall be considered the author of such Materials. COMMERCE shall provide a full and complete copy to the COUNTY for use by the county for all COUNTY purposes.

"Materials" means the final Independent Financial Feasibility Review (IFFR) and all drafts thereof. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, COMMERCE hereby grants to the COUNTY a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. COMMERCE warrants and represents that COMMERCE has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the COUNTY.

COMMERCE shall exert all reasonable effort to advise the COUNTY, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. COMMERCE shall provide the COUNTY with prompt written notice of each notice or claim of infringement received by COMMERCE with respect to any Materials delivered under this Contract. The COUNTY shall have the right to modify or remove any restrictive markings placed upon the Materials by COMMERCE.

7. DISPUTES

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, Agreement terms and applicable statutes and rules and make a determination of the dispute. The Dispute Board shall thereafter decide the dispute with the majority prevailing. The determination of the Dispute Board shall be final and binding on the parties hereto. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

8. GOVERNING LAW AND VENUE

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and any applicable federal laws, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

9. INDEMNIFICATION

Each party shall be solely responsible for the acts of its employees, officers, and agents.

10. LICENSING, ACCREDITATION AND REGISTRATION

The COUNTY and COMMERCE shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

11. RECAPTURE

In the event that COMMERCE fails to perform this Contract in accordance with state laws, federal laws, and/or the provisions of this Contract, the COUNTY reserves the right to recapture funds in an amount to compensate the COUNTY for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by COMMERCE of funds under this recapture provision shall occur within the time period specified by the COUNTY. In the alternative, the COUNTY may recapture such funds from payments due under this Contract.

**GENERAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
STATE FUNDS**

Notwithstanding the foregoing and for the avoidance of doubt, the selection of the Consultant and the final determination of the scope and adequacy of the IFFR shall be made by Commerce.

12. RECORDS MAINTENANCE

The COUNTY and COMMERCE shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

The COUNTY and COMMERCE shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by COMMERCE or COUNTY, personnel duly authorized by COMMERCE or COUNTY, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

13. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, COMMERCE or the COUNTY may suspend or terminate the Contract under the "Termination for Convenience" clause, without the ten-calendar day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

14. SEVERABILITY

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

15. NO SUBCONTRACTING

Commerce will retain the Consultant as a first-tier independent contractor and does not anticipate subcontracting any work associated with the IFFR.

16. SURVIVAL

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

17. TERMINATION FOR CAUSE

In the event either party determines the other party has failed to comply with the conditions of this contract in a timely manner, either party has the right to suspend or terminate this contract. Before suspending or terminating the contract, the party shall notify the other party in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the breaching party shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

Either party reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the other party from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action or a decision to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the breaching party: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

**GENERAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
STATE FUNDS**

The rights and remedies of either party provided in this contract are not exclusive and are in addition to any other rights and remedies provided by law.

18. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract, COMMERCE may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, the COUNTY shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

19. TERMINATION PROCEDURES

Upon termination of this contract, the COUNTY, in addition to any other rights provided in this contract, may require COMMERCE to deliver to the COUNTY any property specifically produced or acquired for the performance of such part of this contract as has been terminated, upon payment by the COUNTY of the contract amount on a pro-rata basis.

The rights and remedies of COMMERCE and the COUNTY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Authorized Representative, COMMERCE shall:

- A. Stop work under the contract on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated.

20. TREATMENT OF ASSETS

The parties acknowledge that all writings furnished by the COUNTY to COMMERCE or Consultant to assist Consultant in performing the IFFR are public records of COMMERCE pursuant to the Public Records Act, Chapter 42.56 RCW. In the event of a public records request to COMMERCE for such records, COMMERCE will assert exemptions to disclosure, if any, as may be determined by COMMERCE in COMMERCE's sole discretion. To aid COMMERCE in such determinations, COUNTY may provide writings that COUNTY considers exempt from disclosure in whole or in part, with marking. Such marking will specify exemptions under RCW 42.56 or other state or federal law that COUNTY believes apply, and the portions of writings that COUNTY believes are exempt.

21. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless the contract is amended in writing as provided in Clause 3, Amendments.

Scope of Work

1. COMMERCE will contract pursuant to its authority under RCW 43.110.080, with an independent contractor of its choice, (Consultant) to obtain an independent financial feasibility review ("IFFR") prior to the COUNTY's proposed formation of a Public Facilities District (PFD), as required by RCW 36.100.025.

The IFFR will be confined to formation of a proposed PFD. The IFFR will examine the feasibility of formation of a Public Facility District in Jefferson County for the purpose of designing and building a multi-purpose recreation facility, including among other things, a pool, locker room and other amenities.

Projects that the proposed PFD may undertake, including but not limited to actual design and construction of a multi-purpose recreation facility will be subject to an additional IFFR as required by RCW 36.100.025.

COMMERCE's contract with Consultant is contingent upon full execution this Agreement.

Upon execution by Commerce of the Consultant's contract, the parties will convene a "kick off meeting" as set forth in Section 7. COUNTY will provide information necessary for Consultant to perform the IFFR, including but not limited to relevant reports or studies, to COMMERCE and the Consultant at the "kick off meeting".

2. RCW 36.100.025 requires the IFFR to be completed by COMMERCE prior to any of the following events:

- (a) The formation of a public facilities district under chapter 36.100 RCW;
- (b) The issuance of any indebtedness, excluding the issuance of obligations to refund or replace such indebtedness, by a public facilities district under chapter 36.100 RCW; or
- (c) The long-term lease, purchase, or development of a facility chapter 36.100 RCW.

3. The IFFR must examine the potential costs to be incurred by the public facility district and the adequacy of revenues or expected revenues to meet those costs. The cost of the IFFR must be borne by the COUNTY as the local government proposing to form a public facilities district. RCW 36.100.025;

4. COMMERCE will require the IFFR to be completed consistent with professional standards in the industry.

6. The COUNTY will pay to COMMERCE \$11,000 for the IFFR upon delivery of the IFFR to COUNTY. COUNTY will provide additional information/documentation as may be requested by the Consultant or COMMERCE. All Communications between the Consultant and Jefferson County must include (Cc) the Public Facility District Financial Feasibility Review Program at Commerce (PFDreview@commerce.wa.gov).

7. The estimated schedule of activities is:

ACTIVITY

Kickoff meeting/documentation provided to Consultant
 Draft FFR provided to the parties
 COMMERCE reviews IFFR
 Final IFFR provided by Consultant for review
 Final IFFR published and distributed by COMMERCE

DATE

February 1, 2024
 February 23, 2024
 no later than March 29, 2024
 no later than April 3, 2024
 no later than April 12, 2024

Budget

The COUNTY provides \$11,000 to COMMERCE to contract with an independent contractor in order to conduct an independent financial feasibility review on behalf of the COUNTY.