



September 6, 2022

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA REQUEST

**TO: Board of County Commissioners
Mark McCauley, County Administrator**

**FROM: Pinky Mingo, Environmental Public Health and
Water Quality Director**

DATE: September 6, 2022

SUBJECT: Septage Capacity Analysis Study

STATEMENT OF ISSUE:

The lack of a capacity for the treatment of septage is a growing concern in Jefferson County as the region grows and there are limited options for septage disposal. The City of Port Townsend's septage facility has 4,000 gallons a day capacity and the rest of the septage is taken to Kitsap and Mason Counties.

The lack of capacity for septage within the county makes us vulnerable. Wastewater treatment plants (WWTP) do not have to accept septage from septage haulers. In the fall of 2021, several out of county WWTPs were unable to take our septage and septage mixed with grease, and the haulers had a difficult time finding disposal options. This creates inefficiencies and increases the likelihood of improper disposal of septage. The proper treatment and disposal of septage is essential to protect water quality, shellfish, and public health.

The City of Port Townsend is conducting a Sewer Plan Update for their service area and there is an opportunity to include a septage capacity analysis for areas outside of the City's service area.

ANALYSIS/STRATEGIC GOALS:

We are requesting \$30,000 to conduct a Septage Capacity Analysis under an Interlocal Agreement with the City of Port Townsend. The study would evaluate infrastructure upgrades needed to expand septage capacity. This could include increasing the size of the existing batch reactor or adding a pump station to pump the septage to the main wastewater treatment plant.

FISCAL IMPACT:

We are requesting \$30,000 in General Fund support to conduct a Septage Capacity Analysis. If the Board of County Commissioners approves the request it is also committing to funding an upcoming Supplemental Budget Request.

RECOMMENDATION:

We recommend approving the Interlocal Agreement and the request for \$30,000 to conduct a Septage Capacity Analysis.

REVIEWED BY:

 8/31/22
Mark McCauley, County Administrator Date

INTERLOCAL AGREEMENT ON SEPTAGE CAPACITY ANALYSIS

Between
Jefferson County
and the
City of Port Townsend

This Interlocal Agreement on the Septage Capacity Analysis (Agreement) is between the City of Port Townsend (City) and Jefferson County (County).

WHEREAS, disposal of septage generated outside of the City service area is a growing concern as there are limited disposal options, and

WHEREAS, growth in the County is expected to increase by approximately 21 percent between 2021 and 2040;¹ and

WHEREAS, the County actively has been educating septic system owners regarding proper maintenance, including regular septic tank inspection and pumping, and

WHEREAS, proper treatment and disposal of septage is essential to protect water quality, shellfish, and public health, and

WHEREAS, the City is conducting a Septage Analysis Study for their service area and the City and County recognize there is an opportunity to include analysis for areas outside of the City's service area; and

NOW, THEREFORE, based on the mutual understanding made in this Agreement, the parties agree:

- 1. Effective Date.** The effective date of this Agreement is the date the last party signs this Agreement.
- 2. Project.** The project is to obtain an Amended Septage Analysis Study that covers both areas served by the City and areas in unincorporated Jefferson County.
- 3. Authority.** This Agreement is based upon the authority of the interlocal cooperation act, Chapter 34.30 RCW, which authorizes local municipal corporations to enter into agreements to assist and cooperate with each other to better serve the needs of the municipal corporations and the local community. Each Party shall conduct its own administration of this Agreement. The Parties do not anticipate acquiring any property in furtherance of this Agreement.

¹ See:

https://ofm.wa.gov/sites/default/files/public/dataresearch/pop/GMA/projections17/GMA_2017_county_pop_projections.pdf, pdf pg.52

4. Definitions.

- a. Agreement. "Agreement" means this Interlocal Agreement on the Septage Capacity Analysis.
- b. Amended Septage Analysis Study. "Amended Septage Analysis Study" means the Septage Analysis Study, plus a study of the areas outside of the City's service area within unincorporated Jefferson County.
- c. City. "City" means the City of Port Townsend, Washington.
- d. "Consultant" means RH2 Engineering, Inc. (UBI Number: 600 373 878), whose address is 22722 29th DR SE, Suite 210, Bothell, WA, 98021-4401
- e. County. "County" means Jefferson County, Washington.
- f. Parties. "Parties" means both the City and the County.
- g. Septage Analysis Study. "Septage Analysis Study" means the study being performed by the Consultant for City for its service area.

5. Amended Septage Analysis Study.

- a. The City shall increase the scope of the Consultant's work on the general sewer plan to provide the Amended Septage Analysis Study.
- b. The City shall provide the County with the Amended Septage Analysis Study.
- c. The City shall provide the County invoices that document the additional costs incurred by the City for the increased scope of work for the Amended Septage Analysis Study.

6. County Contribution to the Amended Septage Analysis Study. The County shall pay for the reasonable services of Consultant, as reflected by the invoices required in Section 5.c. within 60 days of receipt. The County shall have 30 days from receipt of an invoice to object to any invoice as unreasonable. If no objection by the County is made within 30 days after receipt by the County, any objection by the County shall be deemed waived. The County's maximum contribution to the Amended Septage Analysis Study shall be \$30,000.

7. Term of this Agreement.

- a. This Agreement shall remain in effect (a) until the City provides the County with the Amended Septage Study; or, (b) until terminated by either Party as provided for in Section 7.b., whichever shall occur first.
- b. Either Party may terminate this Agreement for cause, before its expiration by providing the other Party at least 30 days prior written notice.

8. No Third-Party Beneficiaries. There are no third-party beneficiaries of this Agreement.

9. Indemnification.

- a. To the fullest extent allowed by law, the City will be solely and entirely responsible for its acts/omissions and for the acts/omissions of its agents, employees, servants, or representatives. To the fullest extent allowed by law, the County will be solely and entirely responsible for its acts/omissions and for the acts/omissions of its agents, employees, servants or representatives.
- b. Each Party agrees to defend and indemnify the other Party and its officers, officials, employees, agents and volunteers (and their marital communities) from and against all claims, losses, damages, suits and expenses, including reasonable attorneys' fees and costs, to the extent they arise out of the negligence or willful misconduct of the indemnitor or its officers, officials, employees, agents and volunteers (and their marital communities) to perform this Agreement. The indemnitor's duty to defend and indemnify extends to claims by the elected or appointed officials, officers, employees or agents of the indemnitor or of any contractor or subcontractor of indemnitor. The indemnitor waives its immunity under Title 51 (Industrial Insurance) of the Revised Code of Washington solely for the purposes of this provision and acknowledges that this waiver was mutually negotiated.
- c. In executing this Agreement, the County does not assume liability or responsibility for or in any way release the City from any liability or responsibility that arises in whole or in part from unenforceability or invalidity of City ordinances, rules or regulations. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such City ordinance, rule or regulation is at issue, the City shall defend the same at its sole expense and if judgment is entered or damages are awarded on account of the unenforceability or invalidity of such City ordinance against the City, the County, or both, the City shall satisfy the same, including all chargeable costs and attorney's fees.
- d. This provision shall survive the termination of this Agreement.

10. Non-Payment and Other Defaults. If any default occurs, upon thirty (30) days written notice by the City to the County regarding failure to make any payment required, and in the event same shall not be cured within sixty (60) days, then the City shall be entitled, without further notice or demand, to give notice of termination in Section 7.B Duration and Termination, including any other remedy granted at law or in equity.

11. Disputes. Disputes shall be referred to the County Administrator and the City Manager for settlement. If disputes are not resolved by the Parties within thirty (30) days of the referral, unless the Parties agree to an extension of time, the dispute shall be referred to an arbitrator mutually agreed upon by the City and County. Or if they cannot agree to an arbitrator, the Parties may apply to the presiding judge of the Jefferson County Superior Court to appoint an arbitrator. The arbitrator's decision shall be final and binding on both Parties; provided however, an arbitrator's decision may be appealed to Superior Court if it is based on an error of law, is arbitrary and capricious, is not founded on substantial facts or exceeds the authority of the arbitrator. Each Party shall pay one-half of the arbitrator's fee. If mutual

written consent to apply to appoint an arbitrator is not reached, either Party may seek court action to decide the disputed contract provision.

- 12. Notice.** Any notice required to be given by either Party to the other shall be deposited in the United States mail, postage prepaid, addressed:

To the County at:

Jefferson County Administrator
P.O. Box 1220
Port Townsend, WA 98368

To the City at:

City Manager
250 Madison Street
Port Townsend, WA 98368

Or, at such other address as either Party may designate to the other in writing from time to time.

All notices to be given with respect to this Agreement shall be in writing. Every notice shall be deemed to have been given at the time it shall be deposited in the United States mails in the manner prescribed. Nothing in this section shall be construed to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process.

- 13. Entire Agreement.** This Agreement constitutes the entire Agreement of the Parties and supersedes all prior agreements, contracts, and understanding, written or oral. The Parties agree there are no other understandings, oral or otherwise, regarding the subject matter of this Agreement. Any previous agreements, understandings oral or otherwise, are revoked.
- 14. Headings.** The headings of the sections of this Agreement are for convenience of reference only and do not restrict, affect, or be of any weight in the interpretation or construction of the sections or this Agreement.
- 15. Construction of Agreement.** The Parties negotiated this Agreement at arms-length, with the assistance and advice of competent, independent legal counsel. If a dispute arises between the Parties as to the meaning of terms, phrases or specific provisions of this Agreement, the authorship of this Agreement shall not be cause for this Agreement to be construed against any Party nor for any Party.
- 16. Execution.** This Agreement is executed by each Party acting with authority granted, where required, by its governing body. This Agreement may be executed in counterpart originals. A copy of each such executed counterpart original shall be delivered to each Party upon that Party's execution of a counterpart original.

17. Administration. This Agreement will be administered by the City. This Agreement does not create any separate legal or administrative entity. However, nothing in this Agreement is intended to prevent or otherwise interfere with discussions or decisions that may be made by the Parties during the Annual Review. Further, the Parties understand and agree there will be communication between the Parties to effectuate the terms of this Agreement.

18. No Joint Budget. This Agreement does not contemplate a joint budget.

19. Property Acquisition and Disposition. This Agreement does not contemplate the joint acquisition of property by the Parties. At termination, each Party will remain the sole owner of its own property.

20. Applicable Law and Venue. The Parties signed this Agreement in the State of Washington. The laws of the United States, the State of Washington, and the County of Jefferson govern this Agreement, as if applied to transactions agreed upon 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. The venue for any court action will be in Kitsap County Superior Court.

21. Nondiscrimination.

- a. The Parties agree not to discriminate against any employee or applicant for employment or any other to perform this Agreement because of age, sex, marital status, sexual orientation, race, creed, 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 as required by law, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.
- b. The Parties shall comply with all federal, state, or local laws, ordinances, rules, or regulations regarding nondiscrimination and equal employment opportunity applicable to the work to be done under this Agreement.
- c. Violation of this section shall be a material breach of this Agreement and grounds for cancellation, termination or suspension, in whole or in part.

22. Waivers. Failure to insist upon strict compliance with any terms, covenants or conditions of this Agreement shall not be deemed a waiver of such, nor shall any waiver or relinquishment of such right or power be taken to be a waiver of any other breach.

23. Records Retention. The Parties shall keep and maintain all records required by law in connection with the performance of this Agreement.

24. Public Records Requests. The County shall be responsible for timely and adequately responding to requests for records addressed to it under the Public Records Act. The City shall be responsible for timely and adequately responding to requests for records addressed to it under the Public Records Act.

- 25. Challenges.** The entry into this Agreement shall not be construed to be a waiver or abandonment of any defense or claim either party may have against the other notwithstanding the entry into this Agreement.
- 26. Mutual Objectives.** Each Party agrees to aid and assist the other in carrying out the objectives of this Agreement.
- 27. Authority.** Each person who signed this Agreement acted with authority granted, where required, by a governing body of a party.
- 28. Filing with the County Auditor.** Within 10 days of the effective date, the County shall file this Agreement with the Jefferson County Auditor.

(SIGNATURES FOLLOW ON THE NEXT PAGE)

JEFFERSON COUNTY WASHINGTON

Board of County Commissioners
Jefferson County, Washington

By: _____
Heidi Eisenhour, Chair Date

By: _____
Kate Dean, Commissioner Date

By: _____
Greg Brotherton, Commissioner Date

SEAL:

ATTEST:

Carolyn Galloway, Date
Clerk of the Board

Approved as to form only:

Barbara Dyles Ehrlichman Aug. 29, 2022 for

Philip C. Hunsucker, Date
Chief Civil Deputy Prosecuting Attorney

CITY OF PORT TOWNSEND

By: _____
John Mauro, City Manager Date