

**INTERAGENCY SERVICES AGREEMENT
BETWEEN
THURSTON COUNTY PUBLIC WORKS
AND
WASHINGTON STATE DEPARTMENT OF FISH AND WILDLIFE**

THIS AGREEMENT is entered into duplicate originals between Thurston County Public Works (TCPW), hereinafter 'County' and the Washington Department of Fish and Wildlife (WDFW), hereinafter 'Agency'.

WHEREAS, County has a planned project to replace the stormwater facility located at Boston Harbor; and

WHEREAS, Agency is currently in active construction of Boston Harbor Access Redevelopment Project; and

WHEREAS, within the limits of the Boston Harbor Access Redevelopment Project, the County desires to include the stormwater facility improvements (Utility Work); and

WHEREAS, the Boston Harbor Access Redevelopment Project and County Utility Work, hereinafter collectively referred to as the "Work" shall include all materials, equipment, labor, administration, and any other efforts required to perform the construction of the "Work"; and

WHEREAS, Agency is solely responsible for performance of all improvement work; and

WHEREAS, County will contribute funds from the Thurston County Public Works Stormwater Utility for the services of WDFW to construct the stormwater facility improvements as part of their Boston Harbor Access Redevelopment Project.

WHEREAS, it is to the mutual advantage of the County and the Agency to cooperate in the 'Work', as described herein, in order to make the most efficient use of their powers to provide services and facilities needed by the citizens residing within their respective jurisdictions; and

WHEREAS, RCW 39.34.080 authorizes a public agency to contract with another public agency to perform any governmental activity that each public agency is authorized by law to perform; and

WHEREAS, it is deemed to be in the best public interest for the Agency to include the County Utility Work in the Agency's Boston Harbor Access Redevelopment;

NOW THEREFORE, pursuant to chapter 39.34 RCW and in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof,

IT IS MUTUALLY AGREED BY THE COUNTY AND AGENCY AS FOLLOWS:

1. PLANS AND SPECIFICATIONS

- 1.1. The Agency, through its selected contractor, agrees to perform the "Work" in accordance with approved Plans and Specifications and in accordance with all applicable federal, state and local laws, ordinances, regulations, and rules.

2. CONSTRUCTION, INSPECTION, AND WORK ACCEPTANCE

- 2.1. The Agency shall require its contractor to construct the 'Work' in accordance with stamped engineered Work Plans and Specifications.
- 2.2. The Agency shall furnish an inspector for the 'Work' and is responsible for Inspection costs.
- 2.3. The Agency shall promptly notify the County in writing when the 'Work' is started and completed.
- 2.4. The County shall, within ninety (90) calendar days of being notified that the "Work" is completed: (a) deliver a letter of acceptance to the Agency which shall include a release and waiver of all future claims or demands, of any nature, resulting from the Agency's performance of the Work under this Agreement, or (b) deliver to the Agency written notification, listing all reasons for withholding acceptance.
- 2.5. If the County does not respond within ninety (90) calendar days, the "Work" will be deemed accepted by the County, and the Agency shall be released from all future claims and demands resulting from its performance of the 'Work' under this Agreement.

3. COST LIABILITY AND PAYMENT

- 3.1. The County agrees that it will contribute seventy-four thousand, four hundred sixty-five dollars and forty-eight cents (\$74,465.48) in 2024 for costs associated with constructing stormwater infrastructure owned by Thurston County.
- 3.2. The Agency agrees that it is responsible for payment to the construction contractor for all costs associated with the 'Work'.
- 3.3. County will remit payment to Agency within thirty (30) calendar days from the date of receipt of billing from WDFW.

4. OWNERSHIP, OPERATION, MAINTENANCE AND REPAIR

- 4.1. Upon completion of the 'Work', all ownership, operation, maintenance, and repair of the County's facilities (stormwater improvements) shall be the sole responsibility of the County at the sole cost of the County and without expense to the Agency.

5. RELATIONSHIP OF THE PARTIES

- 5.1. The employees or agents of each Party who are engaged in the performance of this Agreement shall continue to be employees or agents of that Party and shall not be considered for any purpose to be employees or agents of the other Party. This agreement is for the benefit of the Parties, and no third party beneficiary relationship is intended unless specifically set forth herein. No separate legal entity is created by this Agreement. No joint organization is created. No common budget is to be established. No personal or real property is to be jointly acquired or held.

6. DURATION

- 6.1. This Agreement shall commence upon its date of execution and shall remain in effect until June 30, 2024, unless terminated sooner by the County or the Agency.

7. INDEMNIFICATION AND HOLD HARMLESS

- 7.1. To the fullest extent permitted by law, the County and the Agency shall indemnify and hold harmless one another and their officers, officials, and employees from and shall process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages (both to persons and/or property), or costs, of whatsoever kind or nature, brought against the one Party arising out of, in connection with, or incident to the other Party's performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of (a) the County and (b) the Agency, their officers, officials, and/or employees, or involves those actions covered by RCW 4.24.115, this indemnity and hold harmless provision shall be valid and enforceable only to the extent of the negligence of the County or the Agency; and provided further, that nothing herein shall require the County or the Agency to hold harmless or defend the other or its officers, officials, and/or employees from any claims arising from that Party's sole negligence or that of its officers, officials, and/or employees. The terms of this section shall survive the termination of this Agreement and completion of the Work. This indemnification and hold harmless provision only applies to third party claims.

In any and all claims against the County, its officers, officials, employees and agents by any employee of the Agency, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Agency or subcontractor under Worker's Compensation acts, disability benefits acts, or other employee benefits acts, it being clearly agreed and understood by the parties hereto that the Agency expressly waives any immunity the Agency might have had under Title 51 RCW. By executing this Agreement, the Agency acknowledges that the foregoing waiver has been mutually

negotiated by the parties and that the provisions of this Section shall be incorporated, as relevant, into any contract the Agency makes with any subcontractor or agent performing work hereunder.

8. AGREEMENT REPRESENTATIVES

- 8.1. Each party to the Agreement shall have a representative. Each party may change its representative upon providing written notice to the other party. The parties' representatives are as follows:

For WDFW:

Name of Representative: Kristen Kuykendall

Title: Assistant Director, Capital and Asset Management Program

Mailing Address: PO Box 43158

City, State and Zip Code: Olympia, WA 98504-3158

Telephone Number: 360-249-1222

E-mail Address: Kristen.kuykendall@dfw.wa.gov

For TCPW:

Name of Representative: Jennifer D. Walker

Title: Public Works Director

Mailing Address: 9605 Tilley Road S, Ste. C

City, State and Zip Code: Olympia, WA 98512-9140

Telephone Number: 360-867-2271

E-mail Address: jennifer.walker@co.thurston.wa.us

9. GENERAL PROVISIONS

- 9.1. Dispute Resolution: Each party to this agreement shall provide one member to discuss and seek a solution to the dispute. If the two members are unable to reach a solution that is agreeable to both parties, the members shall jointly request the assistance of an agreed upon neutral third party. The three members shall review the facts, Agreement terms, and applicable status and rules and make a determination of the dispute. The determination shall be final and binding on the parties hereto.
- 9.2. Governance: This Agreement is entered into pursuant to and under the authority granted by the laws of the State of Washington. The provisions of this Agreement shall be construed to conform to those laws and shall be governed by those laws as to interpretation and performance. Any action at law, suit in equity, or judicial proceeding arising out of this Agreement shall be instituted and maintained only in any of the courts of competent jurisdiction in Thurston County, Washington. Each Party shall be responsible for its own attorneys' fees and costs.
- 9.3. Termination: This Agreement may be terminated when a party gives written notice to the other party at least sixty (60) days prior to its intended effect and withdrawal from this Agreement. If the Agency does not fulfill the scope of the County Utility Work, the County may be reimbursed for outstanding costs.

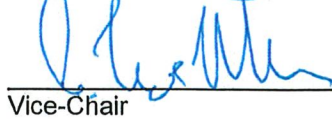
- 9.4. Records and Audit: During the progress of the Work and for a period of not less than seven (7) years from the date of final payment, both Parties shall maintain the records and accounts pertaining to the Work and shall make them available for inspection and audit by the other Party and/or Federal Government, and copies of all records, accounts, documents or other data pertaining to the Work will be furnished upon request. If any litigation, claim or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim or audit finding has been resolved even though such litigation, claim or audit continues past the seven-year retention period.
- 9.5. Amendment: This Agreement may be amended by the mutual agreement of the Parties. Such amendments or modifications shall not be binding unless put in writing and signed by persons authorized to bind each of the Parties.
- 9.6. Waiver: A failure by either Party to exercise its rights under this Agreement shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the Party.
- 9.7. Severability: If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.
- 9.8. Entire Agreement: This Agreement sets forth all terms and conditions agreed upon by the County and the Agency and supersede any prior agreements oral or otherwise with respect to the subject matter addressed herein.
- 9.9. Recording: Prior to its entry into force, this Agreement shall be filed by the County in accordance with RCW 39.34.040.
- 9.10. Notice: Any notice required under this Agreement shall be to the Party at the address listed in Section 8 above and shall become effective three (3) days following the date of deposit in the United States Postal Service:

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date of the last authorizing signature below.


Board of County Commissioners
Thurston County, Washington

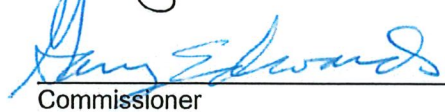
Washington Department of Fish and Wildlife


Chair


Vice-Chair


Commissioner


Commissioner


Commissioner

Hugdahl,
Jeffrey R (DFW)

Digitally signed by
Hugdahl, Jeffrey R (DFW)
Date: 2023.12.20 14:46:00
-08'00'

Jeff Hugdahl
Contracts and Purchasing Manager

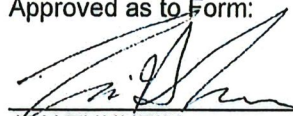
Date: _____

Date: December 12, 2023

ATTEST:


Clerk of the Board

Approved as to Form:


JON TUNHEIM
PROSECUTING ATTORNEY

12/4/23