

21RD.001

INTERLOCAL MUTUAL COOPERATION AGREEMENT BETWEEN SAN JUAN COUNTY AND THE PORT OF FRIDAY HARBOR

THIS Interlocal Mutual Cooperation Agreement ("AGREEMENT") is made and entered into pursuant to RCW 39.34.080, by and between San Juan County ("COUNTY"), and the Port of Friday Harbor ("PORT"), a municipal corporation duly organized and existing under the State of Washington. COUNTY and PORT may be individually referred to herein as a "party" and may be collectively referred to herein as the "parties." In consideration of the following, the parties mutually agree as follows:

WHEREAS, the COUNTY and the PORT desire to enter into an AGREEMENT to allow each party to provide mutual assistance related to the planning, funding, maintenance, equipment sharing, construction and/or other activities related to Public Works projects ("PROJECT(S)") in the COUNTY pursuant to and subject to the terms of this AGREEMENT; and

WHEREAS, the parties each represent that they are qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise, where required, to perform the services and/or tasks set forth in this AGREEMENT;

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, the parties hereto agree as follows:

1. SCOPE OF RESPONSIBILITIES.

In accordance with and subject to the purpose of this AGREEMENT (as provided above), either party may, but shall not be required to, perform PROJECT work and/or services, provide PROJECT materials, and allow for the use of each party's equipment for PROJECT work as may be requested by the other party as described in Section 1.1 of this AGREEMENT, below. Reimbursement to the party providing said Project work, materials, equipment, etc., shall be made as further provided and described in Section 3 of this AGREEMENT.

1.1. The scope of such PROJECTS shall be defined in a request for interlocal services on the form provided in Exhibit A, which will list the specific services to be provided by the parties and the estimated costs. The individual request for services must be approved by the Public Works Director (COUNTY) and the Executive Director (PORT) prior to the initiation of work. Individual requests over \$10,000 will also be approved the County Manager (COUNTY) and the Chair of the Board of Commissioners (PORT). The parties may at any time, by written order, make changes to the request for interlocal services. These changes must be approved Public Works Director and the Executive Director (and if change is over \$10,000, the County Manager and the Chair of the Board of Commissioners) prior to the initiation of the changes.

1.2. In any particular instance or in all instances, either party may choose not to perform requested PROJECT work and/or services for the other party, in the event that

such party determines that it would be undesirable, unsafe, impracticable, or otherwise not feasible for any reason.

2. TERM.

The term of this AGREEMENT shall be from date of mutual execution through December 31, 2025, unless sooner terminated pursuant to the terms herein.

3. COMPENSATION AND MANNER OF FINANCING.

The parties agree that reimbursement for PROJECT work as may be performed by either party shall be made as follows:

3.1. COUNTY may perform services, provide materials, and/or provide the use of COUNTY's equipment (to be operated by a COUNTY operator), for work on PORT's facilities upon PORT's request and acceptance by COUNTY, to be reimbursed by PORT to COUNTY at the actual costs incurred by COUNTY for said work, materials, use of COUNTY equipment, and wages for COUNTY operators and Public Works staff, and in addition thereto, ten percent (10%) of the total costs shall be added for overhead costs for account, billing, and administrative services, provided that COUNTY shall submit to PORT an itemized, signed statement of the costs and within thirty (30) days thereafter, PORT shall pay to COUNTY the amount of said statement. Upon the request of PORT, COUNTY shall provide the adequate supporting documentation for any and all amounts billed to PORT by COUNTY pursuant to the terms of this AGREEMENT.

3.2. PORT may perform services, provide materials, and/or provide the use of PORT's equipment (to be operated by a PORT operator), for work on COUNTY's facilities upon COUNTY's request and acceptance by PORT, to be reimbursed by COUNTY to PORT at the actual costs incurred by PORT for said work, materials, use of PORT equipment, and wages for PORT operators and Public Works staff, and in addition thereto, ten percent (10%) of the total costs shall be added for overhead costs for account, billing, and administrative services, provided that PORT shall submit to COUNTY an itemized, signed statement of the costs and within thirty (30) days thereafter, COUNTY shall pay to PORT the amount of said statement. Upon the request of COUNTY, PORT shall provide the adequate supporting documentation for any and all amounts billed to COUNTY by PORT pursuant to the terms of this AGREEMENT.

4. ADMINISTRATION.

The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this AGREEMENT and for coordinating and monitoring performance under this AGREEMENT. In the event such representatives are changed the party making the change shall notify the other party.

4.1. The COUNTY's representatives shall be the Public Works Director and the County Manager, or their designee(s).

4.2. The PORT's representatives shall be the Executive Director and the Chair of the Board of Commissioners, or their designee(s).

5. TREATMENT OF ASSETS OR PROPERTY.

All improvements made under this AGREEMENT will be the property of the jurisdiction that requested the improvements. No fixed assets or personal or real property will be jointly or cooperatively acquired, held, used, or disposed of pursuant to this AGREEMENT.

6. NO PARTNERSHIP OR JOINT VENTURE.

No partnership and/or joint venture exists between the parties, and no partnership and/or joint venture is created by and between the parties by virtue of this AGREEMENT. No agent, employee, contractor, subcontractor, consultant, volunteer, and/or other representative of the parties shall be deemed an agent, employee, contractor, subcontractor, consultant, volunteer, or other representative of the other parties.

7. NO THIRD-PARTY BENEFICIARIES.

This AGREEMENT is not intended to nor does it create any third party beneficiary or other rights in any third person or party, including, but not limited to, the general public, property owners and residents at or in the vicinity of the Project(s), or any other organization or entity, or any agent, contractor, subcontractor, consultant, employee, volunteer, or other representative of any party.

8. INDEMNIFICATION.

Each party agrees to be responsible and assume tort liability for its own wrongful and/or negligent acts or omissions, or those of its officials, officers, agents, or employees to the fullest extent required by law, and agrees to save, indemnify, defend and hold the other party harmless from any such tort liability. In the case of negligence or wrongful acts by both the COUNTY and the PORT, any damages allowed shall be levied in proportion to the percentage of fault attributable to each party, and each party shall have the right to seek contribution from the other party in proportion of the percentage of negligence attributable to the other party.

For work performed under this AGREEMENT, each party shall also indemnify the other against all liability and loss in connection with, and shall assume full responsibility for, payment of all federal, state and local taxes or contributions imposed or required under unemployment insurance, worker's compensation, social security and income tax laws, for itself and any of its own employees or volunteers.

9. INSURANCE.

Each party will carry and maintain throughout the period of the AGREEMENT at its own expense the following minimum insurance, which may be provided by a county or municipal risk management pool approved by the Washington State Insurance Commissioner:

9.1. Comprehensive commercial general liability insurance in the amount of no less than \$1,000,000, or if greater, to the limit of the policy for combined, single-limit bodily

injury, including wrongful death, or property damage to defend and indemnify all activities and services covered by this AGREEMENT.

9.2. Auto liability insurance with limits of no less than \$1,000,000 for each person and/or \$1,000,000 for each occurrence for owned, hired and non-owned automobiles used for any activities and services covered by this AGREEMENT.

9.3. Statutory workers' compensation insurance and employer's liability insurance to cover employees and volunteers as required by state and federal law.

9.4. Each party shall provide the other with evidence of insurance in the form of a Certificate of Insurance satisfactory to the other, executed by a duly authorized representative of each insurer showing compliance with the insurance requirements set forth above. Upon request, a party shall also provide a duplicate copy of each insurance policy and endorsements noted above and the name, address and telephone number of the broker who issued each one, if applicable as evidence of coverage.

10. MAINTENANCE AND INSPECTION OF RECORDS.

10.1. Both parties shall maintain books, records and documents, which sufficiently and properly reflect all work related to the performance of the AGREEMENT. In addition, the parties shall maintain all accounting records in a form necessary to assure proper accounting of all funds paid pursuant to this AGREEMENT. All of the above shall be subject at all reasonable times to inspection, review, or audit by the other party, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this AGREEMENT.

10.2. The parties shall retain all books, records, documents and other material relevant to this Agreement for six (6) years after its expiration. Each party agrees that the other party or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.

11. USE OF DOCUMENTS AND MATERIALS PRODUCED.

Both parties shall have the right to use and distribute any and all documents, writings, programs, data, public records or other materials prepared by any party (and/or any party's contractors, consultants, and/or subcontractors), in connection with performance of the AGREEMENT. The parties recognize and agree that any documents and/or materials arising from and/or related to this AGREEMENT may be subject to public disclosure pursuant to applicable law.

12. COMPLIANCE WITH LAWS.

The parties to this AGREEMENT shall comply with all applicable federal, state and local laws, rules and regulations in carrying out the terms and conditions of this AGREEMENT.

13. TERMINATION.

Any party hereto may terminate this AGREEMENT upon thirty (30) days' notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested

to the party's last known address for the purposes of giving notice under this paragraph. If this AGREEMENT is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this AGREEMENT prior to the effective date of termination, except the duty to indemnify pursuant to Section 8 shall survive such termination.

14. DISPUTES.

The parties shall use reasonable efforts to resolve any controversies or disputes arising out of or relating to this AGREEMENT through a good faith attempt at mediation. Either party may resort to filing suit in San Juan County Superior Court if the mediation is not resolved or concluded within ninety (90) days of a written request to mediate. Each party will pay its own attorneys' fees and costs in connection with mediation or litigation.

15. APPLICABLE LAW.

This AGREEMENT shall be governed by the laws of the State of Washington, both as to interpretation and performance.

16. CHANGES, MODIFICATIONS, AMENDMENTS, and WAIVERS.

The AGREEMENT may be changed, modified, amended or waived only by written agreement executed by the parties hereto. Waiver or breach of any term or condition of this AGREEMENT shall not be considered a waiver of any prior or subsequent breach. All remedies afforded in this AGREEMENT shall be taken as cumulative; that is, in addition to every other remedy provided herein or by law.

17. SEVERABILITY.

It is understood and agreed by the parties that in the event any term or condition of this AGREEMENT or application thereof to any person or circumstances is held by any court to be illegal or in conflict with any law of the State of Washington, the validity of the remaining portions of the AGREEMENT shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the AGREEMENT did not contain the particular term, part or provision held to be invalid.

18. ENTIRE AGREEMENT.

This instrument contains the entire AGREEMENT between the parties and any prior statements, promises, or inducements made by any party or agent of that party that are not contained in this AGREEMENT shall not be valid or binding.

19. NOTICE.

Notice provided for in this AGREEMENT shall be sent by certified mail to the following addresses designated for the parties:

SAN JUAN COUNTY PUBLIC WORKS
Colin F. Huntemer, Director
P.O. Box 729
Friday Harbor, WA 98250

PORT OF FRIDAY HARBOR
Todd Nicholson, Executive Director
P.O. Box 889
Friday Harbor, WA 98250

20. ELECTRONIC SIGNATURES.

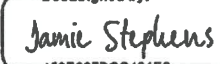
A copy of this AGREEMENT signed electronically and transmitted by facsimile, email, or other means of electronic transmission, shall be deemed to have the same legal effect, for all purposes, as an original, manually executed copy.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed as of this _____ day of 1/26/2021, 2021.

ATTEST: Clerk of the Council

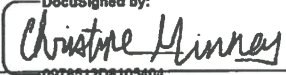
DocuSigned by:
 1/26/2021
Ingrid Gabriel, Clerk Date

COUNTY COUNCIL
SAN JUAN COUNTY, WASHINGTON


DocuSigned by:
 1/26/2021
Jamie Stephens, Chair Date
District 3

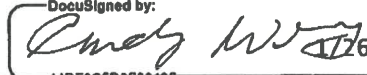
REVIEWED BY COUNTY MANAGER

DocuSigned by:
 1/26/2021
Michael J. Thomas Date

DocuSigned by:
 1/26/2021
Christine Minney, Date
Vice-Chair District 1

APPROVED AS TO FORM ONLY
RANDALL K. GAYLORD

DocuSigned by:
 12/9/2020
By: _____ Date

DocuSigned by:
 1/26/2021
Cindy Wolf, Member Date
District 2

PORT OF FRIDAY HARBOR

By:  1/25/2021
Todd Nicholson, Executive Director Date

Exhibit A

Request for Interlocal Work or Services

Requesting Party:

- San Juan County Public Works
- Port of Friday Harbor

Providing Party:

- San Juan County Public Works
- Port of Friday Harbor

Description of Request:

Estimated Date of Project Completion:

Estimated Cost of Services:

Approved By:

San Juan County Public Works
Colin F. Huntemer
Director

Port of Friday Harbor
Todd Nicholson
Executive Director

Signature Date

Signature Date

If request is over \$10,000:

Approved By:

San Juan County Public Works
Michael J. Thomas
County Manager

Port of Friday Harbor
Chair, Board of Commissioners

Signature Date

Signature Date

