

SJC Agreement No.

23EN.006

**INTERLOCAL AGREEMENT
FOR DERELICT VESSEL REMOVAL AND DISPOSAL
BETWEEN SAN JUAN COUNTY,
TOWN OF FRIDAY HARBOR AND PORT OF FRIDAY HARBOR**

THIS Agreement is made and entered into at Friday Harbor, Washington, pursuant to RCW 39.34.080 between San Juan County (“COUNTY”), a political subdivision of the State of Washington, and the Town of Friday Harbor (“TOWN”) and the Port of Friday Harbor (“PORT”), both municipal corporations, all hereinafter referred to collectively as the PARTIES.

WHEREAS, the waterways of San Juan County are becoming increasingly congested as both local and non-local populations increase; and

WHEREAS, the marine environment is a substantial component of the various amenities upon which our local economy is based; and

WHEREAS, the ever-increasing population of vessels and/or other floating structures has resulted in a commensurate increase in the number of derelict vessels; and

WHEREAS, these derelict vessels are a hazard to navigation, anchoring, public health and safety, and the marine environment; and

WHEREAS, these derelict vessels are detrimental to the local economy; and

WHEREAS, it is in the best interest of the PARTIES to minimize the negative impact of these derelict vessels by removing these vessels from the marine environment; and

WHEREAS, the Washington State Legislature has adopted RCW 79.100 to aid in the disposal of derelict vessels; and

WHEREAS, pursuant to RCW 79.100, the Washington State Department of Natural Resources (WDNR) has developed a Derelict Vessel Removal Program; and

WHEREAS, the PARTIES are all authorized public entities given the authority under RCW 79.100 to dispose of derelict vessels; and

WHEREAS, funds from the WDNR Derelict Vessel Removal Program are available to fund up to 90% of the cost of the removal of specified derelict vessels; and

WHEREAS, the authorized public entities are responsible for funding the remaining 10% of the removal costs; and

WHEREAS, the PARTIES desire to implement a program to remove derelict vessels in San Juan County pursuant to RCW 79.100;

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

1. TERM

The Agreement shall become effective on **January 1, 2023**. The Agreement shall end on **December 31, 2027**. Any of the PARTIES to this Agreement may terminate this Agreement, in whole or in part, at any time, by giving at least thirty (30) days written notice to all other PARTIES. All amendments to this Agreement shall be in writing signed by the PARTIES.

2. SERVICE PROVIDER

The COUNTY shall retain one or more Service Provider(s), who shall be responsible for the actual recovery and disposal of derelict vessels in the Areas of Overlapping Obligation as shown in the attached Exhibit A. The COUNTY shall be the contract manager and primary point of contact for the Service Provider.

No vessel shall be removed under this Agreement until each party that has jurisdiction over the area where the vessel is located agrees to removal and to pay their respective share in the costs of removal. The COUNTY may proceed without the agreement of the affected parties in the event of an imminent threat that the COUNTY deems to warrant an Emergency Removal under RCW 79.100.040(3). Each of the PARTIES may be limited in their participation dependent on authorized budget.

3. COST REIMBURSEMENT

The COUNTY shall coordinate with the Washington State Department of Natural Resources (WDNR) to provide reasonable assurance of reimbursement of expenses from the Derelict Vessel Removal Account (DVRA) for costs incurred by the PARTIES as a result of exercising authority under RCW 79.100.030.

As described in Section 2 above, the PARTIES shall share the local cost (authorized local entity responsibility) of the removal and disposal of derelict vessels under the WDNR's Derelict Vessel Removal Program. In-kind contributions of labor, valued at cost, and of moorage, valued at the basic permanent moorage rate, may be counted as contributions. It is expected that ninety percent (90%) of the total reasonable and auditable costs of vessel removal will be reimbursed by WDNR, with the remaining ten percent (10%) to be shared equally among the PARTIES whose jurisdiction extends over the geographic location of the vessel to be removed.

The COUNTY will invoice each other party that has jurisdiction over the area where a vessel is removed for its share of the costs exceeding the amount reimbursed by WDNR. Payment on COUNTY invoices shall be due within thirty (30) days of issuance.

4. ADMINISTRATION

This Agreement shall be administered by the COUNTY Director of Environmental Stewardship or their designee. The PORT's Harbormaster shall be authorized to act on behalf of the PORT and the TOWN's Administrator shall be authorized to act on behalf of the TOWN with respect to this agreement.

5. SUPPORT TO DEREICT VESSEL PREVENTION PROGRAM

The PORT may provide support to the COUNTY in implementing the Derelict Vessel Prevention Program. Activities will focus on identifying Vessels of Concern within the PORT's Area of Obligation. The PORT may provide boat transportation to COUNTY personnel in the performance of marine patrols. The PORT's Harbormaster will coordinate with the COUNTY to schedule patrols and provide the boat, fuel, and authorized boat operator. The boat operator will be required to navigate in close proximity to anchored and moored vessels and safely position the patrol boat alongside a Vessel of Concern so that COUNTY personnel may affix a notice to the vessel. During such activities all involved COUNTY personnel must wear a personal floatation device and abide by all safety protocols and instructions of the PORT's boat operator.

As these patrols are mutually beneficial to reduce the potential hazards and future costs associated with vessels of concern, the PORT agrees to provide these support services at its own expense.

6. INDEMNIFICATION

Each party agrees to be responsible and assume tort liability for its own wrongful acts or omissions, or those of its 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 more than one party, 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.

Each party shall also indemnify the other parties 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 the indemnifying party and any employees or volunteers of the indemnifying party.

7. MAINTENANCE AND INSPECTION OF RECORDS

A. Each party shall maintain books, records and documents, which sufficiently and properly reflect all work related to the performance of the Agreement. In addition, each party 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 parties or their authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

B. Each party 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 parties or their designees shall have full access and right to examine any of said materials at all reasonable times during said period.

8. PROPERTY OWNERSHIP; NO SEPARATE ENTITY

All real or personal property used in the performance of this Agreement shall remain the property of the furnishing party. No separate legal or administrative entity is intended to be created by this Agreement.

9. MEDIATION

The parties shall attempt to resolve any controversies or disputes arising out of or relating to this Agreement through a good faith attempt at mediation. Each party will pay its own attorneys' fees and costs.

10. ARBITRATION

A. Any controversy or claim arising out of or relating to this Agreement that is not resolved through mediation, shall be resolved by final and binding arbitration pursuant to RCW 7.04A. Demand for arbitration shall be made in writing to the other party. The arbitration shall be held in San Juan County before a single arbitrator selected by the Agreement of the parties. If the parties cannot agree upon an arbitrator within fifteen (15) days after the demand for arbitration is made, the arbitrator shall be selected by a judge in the Superior Court of San Juan County in accordance with the procedures set out in RCW 7.04A.110.

B. Unless the parties agree otherwise in writing, the arbitration hearing shall occur no later than sixty (60) days after the date the arbitrator is appointed.

C. The parties agree that, with the exception of the circumstances set out in RCW 7.04A.230, the arbitrator's decision shall be binding, final and not appealable to any court of law.

D. Each party shall pay its own costs of arbitration including attorneys' fees. The arbitrator's fee and any administrative expenses imposed by the arbitrator shall be shared equally by the parties.

E. This Agreement shall be governed by laws of the state of Washington, both as to interpretation and performance.

11. WAIVER

The waiver by, or the failure to take action with respect to, breach of any term, covenant or condition of the Agreement shall not be deemed to be a waiver of such term, covenant or condition on any 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.

12. SEVERABILITY

It is understood and agreed by the parties that if any term or provision of this Agreement 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 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.

13. ENTIRE AGREEMENT


This instrument contains the entire Agreement between the parties and 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. This Agreement may not be enlarged, modified, or altered except in writing signed by all parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of this 17th day of February 20 23.

TOWN OF FRIDAY HARBOR

Raymont Jackson

Mayor

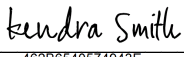
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 Date

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SAN JUAN COUNTY DEPARTMENT OF ENVIRONMENTAL STEWARDSHIP

Kendra Smith

Director

DocuSigned by:

 462B6540574943E... 2/7/2023
 Date

PORT OF FRIDAY HARBOR

Todd Nicholson
Executive Director

DocuSigned by:

52D69789614E4CA... 2/7/2023
Date

FINAL APPROVAL

Michael J. Thomas
San Juan County Manager

DocuSigned by:

BD203AD17ED3465... 2/17/2023
Date

APPROVED AS TO FORM ONLY

Amy S. Vira
San Juan County Prosecuting Attorney

Reviewed By: Jon Cain 1/19/2023

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Exhibit A

