SJC Agreement No.
12RD.024

INTERLOCAL AGREEMENT
FOR PROFESSIONAL SERVICES

THIS Agreement is made and entered into at Friday Harbor, Washington, pursuant to
RCW 39.34.080 between San Juan County ("COUNTY"), and Port of Orcas ("PORT").

WHEREAS, the PORT desires to enter into an interlocal agreement with the COUNTY
to perform certain services and/or tasks set forth below requiring specialized skills and other
supportive capabilities; and

WHEREAS, the COUNTY represents that the COUNTY is 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 SERVICES

The COUNTY shall perform such services and accomplish such tasks, including the furnishing
of all materials and equipment necessary, as are designated in the responsibilities of COUNTY
throughout this Agreement and as described in Exhibit A, attached and incorporated herein.
2. **TERM**

The Project shall begin upon the execution of this Agreement and shall be completed no later than **May 31, 2019**.

3. **COMPENSATION AND METHOD OF PAYMENT**

Payments for services provided shall be made following the performance of such services, unless otherwise permitted by law and approved in writing by the PORT. No payment shall be made for any service rendered by the COUNTY except for services identified and set forth in this Agreement, including Exhibit A. Fees for services shall be in accordance with the current COUNTY wage rates and shall not exceed **$9,950.00 annually**.

4. **ADMINISTRATION.**

This Agreement shall be administered by **PUBLIC WORKS DIRECTOR**.

5. **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 requires 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.

The COUNTY shall also indemnify the PORT 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, workman's compensation, social security and income tax laws, for the COUNTY and any employees or volunteers of the COUNTY.

6. **INSURANCE**

A. The PORT will carry and maintain throughout the period of the Agreement at its own expense the following minimum insurance which must be primary and non-contributory:

1. Comprehensive commercial general liability insurance in the amount of no less than $1,000,000 for combined, single-limit bodily injury, including wrongful death, or property damage to defend and indemnify all activities and services covered by this Agreement with a commercial insurance carrier protected under the State of Washington Guaranty Fund or with a risk pool approved by the Insurance Commissioner. Such insurance shall be endorsed to include San Juan County, its officers, elected officials, employees and agents as an additional insured, and shall not be reduced or cancelled without thirty (30) days prior written notice to the COUNTY.
Each insurance shall be endorsed to include language containing a “cross liability” or “separation of insureds” indicating essentially that except with respect to the limits of insurance, and any rights or duties specifically assigned in the coverage part to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom a claim is made or a suit is brought. Any payment of a deductible or self-insured retention shall be the sole responsibility of the PORT.

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. Such insurance shall be endorsed to include San Juan County, its officers, elected officials, employees and agents as an additional insured, and shall not be reduced or cancelled without thirty (30) days prior written notice to the COUNTY.

3. Standard professional liability insurance covering damages resulting from errors or omissions of the PORT or his employees or agents. The limit of liability shall not be less than $1,000,000 per claim and annual aggregate. Notwithstanding paragraph 5, professional liability insurance is not required to hold harmless or defend the COUNTY for any claim.

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

B. The PORT shall provide the COUNTY evidence of insurance in the form of a Certificate of Insurance satisfactory to the COUNTY, executed by a duly authorized representative of each insurer showing compliance with the insurance requirements set forth above. Upon the request of the COUNTY, the PORT shall also provide a duplicate (photocopy) of each insurance policy and endorsements noted above and the name, address and telephone number of the broker who issued each one as evidence of coverage. Approval of insurance is a condition precedent to full execution, including continued compensation, of this Agreement. The maintenance of said insurance will not in any manner affect the PORT’S obligation to hold harmless and indemnify the COUNTY as provided in this Agreement.

7. MAINTENANCE AND INSPECTION OF RECORDS

A. The COUNTY shall maintain books, records and documents, which sufficiently and properly reflect all work related to the performance of the Agreement. In addition, the COUNTY 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 COUNTY, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.
B. The COUNTY shall retain all books, records, documents and other material relevant to this Agreement for six (6) years after its expiration. The COUNTY agrees that the PORT or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.

8. **EXTRA WORK**

A. The PORT may at any time, by written order, make changes within the general scope of the Agreement in the services to be performed.

B. If any such change causes an increase or decrease in the estimated cost of, or the time required for performance of any part of the work under this Agreement, whether or not changed by the order, or otherwise affects any other terms and conditions of the Agreement, the PORT shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the Agreement accordingly.

C. The COUNTY must submit its “request for equitable adjustment” or claim under this clause within thirty (30) days from the date of receipt of the written order.

D. The maximum amount payable for this Agreement shall not be increased or considered to be increased except by specific written supplement to this Agreement.

9. **OWNERSHIP OF WORK PRODUCTS**

All data, materials, reports, memoranda, and other documents developed under this Agreement, whether finished or not, shall become the property of the PORT, shall be forwarded to the PORT at its request, and may be used by the PORT as it sees fit.

10. **TERMINATION**

A. **Termination for Convenience.** The COUNTY may terminate this Agreement, in whole or in part, at any time, by at least thirty (30) days written notice to the PORT. The COUNTY shall be paid for work performed and expenses incurred to the date of termination. Within thirty (30) days, the PORT shall submit a termination claim to the COUNTY. If the PORT has any property in its possession belonging to the COUNTY, the PORT will account for the same, and dispose of it in the manner directed by the COUNTY.

B. **Termination for Cause.** If the COUNTY fails to perform in the manner called for in this Agreement, or if the COUNTY fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within five (5) days written notice thereof, the PORT may terminate this Agreement for cause. Termination shall be effected by serving a notice of termination on the COUNTY setting forth the manner in which the COUNTY is in default. The COUNTY will only be paid for services performed in accordance with the manner of performance set forth in this Agreement.
11. **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.

12. **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.

13. **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.

14. **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.
15. **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.

16. **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**
P.O. BOX 729
FRIDAY HARBOR, WA 98250

**PORT OF ORCAS**
P.O. BOX 53
EASTSOUND, WA 98245

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of this 24th day of May 2012.

**PORT OF ORCAS**
Audrey Wells
Chairman

**SAN JUAN COUNTY PUBLIC WORKS**
Frank Mulcahy
Director

Audrey Wells 5-21-12
Date

**APPROVED AS TO FORM ONLY**
San Juan County Prosecuting Attorney
Randall K. Gaylord

**FINAL APPROVAL**
Pete Rose
County Administrator

By: 5/15/12
Date

5/23/2012
Date
Exhibit A

Scope of Services

San Juan County Public Works (Public Works) intends to:

1. Perform Road Maintenance services for the Port of Orcas; specifically snow removal, pothole repair, sweeping and other Road Maintenance as requested.

2. Public Works agrees to perform such work in a good workmanlike manner and consistent with all local, state and federal laws and regulations affecting the work. Public works reserves the right to refuse or delay service if warranted.

3. Public Works will provide additional maintenance services as needed when agreed to in advance by both parties. All work included under this term will be itemized on the monthly invoice from Public Works to the Port. Consumable products used for the Port facilities will be billed at a rate of cost plus 5%. Either party via telephone, e-mail, fax, or mail may cancel requests for work, with at least 48 hours' notice.

4. Provide the Port with a monthly bill on or before the 10th of the month. A record of services provided will be submitted with the monthly billing to the Port.

5. Frequency of service: As requested.

Both Parties Intend To:

1. Cooperate to maintain and operate the described properties, and upon request, share all relevant information concerning maintenance and operation of the properties.