INTERLOCAL AGREEMENT FOR
AWARD OF FUNDS FOR PUBLIC FACILITIES FINANCING ASSISTANCE
UNDER RCW 82.14

THIS Agreement is made and entered into at Friday Harbor, Washington, pursuant to
RCW 39.34.080, between San Juan County ("COUNTY"), and the PORT OF FRIDAY
HARBOR ("GRANTEE").

RECITALS

1. The COUNTY imposes, in addition to other taxes authorized by law, a nine one-
hundredths of one percent (0.09%) of the selling price in the case of sales tax or value of the
article used in the case of a use tax as allowed by RCW 82.14.370, and San Juan County Code
(SJCC) 3.26.

2. The moneys collected as described above are deposited into the County treasury
in a special revenue fund recognized as the San Juan County Public Facilities Improvement Fund
for financing public facilities in San Juan County.

3. San Juan County solicited proposals for grants of up to $376,617 in funds from
the Public Facilities Improvement Fund for the year 2014.

4. The Public Facilities Financing Assistance Program screening committee
reviewed the applications and made recommendations to the County Council for the award of the
funds.

5. The GRANTEE has been selected by the COUNTY to receive a grant from the
Public Facilities Assistance Program.

6. The GRANTEE represents and certifies that it is qualified to receive funds for a
"public facility" under RCW 82.14.370, and is qualified and possesses sufficient skills and the
necessary capabilities, including technical and professional expertise, where required, to perform
the services and/or work set forth in this Agreement.

Therefore, in consideration of the above recitals, and the terms, conditions, covenants,
and performance contained herein, the parties agree as follows:

1. SCOPE OF SERVICES

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

2. TERM

The Project shall begin no sooner than July 1, 2014 and shall be completed no later than
December 31, 2016.
3. **COMPENSATION AND METHOD OF PAYMENT**

Payment for services provided shall be made following the performance of such services, unless otherwise permitted by law and approved in writing by the COUNTY. Invoices for payment, with original receipts, shall be submitted by the GRANTEE to the County Auditor. No payment shall be made for any service rendered by the GRANTEE except for services identified and set forth in this Agreement, including Exhibit A. Fees for services shall not exceed $214,634.

4. **ADMINISTRATION.**

The San Juan County Council has delegated the authority to sign and administer this Agreement to the County Manager.

5. **INDEMNIFICATION.**

The GRANTEE shall protect, defend, hold harmless and indemnify the COUNTY against all tort liability or loss, and against all claims or actions based upon or arising out of damage or injury (including death) to persons or property caused by or sustained in connection with the GRANTEE's negligent performance of this Agreement or by conditions created thereby, or based upon violation of any code or regulation, and the defense of any such claim or actions.

The GRANTEE shall also indemnify the COUNTY 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 GRANTEE and any employees or volunteers of the GRANTEE.

6. **INSURANCE**

A. The GRANTEE 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 GRANTEE.

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

B. The GRANTEE shall provide the COUNTY with 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 GRANTEE 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 GRANTEE’S obligation to hold harmless and indemnify the COUNTY as provided in this Agreement.

7. ASSIGNMENT/SUBCONTRACTING

The CONSULTANT shall not assign its rights and duties under any portion of this Agreement without the written consent of the County. Consent must be sought in writing by the CONSULTANT not less than fifteen days prior to the date of any proposed assignment.

8. PREVAILING WAGES

The work provided under this Agreement is subject to the minimum wage requirements of RCW 39.12. Prior to beginning work under this Agreement, the Contractor shall deliver to the County a signed statement of Intent to Pay Prevailing Wages as filed with the Washington State Department of Labor and Industries (L&I). In the event the Contractor employs any person in the performance of this Agreement, the Contractor shall file an Affidavit of Wages Paid as required under RCW 39.12. If employing labor in a class not listed by L&I, the Contractor shall request a determination of the correct wage rate for that class from the Industrial Statistician, L&I. All submitted invoices must conform to the prevailing wage requirements set out in RCW 39.12.040(1).

9. PROPERTY ACQUISITION

Any property acquired by Grantee under this agreement is the sole and separate property of Grantee.
10. MAINTENANCE AND INSPECTION OF RECORDS

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

11. TERMINATION

If the GRANTEE fails to perform in the manner called for in this Agreement, or if the GRANTEE fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within five (5) days written notice thereof, the COUNTY may terminate this Agreement for cause. Termination shall be initiated by serving a notice of termination on the GRANTEE setting forth the manner in which the GRANTEE is in default. The GRANTEE shall have the opportunity to address the Council before the Agreement is formally terminated by the County Council. In the event of termination, the GRANTEE will only be paid for services performed in accordance with the manner of performance set forth in this Agreement.

12. INDEPENDENT CONTRACTOR

Grantee is an independent contractor and is solely responsible for the work performed under this agreement.

13. 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.

14. 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 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 7.04.A.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 7.04.A.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.

15. **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.

16. **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.

17. **ENTIRE AGREEMENT**

This instrument contains the entire Agreement between the parties; 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.

18. **NOTICE**

Notice provided for in this Agreement shall be sent by certified mail to the following addresses designated for the parties.
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of this 2nd day of September 2014.

Marilyn O'Connor  
Executive Director  

Date

Mike Thomas  
County Manager  

Date

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

By:  

Date
Exhibit A

Scope of Services

Port of Friday Harbor will use the funds provided through this grant for: Installation of a Waterfront Walkway to provide pedestrian connections along the water and provide an attractive plus educational link between the marina and the downtown core area of Friday Harbor as described in the attached application.

The complete application and project proposal is attached, including budget detail for the award of funding in the amount of $214,634 as approved.