

June 16, 2025

Ms. Elizabeth Kosa
Public Works Director
Whatcom County
322 N. Commercial Street, Suite 201
Bellingham, Washington 98225

Subject: Ferry Agreements

Dear Ms. Kosa:

Enclosed for your review and signature are Interagency Agreement GCC 1231, renewing the operating deficit agreement for the Whatcom County Ferry, and Interagency Agreement GCC 1234, renewing the zero youth fares agreement. After execution, these agreements will be in effect from July 1, 2025, until June 30, 2027.

To authorize the funding for these programs you must sign and return the agreements to eileen.leingang@wsdot.wa.gov. Once we receive the signed copies from you, the fully executed agreements with WSDOT's added signature will be returned for your records.

Thank you for your assistance in finalizing these agreements. We appreciate the opportunity to build this partnership with you.

Sincerely,



Eileen Leingang
Finance and Administration Manager
Local Programs

EL:ml
Enclosure

**GCC-1234
INTERAGENCY AGREEMENT
BETWEEN
THE STATE OF WASHINGTON**

Department of Transportation, Local Programs

**AND
Whatcom County**

THIS AGREEMENT is between the Washington State Department of Transportation, Local Programs, hereinafter referred to as "WSDOT," and Whatcom County, hereinafter referred to as the "COUNTY," collectively the "Parties" and individually the "Party."

WHEREAS, the Transportation Budget 2025-2027 - ESSB 5161, Section 224 provides funding to support Pierce, Skagit, Whatcom, and Wahkiakum county ferries with youth zero-fare policies.

It is mutually agreed as follows:

1. **PURPOSE**

This Agreement is intended to carry out ESSB 5161, Section 224, as directed in the 25-27 Transportation Budget which provides funding in the carbon emissions reduction account-state appropriation for Pierce, Skagit, Whatcom, and Wahkiakum county ferries to eliminate fares for passengers eighteen years (18) years of age and younger.

2. **GENERAL**

WSDOT agrees to reimburse the COUNTY, no more than one (1) time per month, an amount equal to the number of documented riders eighteen (18) years and under (for that period) multiplied by the established youth fare consistent with its current schedule of tolls. The maximum amount WSDOT shall reimburse the COUNTY during the Period of Performance set forth in paragraph 4 shall not exceed Sixty-Eight Thousand Five Hundred Dollars (\$68,500).

3. **BILLING PROCEDURES**

- 3.1 On a monthly basis, the COUNTY shall submit an invoice to WSDOT itemizing the number of youth riders for that period multiplied by the cost of the established youth fare.
- 3.2 WSDOT agrees to reimburse the COUNTY within thirty (30) calendar days from receipt of a properly completed invoice, including all necessary supporting documentation. The total of all amounts paid to the COUNTY during the Period of Performance shall not exceed the amount set forth in Paragraph 2.
- 3.3 Each invoice voucher submitted shall include such information as is necessary to determine the exact nature of all expenditures. At a minimum, the invoice shall specify the following:
 - a. Agreement Number GCC1234
 - b. Invoice number and date of invoice

- c. The total number of youth riders for each month
- d. The established youth fare for the month
- e. The total amount due the COUNTY

3.4 The invoice shall be submitted electronically to Eileen Leingang and Andrea Johns at - eileen.leingang@wsdot.wa.gov; andrea.johns@wsdot.wa.gov

4. PERIOD OF PERFORMANCE

The term of this Agreement shall commence as of July 1, 2025, and continue through June 30, 2027, unless terminated sooner as provided herein.

5. AGREEMENT ALTERATIONS AND AMENDMENTS

This Agreement may be amended by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the Parties.

6. TERMINATION

This Agreement may be terminated, without penalty or further liability as follows:

6.1 Termination for Cause:

This Agreement may be terminated for cause by either Party if the other Party does not fulfill in a timely and proper manner its obligations under this Agreement, or if the other Party violates any of the terms and conditions of this Agreement. The notice of intent to terminate for cause shall be issued by a Party in writing and the other Party shall have the opportunity to correct the violation or failure within fifteen (15) working days of the date of the notice. If the failure or violation is not corrected within the time allowed, this Agreement will automatically terminate.

6.2 Termination for Withdrawal of Authority:

This Agreement may be terminated by WSDOT in the event that WSDOT's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Agreement. The notice of intent to terminate for withdrawal of authority shall be issued by WSDOT in writing no less than seven (7) calendar days in advance of termination. No penalty shall accrue to WSDOT in the event termination under this section is exercised. This section shall not be construed to permit WSDOT to terminate this Agreement in order to acquire similar services from a third-party.

6.4 Termination for Non-Allocation of Funds:

This Agreement may be terminated by either Party if insufficient funds are allocated or appropriated to the Party to continue its performance of this Agreement in any future period. The notice of intent to terminate for non-allocation of funds shall be issued in writing no less than seven (7) calendar days in advance of termination.

6.5 If this Agreement is terminated prior to the fulfillment of the terms stated herein, the WSDOT agrees to reimburse the COUNTY for costs it has incurred up to the date of termination, as well as the costs of non-cancelable obligations.

6.6 Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior **to termination**.

7. MAINTENANCE OF RECORDS

- 7.1 The parties to this Agreement shall each maintain books, records, documents, and other evidence that sufficiently and properly reflect all costs associated with this Agreement. These records shall be subject to inspection, review, or audit by personnel of both parties, other personnel duly authorized by either Party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration of agreement. The Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.
- 7.2 The total cash payment to the COUNTY during any biennium shall not exceed the amount appropriated by the legislature for such purpose. If, through audit findings or by other means, it is determined that the COUNTY has been paid any erroneous payment or overpayment under this agreement, the COUNTY agrees to refund the excess amount to WSDOT within thirty (30) calendar days from written notice of the overage paid. The COUNTY agrees that should it fail to make such refund as provided, WSDOT shall withhold the overage amount paid from future funds due to the COUNTY. This provision of the Agreement shall survive termination.

8. HOLD HARMLESS AND INDEMNIFICATION

- 8.1 To the fullest extent permitted by law, each Party to this Agreement will protect, defend, indemnify, and save harmless the other Party, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and property), arising out of, or in any way resulting from, each Party's negligent acts or omissions with respect to the provisions of this Agreement. Neither Party will be required to indemnify, defend, or save harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and property) is caused by the sole negligence of the other Party. Where such claims, suits, or actions result from the concurrent negligence of the Parties, their agents, officials, or employees, and/or involve those actions covered by RCW 4.24.115, the indemnity provisions provided herein will be valid and enforceable only to the extent of the negligence of the indemnifying Party, its agents, officials, or employees.
- 8.2 The Parties agree that their obligations under this section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of their officers, officials, employees, or agents. For this purpose, only, the Parties, by mutual negotiation, hereby waive, with respect to each other only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.
- 8.3 This indemnification and waiver will survive the termination of this agreement.

9. LIABILITY

WSDOT shall assume no liability or responsibility for the COUNTY's Ferry, its personnel, assets or operations and maintenance, except for statutory funding as identified in this Agreement.

10. DISPUTES

The Parties shall work collaboratively to resolve disputes and issues arising out of, or related to, this Agreement. Disagreements shall be resolved promptly and at the lowest level of hierarchy. To this end, following the dispute resolution process shown below shall be a prerequisite to the filing of litigation concerning any dispute between the Parties:

- a. The representative, as shown herein designated in this Agreement shall use their best efforts to resolve disputes and issues arising out of or related to this Agreement. The representatives shall communicate regularly to discuss the status of the tasks to be performed hereunder and to resolve any disputes or issues related to the successful performance of this Agreement. The representatives shall cooperate in providing staff support to facilitate the performance of this Agreement and the resolution of any disputes or issues arising during the term of this Agreement.
- b. A Party's representative shall notify the other Party in writing of any dispute or issue that the representative believes may require formal resolution according to this Section. The representatives shall meet within five (5) working days of receiving the written notice and attempt to resolve the dispute.
- c. In the event the representatives cannot resolve the dispute or issue, the entity, and WSDOT's Region Administrator, or their respective designees, shall meet and engage in good faith negotiations to resolve the dispute.
- d. In the event the entity and WSDOT's Region Administrator, or their respective designees, cannot resolve the dispute or issue, the entity and WSDOT shall each appoint a member to a Dispute Board. These two members shall then select a third member not affiliated with either Party. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. All expenses for the third member of the Dispute Board shall be shared equally by both Parties; however, each Party shall be responsible for its own costs and fees.

11. GOVERNANCE

- 11.1 This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.
- 11.2 In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:
 - a. Applicable state and federal statutes and rules; and
 - b. Any other provisions of this Agreement, including materials incorporated by reference.

12. VENUE

In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties agree that any such action or proceedings shall be brought in Thurston County Superior Court. Further, the Parties agree that each will be solely responsible for payment of its own attorney's fees, witness fees, and costs.

13. 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 writing signed by an authorized representative of the Party and attached to the original Agreement.

14. 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.

15. ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

16. AGREEMENT MANAGEMENT

The program manager for each of the Parties shall be responsible for and shall be the contact person for communications regarding the performance of this Agreement.

Program Manager for WSDOT: Jay Drye, Director, Local Programs, P.O. Box 47390, Olympia, WA 98504-7390.

Program Manager for Whatcom County: Elizabeth Kosa, Public Works Director, Whatcom County, 311 Grand Avenue, Bellingham, WA 98225

Or, to such other persons and/or addresses as may be specified from time to time by notice to the other Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement, as of the day, month, and year last signed below.

WHATCOM COUNTY
PUBLIC WORKS

STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION

Elizabeth Kosa, Public Works
Director

Jay Drye, Local Programs Director

Date: _____

Date: _____

WHATCOM COUNTY:
Recommended for Approval:

Elizabeth Kosa, Public Works Director Date

Approved as to form:

Christopher Quinn Date
Chief Civil Deputy Prosecuting Attorney

Approved:
Accepted for Whatcom County:

By: _____
Satpal Singh Sidhu, Whatcom County Executive Date