

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No. _____

Originating Department: _____	
Division/Program: (i.e. Dept. Division and Program) _____	
Contract or Grant Administrator: _____	
Contractor's / Agency Name: _____	
<p>Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes No</p> <p>Yes No If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____</p> <p>Does contract require Council Approval? Yes No If No, include WCC: _____</p> <p>Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)</p> <p>Is this a grant agreement?</p> <p>Yes No If yes, grantor agency contract number(s): _____ CFDA#: _____</p> <p>Is this contract grant funded?</p> <p>Yes No If yes, Whatcom County grant contract number(s): _____</p> <p>Is this contract the result of a RFP or Bid process? Contract</p> <p>Yes No If yes, RFP and Bid number(s): _____ Cost Center: _____</p> <p>Is this agreement excluded from E-Verify? No Yes If no, include Attachment D Contractor Declaration form.</p> <p>If YES, indicate exclusion(s) below:</p> <p><input type="checkbox"/> Professional services agreement for certified/licensed professional. Goods and services provided due to an emergency</p> <p><input type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Contract for Commercial off the shelf items (COTS).</p> <p><input type="checkbox"/> Contract work is for less than 120 days. <input type="checkbox"/> Work related subcontract less than \$25,000.</p> <p><input type="checkbox"/> Interlocal Agreement (between Governments). <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.</p>	
<p>Contract Amount:(sum of original contract amount and any prior amendments):</p> <p>\$ _____</p> <p>This Amendment Amount:</p> <p>\$ _____</p> <p>Total Amended Amount:</p> <p>\$ _____</p>	<p>Council approval required for; all property leases, contracts or bid awards exceeding \$40,000, and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when:</p> <ol style="list-style-type: none"> 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance. 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
Summary of Scope: _____	
Term of Contract: _____	
Expiration Date: _____	

Contract Routing:	1. Prepared by: _____	Date: _____
	2. Attorney signoff: _____	Date: _____
	3. AS Finance reviewed: _____	Date: _____
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____	Date: _____
	6. Executive contract review: _____	Date: _____
	7. Council approved, if necessary: _____	Date: _____
	8. Executive signed: _____	Date: _____
	9. Original to Council: _____	Date: _____

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 1231
INTERAGENCY AGREEMENT
BETWEEN
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
LOCAL PROGRAMS

AND

WHATCOM COUNTY

THIS AGREEMENT is made and entered into by and between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, LOCAL PROGRAMS, hereinafter referred to as "WSDOT," and Whatcom COUNTY, hereinafter referred as the "COUNTY," collectively the "PARTIES" and individually the "PARTY".

IT IS THE PURPOSE OF THIS AGREEMENT to carry out the provisions of RCW 47.56.725 regarding a distribution of the funds identified in RCW 46.68.090 (2) (h) and to replace existing interagency AGREEMENT GCB-3514 with interagency AGREEMENT GCC-1231; and

WHEREAS, it is mutually agreed that the continued operation of the Puget Sound county ferry system operated by Pierce, Skagit and Whatcom counties is a benefit to the traveling public; and

WHEREAS, since 1976, the three counties have received a subsidy of up to 50 percent of the county ferry maintenance and operating deficit up to the amount identified in RCW 47.56.725 through a continuing agreement;

NOW, THEREFORE, pursuant to RCW 47.56.725, 46.68.090 (2) (h), chapter 468-22 WAC, the above recitals that are incorporated herein as if fully set forth below, and in consideration of the terms, conditions, covenants, and performances contained herein,

IT IS MUTUALLY AGREED AS FOLLOWS:

1. TERMS AND CONDITIONS

- 1.1 WSDOT agrees to continue to reimburse the COUNTY for up to fifty percent (50%) of the previous year's annual operating deficit incurred in the operation and maintenance of the COUNTY ferry system. The COUNTY shall maintain tolls on its ferry at least equal to published fares in place on January 1, 2015, excluding surcharges. All toll changes shall be made in accordance with chapter 468-22 WAC.
- 1.2 The annual fiscal year operating and maintenance deficit is defined as a total of operating and maintenance expenditures less the sum of ferry toll revenues and that portion of the fuel tax revenue distribution that is attributable to the county ferry system.
- 1.3 Operating and maintenance expenditures are defined as:
 - Routine costs of operating and maintaining the ferry, including salaries, benefits, fuel, supplies, utilities, repairs, inspection, advertising, taxes, small tools, rentals, postage, printing, etc.
 - Routine anticipated replacement of piling, wing-wall facing, repairing docks, etc. which does not extend the useful life, nor increase the efficiency or capacity of an asset.
 - Routine dry-docking and associated repairs to maintain the vessel's certification.
 - Routine engine repair or rebuilding.

- Work directed toward preservation of the existing roadway or facility and related appurtenances as necessary for safe and efficient operation.
 - Any surface treatments less than .06 feet thick, crack sealing, etc.
 - Other work not defined as capital and agreed to in writing by WSDOT.
- 1.4 Excluded from operating and maintenance expenditures are:
- Depreciation
 - Interest
 - Other work or repairs that are considered capital improvements
- 1.5 The COUNTY shall maintain records of actual costs in accordance with the Budgeting, Accounting and Reporting System (BARS) for counties and other accounting procedures as prescribed by the Office of the State Auditor. WSDOT reserves the right to conduct an audit of the COUNTY ferry system operations and maintenance and to disallow any costs not in accordance with BARS and/or this AGREEMENT.
- 1.6 By April 1 of each year, the COUNTY shall submit a "County Ferry Operations Report which details the receipts and expenses resulting from the operations and maintenance of the COUNTY ferry system for the previous COUNTY fiscal year, January 1 through December 31. The report shall be in a format, which shall include:
- A declaration certifying that the amounts claimed are true and correct; that ferry tolls are at least equal to published fares in place on January 1, 2015; that the amount claimed as a deficit is due and payable from the COUNTY's share of the gas tax under the terms of this AGREEMENT and all applicable laws, rules and regulations; and that the signatory is authorized to sign for the COUNTY;
 - The total ferry receipts for the fiscal year; the calculation of the fuel tax revenue attributed to the ferry operation; the total operating and maintenance expenditures and the net deficit; and
 - An expenditure cost breakdown to include the following categories of expenditures: salaries; fringe benefits; miscellaneous costs; diesel and fuel; mechanical costs; insurance.
- 1.6.1 The County Ferry Operations Report must be signed and returned to:
- Director, Local Programs
Jay.Drye@wsdot.wa.gov
- Finance & Administration Manager
Eileen.Leingang@wsdot.wa.gov
- 1.7 Within the first thirty (30) calendar days of the beginning of the subsequent state fiscal year, WSDOT shall submit a request to the Office of the State Treasurer to direct a distribution to the COUNTY in accordance with RCW 46.68.090 (2) (h) in the next regular distribution.
- 1.7.1 The biennial amount set aside by RCW 47.56.725 (2) for reimbursement to Pierce, Skagit and Whatcom counties for the county ferry system operating and maintenance deficits shall be distributed equitably and, was set not to exceed a combined total of one million eight hundred thousand dollars in the 2015-2017 biennium. For subsequent biennia, the amount authorized and distributed to the counties must increase by the

fiscal growth factor as defined in RCW 43.135.025. The following methodology shall be employed:

- A. During the first state fiscal year of the biennium, from the cash available under RCW 47.56.725 (2), WSDOT shall reimburse each county based upon one of the situations following:
- Situation 1: In the circumstance where the combined total of fifty percent (50%) of each county's annual ferry system operating and maintenance deficit does not exceed one-half of the amount provided in RCW 47.56.725 (2), WSDOT shall reimburse each county for fifty percent (50%) of its annual ferry system operating and maintenance deficit incurred in the previous county fiscal year.
 - Situation 2: In the circumstance where the combined total of fifty percent (50%) of each county's annual ferry system operating and maintenance deficit incurred in the previous county fiscal year exceeds one-half of the amount provided in RCW 47.56.725 (2), WSDOT shall reimburse each county based upon the formula following:

Whatcom County Deficit divided by: Total Combined Annual Deficits of Pierce, Skagit and Whatcom counties	Multiplied by:	½ Biennial Amount Available	Equals:	Whatcom County Share
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- B. During the second state fiscal year of the biennium, from the remaining cash available under RCW 47.56.725 (2), WSDOT shall reimburse each county based upon one of the situations following:
- Situation 3: In the circumstance where the combined total of fifty percent (50%) of each county's annual ferry system operating and maintenance deficit does not exceed the total amount provided under RCW 47.56.725 (2), less cash reimbursements made during the first fiscal year of the biennium. WSDOT shall reimburse each county for fifty percent (50%) of its annual ferry system operating and maintenance deficit incurred in the previous county fiscal year. If there are surplus funds remaining in this situation, AND during the first fiscal year of the cash distribution, Situation B was the method of disbursement, the surplus funds remaining shall be distributed in an adjustment of the first year distribution up to fifty percent (50%) of the annual ferry system operating deficit.
 - Situation 4: In the circumstance where the combined total of fifty percent (50%) of each county's annual ferry system operating and maintenance deficit incurred in the previous county fiscal year exceeds the total amount provided under RCW 47.56.725 (2), less the amount reimbursed during the first fiscal year, WSDOT shall reimburse each county based upon the formula following:

Whatcom County Deficit divided by: Total Combined Annual Deficits of Pierce, Skagit and Whatcom counties	Multiplied by:	Biennial Amount Available less the first fiscal year reimbursement	Equals:	Whatcom County Share
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1.7.2 The total cash payments to the counties during any state fiscal biennium shall not exceed the amount provided by RCW 47.56.725 (2). If, through audit findings or by other means, it is determined that the COUNTY has been paid in excess of fifty percent (50%) of its annual fiscal year operation and maintenance deficits in any of the preceding years, the COUNTY agrees to refund the excess amount to WSDOT within thirty (30) calendar days of 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 funds due to the COUNTY from fuel tax distributions.

2. 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.

3. 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 advance, in writing and signed by personnel authorized to bind each of the PARTIES.

4. TERMINATION

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

4.1 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.

4.2 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.

4.3 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.

- 4.4 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.
- 4.5 Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior **to termination**.

5. MAINTENANCE OF RECORDS

- 5.1 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.
- 5.2 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.

6. HOLD HARMLESS AND INDEMNIFICATION

- 6.1 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 defense and 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.
- 6.2 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.

6.3 This indemnification and waiver will survive the termination of this agreement.

7. 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.

8. 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.

9. GOVERNANCE

- 9.1 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.
- 9.2 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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: Director, Local Programs, P.O. Box 47390, Olympia, WA 98504-7390.

Program Manager for Whatcom County: Public Works Director, 322 N Commercial St, STE 210, 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, WASHINGTON	WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
By:	By:
Printed:	Printed:
Title:	Director of Local Programs Division
Date:	Date:
APPROVED TO FORM	APPROVED TO FORM
By:	By:
Printed:	Guy Bowman
Prosecuting Attorney	Attorney General
Date:	Date: 4-13-25