

**INTERLOCAL AGREEMENT BETWEEN
KING COUNTY AND THE KING COUNTY FERRY DISTRICT
REGARDING ADMINISTRATIVE AND SUPPORT SERVICES**

This Agreement is hereby entered into by King County, a home rule charter County in the State of Washington (hereinafter referred to as the "County"), and the King County Ferry District, a municipal corporation of the State of Washington (hereinafter referred to as the "District") and shall be effective upon approval by King County and the District.

WHEREAS, the County developed and submitted a business plan to the governor for a ferry district in accordance with RCW 36.54.110; and

— WHEREAS, the governor approved the business plan and the County formed the District by adopting Ordinance 15739; and

WHEREAS, the District currently consists solely of its governing body, the County Council acting ex officio and independently, and the county treasurer acting as the District's treasurer in accordance with Chapter 36.54 RCW; and

WHEREAS, the District desires to plan for the provision of passenger-only ferry service in the most cost effective manner; and

WHEREAS, pursuant to RCW 36.54.010 et seq., the County has authority to operate passenger-only ferry service within the county or between other counties; and

WHEREAS, the County has the administrative infrastructure necessary to support the work of the District and the experience planning for and operating public transportation service, including water borne transportation; and

WHEREAS, the County has contracted for passenger-only ferry service on Elliot Bay since 1997; and

WHEREAS, the County has established a Marine Division within its Department of Transportation ("Marine Division") for the purpose of providing services to the District; and

WHEREAS, it is the intent of the District to contract with King County to manage operations for passenger-only ferry routes; and

WHEREAS, the parties are each authorized to enter into this Agreement pursuant to Chapter 39.34 RCW (the Interlocal Cooperation Act);

NOW, THEREFORE, it is agreed by the parties as follows:

1. Purpose of the Agreement.

- 1.1. The purpose of this Agreement is to provide the terms and conditions under which the County will provide its technical expertise and services to the District in order for the District to effectively and efficiently provide passenger-only ferry service to the people of King County.

1.2. The services performed by the County pursuant to this Agreement will be funded by District revenues as reflected in budgets for work to be performed by the County each year ("Annual Budget"). In addition to the general services provided by the County pursuant to this Agreement, the specific tasks to be performed each year will be established by a plan describing services to be performed by the County on behalf of the District and describing the capital investment to be made that year related to such services ("Annual Plan").

2. District Obligations.

2.1. In consultation with the County, the District shall adopt by resolution an Annual Budget and Annual Plan each calendar year for the duration of this Agreement.

2.1.1. The Annual Plan and associated Annual Budget shall set the expectations for work to be accomplished by the County during the year.

2.1.2. If project(s) not covered by the Annual Plan are identified during the year, the County and District shall work collaboratively to arrive at a plan to provide the resources necessary to accomplish the new project(s).

2.2. The District shall pay for the costs incurred by the County, consistent with the terms of this Agreement and the Annual Plan, as follows:

2.2.1. The District shall pay the County for all actual incurred costs for providing the services under this Agreement, such as direct labor, employment benefits, equipment rental, sub-contractors, materials and supplies, utilities, permits and capital improvements, financing expenses and acquisitions.

2.2.2. The District shall pay the County for administrative overhead costs for the services provided by the County to the District. The administrative overhead costs incurred from the distribution of central rate charges shall be billed to the District in accordance with the standard methodologies for determining such costs as reviewed and approved by the King County Office of Performance, Strategy and Budget or its successor and included to generate the overhead costs in the adopted County budget each year.

2.3. The District shall adopt and maintain a fare policy and establish and set fares.

2.4. The District shall adopt and maintain a branding plan.

2.5. The District shall provide public outreach and media relations regarding issues related to policy decisions of the Board, e.g. what routes to operate and at what level of service.

2.6. The District shall respond to requests for District public records pursuant to Chapter 42.56 RCW, applicable District resolutions and this Agreement. Upon receipt by the District of a public records disclosure request under Chapter 42.56 RCW that would require disclosure of County Records related to this Agreement, the Clerk of the Board shall advise the County of such request within two (2) business days.

2.7. Unless provided otherwise by District resolution or policy or in the Annual Budget and Annual Plan, the District shall own all ferry service capital assets that are acquired by the

District or the County for the purpose of providing passenger-only ferry services pursuant to this Agreement ("Capital Assets"); Capital Assets shall include, but are not limited to, land, buildings and other improvements to land, vessels, vehicles, docks, equipment, materials, intellectual property and infrastructure. If the District proposes that the County own capital assets related to this Agreement, ownership shall be by mutual agreement by both parties. In consultation with the County, the District will develop policies regarding acquisition (by purchase, lease or otherwise) and financing of and payment for Capital Assets. The District shall be responsible for the inventory of and accounting and financial reporting for Capital Assets.

2.7.1. The District shall make all payments for which it is responsible relating to a Capital Asset in a timely manner. If the District fails to make payment in a timely manner, the County may make such payment and shall be reimbursed by the District for such payment and the costs associated with arranging for such payment.

2.8. The District shall cooperate fully in executing documents necessary for the County to provide services under this Agreement.

2.9. The District shall be responsible for appropriate preparation and/or coordination of state and federal reports and shall work with the County to ensure proper submittal of these reports.

3. County Obligations.

3.1. Unless otherwise directed by the District, the County shall make available the Clerk of the County Council to serve as Clerk of the District ("Clerk of the Board") and to provide services to the District that are similar to the services provided by the Clerk of the Council to the County Council.

3.2. The County shall perform all services necessary to carry out the Annual Plan and this Agreement, including, but not limited, to the following; provided that, unless specified in the Annual Plan or this Agreement, the County may contract with third parties to perform services if the County determines that such arrangement would be beneficial to the County and the District:

3.2.1. Establish a schedule of sailings consistent with the Annual Plan.

3.2.2. Provide a fare collection system and sell fare media.

3.2.3. Hire, train and manage personnel and negotiate and administer labor contracts; provided that:

3.2.3.1. The Clerk of the Council shall be supervised by the District when serving as the Clerk of the Board.

3.2.3.2. During the process of hiring a Marine Division Director, the County shall provide the Ferry District's Executive Committee or designee an opportunity to meet with the candidate and provide input for the King County Department of

Transportation Director's consideration prior to the appointment.

- 3.2.3.3. During negotiation of labor contracts, the County shall consult with the District's designee as soon as practicable, but within at most five business days, following a request of the designee.
- 3.2.3.4. All personnel hired by the County shall be employees of the County for all purposes.
- 3.2.4. In accordance with the Annual Plan and this Agreement, acquire, construct, maintain, repair and operate Capital Assets using County procurement procedures. As approved by the District, establish and maintain a Capital Asset management system to ensure appropriate maintenance of Capital Assets. The County shall have sole control and use of Capital Assets during the term of this Agreement.
- 3.2.5. Provide and maintain a clean and reliable passenger-only ferry service.
- 3.2.6. Provide customer service and produce and distribute customer information; identifying the District as the provider of the service in all written material.
- 3.2.7. As approved by the District, conduct marketing of the passenger-only ferry service.
- 3.2.8. In accordance with District policy and criteria, provide public outreach, media relations and customer service regarding issues not related to policy decisions of the Board.
- 3.2.9. Provide government relations service when requested by the District and agreed to by the County.
- 3.2.10. Produce and install informational signs and paint the vessels consistent with the District's adopted branding plan.
- 3.2.11. Comply with applicable policies, laws and regulations, obtain all permits, certification and accreditation, and prepare and submit all plans, reports and any other information to regulatory agencies and bodies, as are required of passenger-only ferry operators pursuant to applicable laws and regulations.
- 3.2.12. Execute all third party contracts in the name of the County; provided that if a governmental agency third party requires the contract to be executed by the District, the County will submit the contract to the District for execution by the District. The County shall include in all third-party contracts a provision that requires the contractor to include the District as an additional insured on the contractor's insurance.
- 3.2.13. The County shall deposit all revenue derived from operation of the passenger-only ferry service into the District depository fund.
- 3.2.14. The County shall prepare and/or coordinate state and federal reports associated with operating a passenger-only ferry service by working with the District to comply with reporting requirements.

- 3.3. When requested by the District, the County shall provide other support services to the District that are similar to those provided by County agencies to the County Council, including, but not limited to policy analysis of legislation and budgets, technical services and communications.
- 3.4. When requested by the District, the County may provide additional technical expertise and personnel that it is not otherwise required to provide in order to assist the District in carrying out activities related to passenger-only ferry services. In advance of the provision of additional services and reporting, the County and the District will reach agreement on the associated resources and costs, and the District and County budgets shall be adjusted accordingly.
- 3.5. The County shall maintain accounts and records, including labor, property, financial and programmatic records, which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed by the County pursuant to this Agreement. The County shall make available to the District during regular business hours all records related to any matters covered by this Agreement not otherwise privileged. The County shall implement a file retrieval system to respond to requests for County Records related to this Agreement in a timely way, and shall maintain and preserve the records in accordance with applicable state and County retention schedules. The County shall provide the District with copies of all contracts signed by the County in carrying-out this Agreement and the Annual Plan.
- 3.6. Upon receipt by the County of a public records disclosure request under Chapter 42.56 RCW that would require disclosure of County Records related to this Agreement or other District records, the County shall advise the Clerk of the Board of such request within two (2) business days.
- 3.7. Each year during the term of this Agreement, the County shall prepare and submit for review and approval by the District a proposed Annual Budget and a proposed Annual Plan. The submittal shall occur not later than July 31 and shall be consistent with the annual budget request submitted by the Department of Transportation to the Office of Performance, Strategy and Budget or its successor. The County shall provide adequate supporting information to allow the District to analyze the proposed Annual Budget and Annual Plan including a capital improvement plan for the routes identified in the Annual Plan and for the time period that covers the remaining term of this Agreement. The District may request additional information from the County, which the County shall provide in a timely manner, but not more than five (5) business days after receiving the request.
- 3.8. In the event of a threat of imminent harm to property or public safety, the County shall respond on behalf of the District and shall promptly notify the District of the threat; and as soon as conditions permit, will inform the District of the emergency actions that have been taken, or may be required, to protect against such threat.
- 3.9. The parties recognize that the County has the ability to apply for and obtain federal and state grants. The County will make concerted efforts to secure available grants on behalf of

the District. The County shall include anticipated grant proceeds in the proposed Annual Budget or supporting information. The County shall collaborate with the District in supporting grant management services for grants obtained by the District including, but not limited to, grant reporting, grant tracking, grant audit and audit management, and grant close-out activities.

4. Monitoring and Adjusting the Annual Budget and Annual Plan.

- 4.1. The Parties agree that the County shall not subsidize the District's passenger-only ferry service, and that the County shall comply with the Annual Plan. Through the invoicing process and reporting requirements of this Agreement, the County shall keep the District apprised of any foreseeable need to amend the Annual Budget and Annual Plan. If the County believes that the cost of complying with the Annual Plan is likely to exceed the Annual Budget, it shall as soon as possible prepare and submit to the District a proposed amendment to the Annual Budget and/or Annual Plan. The District shall consider the proposed amendment in a timely manner, and may amend the Annual Budget and/or provide for service or other adjustments to the Annual Plan.
- 4.2. Despite the District response to the County's proposed amendment to an Annual Budget, the Marine Division may, after consultation with the District, adjust service levels on a route or routes, but not eliminate all passenger-only ferry service on a route or routes, and/or adjust the provision of support services to the extent it is necessary to ensure that the costs incurred by the County will not exceed the remaining amount of the Annual Budget, provided however that the proposed service level adjustment process complies with state and federal programs and regulations. However, if costs exceed the Annual Budget despite such adjustments, the District shall remain obligated to reimburse the County for costs incurred by the County consistent with this Agreement and the Annual Plan.

5. Invoices.

- 5.1. The County shall submit monthly invoices to the District for reimbursement of services and capital costs actually incurred. All invoices shall be in a form and contain information and data as determined by the County and the District; provided that the information is available in existing County accounting systems.
- 5.2. The District's accountant, if any, or another person designated by the District Board, shall review the invoice before consideration and approval for payment by the District Executive Committee or other designee of the District Board. The person reviewing the invoice shall notify the County within fifteen (15) business days if the invoice is inaccurate or incomplete. Payments are due within thirty (30) days of receipt.
- 5.3. The invoices will be submitted to:

Clerk of the Board
King County Ferry District

5.4. Payments will be processed by:

—
Manager
Financial Management Section
Finance and Business Operations Division
King County Department of Executive Services or its successor

6. Reporting.

6.1. The County shall submit to the District the financial, accounting, performance and service reports described in Exhibit A, according to the schedules indicated in Exhibit A.

6.2. The County shall submit to the District any additional reports requested by the District, as described and required in writing by the District. In addition to the reports identified in Exhibit A, the District may request the County to prepare additional reports. Upon receipt of the request, the County and the District shall negotiate and attempt to reach agreement on the terms and conditions of preparing and paying for the additional report in accordance with Section 3.4. The agreement to prepare an additional report shall not require an amendment to Exhibit A.

6.3. In connection with an audit of County services under this Agreement, or District activities and projects involving the County, the County shall provide to the District or auditors performing the audit all County records, not privileged, requested by the District or the auditors.

6.4. The financial and accounting reports submitted by the County to the District shall comply with applicable financial and accounting standards, practices and requirements.

6.5. All information shall be submitted to:

Clerk of the Board
King County Ferry District

7. Legal Relations.

7.1. It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other party. The County is an independent contractor with respect to the services under this Agreement and nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties. No joint venture or partnership is formed as a result of this Agreement. No employees or agents of one party or any of its contractors or subcontractors shall be deemed, or represent themselves to be, employees, agents contractors or subcontractors of the other party.

7.2. This Agreement shall be interpreted in accordance with the laws of the State of

Washington. The Superior Court of King County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

7.3. To the maximum extent permitted by law, each party shall defend, indemnify and hold harmless the other party, and all of its officials, employees, principals and agents, from any and all claims, demands, suits, actions, fines, penalties, and liability of any kind, including injuries to persons or damages to property, which arise out of or are related to any negligent acts, errors, omissions of the indemnifying party and its contractors, agents, employees and representatives in performing obligations under this Agreement. Provided, that if any such damages and injuries to persons or property are caused by or result from the concurrent negligence of the District or its contractors, employees, agents, or representatives, and the County or its contractor or employees, agents, or representatives, each party's obligation hereunder applies only to the extent of the negligence of such party or its contractor or employees, agents, or representatives.

7.3.1.1. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each party's immunity under industrial insurance, Title 51 RCW, as respects the other party only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of claims made by the indemnitor's employees. This waiver has been mutually negotiated.

7.4. In the event either party incurs attorney fees, costs or other legal expenses to enforce the provisions of this section against the other party, all such fees, costs and expenses shall be recoverable by the prevailing party.

7.5. The County shall provide insurance coverage, or self-insurance, for the acts and omissions of its officers, employees and agents in providing the services and carrying out the obligations of this Agreement, to the same extent and in the same amount as is provided generally by the County for its officers, employees and agents. The County shall provide proof of such insurance coverage or self-insurance at the request of the District. The District shall provide insurance coverage, or self-insurance, for the acts and omissions of its officers, employees and agents as determined by the District's Board.

7.6. The provisions of this section shall survive any termination of this Agreement.

8. Duration, Performance and Termination.

8.1. This Agreement shall take effect upon its signing by both parties and shall remain in effect until December 31, 2014 unless terminated earlier as provided herein. The District may extend this Agreement twice for two (2) years each by sending to the County notice of its intention to extend the Agreement on or before June 30 of the year in which either this Agreement or the first two-year extension expires.

8.2. The County's obligation to perform the work of this Agreement beyond the then current appropriation year is conditional upon appropriation by the King County Council of sufficient funds to support said work. Should such an appropriation not be approved, this Agreement will terminate automatically at the close of the then current appropriation year. The appropriation year ends on December 31 of each year.

- 8.3. The parties may mutually terminate this Agreement after passage of both a County Council ordinance and a Board of Supervisors resolution, each of which establishes an agreed upon date of termination.
- 8.4. If the Legislature adopts a bill that authorizes the County unilaterally to assume (abolish) the District, the County may assume the District pursuant to the following procedure. After the effective date of the bill, the County shall give the District written notice of the proposed assumption. The notice shall state an effective date of the proposed assumption, which shall be at least sixty (60) days after the date of the notice. The County Council shall approve the assumption by ordinance, which shall provide for all aspects of the assumption, including but not limited to vesting of District assets and property in the County. Before passing the ordinance, the County Council shall hold a public hearing on the proposed assumption.
- 8.5. If a party fails to perform its obligations as described in this Agreement, the parties shall use their good faith efforts to resolve the failure to perform using the dispute resolution process of Section 9. If the dispute cannot be remedied, written notice of such termination shall be given by the party terminating this Agreement to the other party not less than one hundred and eighty (180) days prior to the effective date of termination; except that if the District fails to make payment as required herein, the County may provide written notice of termination not less than thirty (30) days prior to the effective date of termination.
- 8.6. Notwithstanding anything contained in this Agreement to the contrary, the County's obligation to perform any service described in this Agreement that requires the negotiation of a labor or service agreement prior to performance shall be excused if the County is unable to negotiate a reasonable labor or service agreement, as determined by the County in its sole discretion, in a timely manner. The County shall give the District written notice of such excused performance not less than ninety (90) days prior to the date the commencement of performance of the service is due.
- 8.7. Failure to require full and timely performance of any provision of this Agreement shall not waive the right to insist upon complete and timely performance thereafter.
- 8.8. In the event of termination, the parties agree to meet at least sixty (60) days prior to the effective date of termination, and thereafter as determined necessary by the District, to coordinate transfer of assets, leases, permits, licenses, service contracts and other agreements for the purpose of continuing the passenger-only ferry service; provided, that the parties are under no obligation to effectuate a transfer.
- 8.9. The County shall be entitled to payment of all costs incurred consistent with this Agreement prior to the date of termination including costs associated with the transferring of assets and winding down of operations.
9. Dispute Resolution.
- 9.1. Should a dispute arise between the Parties out of or related to this Agreement, the Parties will notify the other in writing of any dispute that the respective Party believes should be resolved.

9.2. The Parties will communicate regularly and commit to act in good faith in seeking to resolve the dispute.

9.3. If the dispute cannot be remedied within thirty (30) days after written notice, the Parties shall consider submitting the matter to a mutually agreed upon non-binding mediator. The Parties shall share equally in the cost of the mediator.

10. Administration and Identification of Contacts.

10.1. This Agreement shall be administered by the Chair of the Board and the Director of King County Department of Transportation, or their designees, who shall be contacted as follows:

County:

Director, Department of Transportation
201 South Jackson Street Suite 817
Seattle, WA 98104-3856

Or his successor

District:

Clerk of the Board
King County Ferry District

A party may change its contact person for a party by delivering notice of such change to the other party.

10.2. All written notices required in this Agreement shall be either personally delivered, sent by certified mail, return receipt requested, postage prepaid, or sent by facsimile transmission (with confirmation receipt printed) to the persons identified in this Section 10.

11. General Provisions.

11.1. Entire Agreement.

This Agreement, including exhibits referenced herein or attached hereto, is a complete expression of the terms hereto and any oral representation or understandings not incorporated herein are excluded. Any modification or amendment to this Agreement shall be in writing and approved by both the County Council and the District Board. Copies of such shall be attached hereto and by this reference made a part of this Agreement as though fully set forth herein.

11.2. Severability.

If any provisions of this Agreement are held invalid by a court of competent jurisdiction,

the remainder of this Agreement shall not be affected thereby if such remainder would then continue to serve the purposes and objectives originally contemplated.

11.3. Force Majeure.

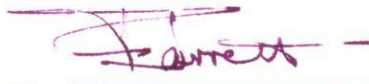
Notwithstanding anything contained herein to the contrary, neither party shall not be deemed in default hereunder nor liable for damages arising from its failure to perform any duty or obligation hereunder if such delay is due to causes beyond the party's reasonable control, including, but not limited to, acts of God, acts of civil or military authorities (including failure of civil authorities to timely process permits or provide utilities), fires, floods, windstorms, earthquakes, strikes or labor disturbances, civil commotion, delays in transportation, governmental delays or war.

12. Authorization.

This agreement has been authorized by King County Ordinance ----- and King County Ferry District Resolution No.-----.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed.

KING COUNTY

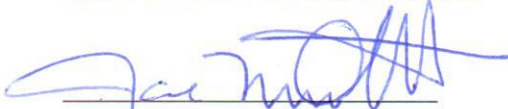


Dow Constantine
King County Executive

12/24/12

Date

KING COUNTY FERRY DISTRICT



Joe McDermott
Chair, King County Ferry District

Date

Approved as to Form:

Dan Satterberg
King County Prosecuting Attorney

By: 

Senior Deputy Prosecuting Attorney

Date

Interlocal Agreement
King County and the King County Ferry District

Exhibit A: DATA AND REPORTING SCHEDULE

MONTHLY

Performance

- Ridership by route and run

Financial

- Monthly Invoices (Capital & Operating) with expenses denoting potential grant eligibility
- Oracle general ledger detail
- ORCA and Passport Journal Entry Form
- T/C 25 (Cash Transmittal Form)
- Parkeon Summary Report and Receipt
- ORCA boarding by product type

QUARTERLY

Performance

- Ridership by route and run
- On-time performance stats
- Service Reliability
- Customer service contacts/ inquiries and response times
- Status update of division projects
 - Capital project update
 - Annual work plan update

Financial

- Quarterly Support Services Billing
- Status of current grants (amounts, billed & balances)

ANNUAL

Performance

- Ridership performance by route and run (minimum 5 years data, if available)
 - Annual
 - Monthly
- On-time performance stats
- Service Reliability
- Customer service contacts/ inquiries and response times
- Status update of division projects
 - Capital project update
 - Annual work plan update

Financial

- Annual Summary of Grants
- Schedules of annual overhead costs/rates chargeable to the District
- Copies of each contract King County entered into that year on behalf of the District
- Annual Summary of Levied Property Taxes on behalf of the King County Ferry District
- MD Fare box Preliminary Revenue Breakdown by sources (ORCA, TVM, special fares, other)
- NTD annual grant report