

AGREEMENT NO. GCB 3441
RE: ORCAS ISLAND FERRY TERMINAL
ADA PARKING IMPROVEMENTS, PHASE 2
(SJC Agreement No. 21RD.009)

Between

Washington State Ferries

and

San Juan County

AGREEMENT NO. GCB 3441

RE: ORCAS ISLAND FERRY TERMINAL

ADA PARKING IMPROVEMENTS, PHASE 2

This **AGREEMENT** is made and entered into this 17th day of August, 2021, between the **WASHINGTON STATE DEPARTMENT OF TRANSPORTATION FERRIES DIVISION**, operating as Washington State Ferries (hereinafter called “**WSF**”) and **SAN JUAN COUNTY** a political subdivision of the state of Washington, acting by and through its Public Works Department (hereinafter called the “**COUNTY**”), each of which is hereinafter referred to individually as a “Party” or collectively as “Parties”.

RECITALS

1. **WSF** owns and operates the Orcas Island Ferry Terminal on Orcas Island in San Juan County, State of Washington (hereinafter may be called the "Terminal"), along the Anacortes – San Juan Islands ferry route; and
2. The Parties previously cooperated on Phase 1 of the Federal Americans with Disabilities Act (ADA) parking improvements, under the Orcas Island Ferry Terminal Facility ADA Compliance Improvements Contract No. 00-8940, under which an access route and ramp between the ferry transfer span and the lower Terminal facility was constructed; and
3. The Parties agree to cooperate on the design, bidding process, construction oversight and funding of such activities for Phase 2 of the ADA parking improvements located west of the Terminal (hereinafter called the “Project”); and

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and mutual promises herein, the Parties agree as follows:

1. PURPOSE & SCOPE

- 1.1 The purpose of the Agreement is to provide for: (i) the division of responsibilities for all work related to Phase 2 of the ADA parking improvements adjacent to the Orcas Island Ferry Terminal; and (ii) reimbursement from the **COUNTY** to **WSF** for a portion of the payments made by **WSF** to the third-party contractor.

- 1.2 The scope of work to be performed by or for the Parties under this Agreement is attached hereto and incorporated herein as Exhibit A, Scope of Work. Generally, the scope of services includes, but is not limited to: ADA parking design; management of the bidding process, from drafting of a contract plans package for bidding through bid evaluation; contract award and execution; construction oversight, contract close-out and other contract administration responsibilities, and funding of Project activities described in Exhibit A, including construction of improvements by a third-party contractor.

- 1.3 The scope of work does not include the post-construction maintenance of the Project improvements, for which the **COUNTY** will be responsible.

- 1.4 All personal property acquired as part of this Agreement shall be the property of the acquiring party. Any improvements to real property made under this Agreement shall be the property of the **COUNTY**.

2. TERM OF AGREEMENT

- 2.1 This Agreement shall become effective on the date first written above and expires on February 28, 2023; unless earlier termination occurs pursuant to Article 9, Termination, herein. Prior to its expiration date, the Parties may extend the term of this Agreement through a written supplemental agreement.
- 2.2 The execution of this Agreement shall constitute a ratification of an earlier verbal agreement between the Parties. Accordingly, pursuant to the terms herein, the **COUNTY** shall reimburse **WSF** for a defined portion of **WSF's** costs incurred in performance of this Agreement.
- 2.3 If the Project is not completed during the term of this Agreement, the Parties shall make a good faith effort to finalize and execute an extension of this Agreement prior to the expiration of this Agreement. If the Parties fail to timely execute such an extension or successor Agreement, or if this Agreement is terminated prior to its expiration, and each Party continues in performance of the duties described herein with the written consent of the other Party, the resulting extension shall be on a month-to-month basis unless agreed to otherwise. During such month-to-month extension, the **COUNTY** shall reimburse **WSF** according to the reimbursement provision for the Agreement term immediately prior to such expiration or termination, unless the Parties agree in writing to different reimbursement terms, and the Parties shall be bound by all other provisions of this Agreement.

3. PROJECT MANAGEMENT

- 3.1** The **COUNTY** will designate a Project Manager from the **COUNTY** to work with the **WSF** Project Manager on evaluation of the planned ADA parking improvements for the Terminal. The responsibilities of the **COUNTY** Project Manager include:
- A. Close coordination with the **WSF** Project Manager and other **WSF** staff, consultants and contractors for the services to be provided under this Agreement;
 - B. Ensure coordinated review of Project design, technical reports and analysis; and
 - C. Provide coordination with other related **COUNTY** planning processes and projects.
- 3.2** **WSF** will designate a Project Manager to manage engineering-related aspects of pre-contract execution activities, including: but not limited to: (i) lighting design; (ii) computer-aided drafting work to convert the **COUNTY's** plans into **WSF's** standard format for **WSF's** use; (iii) conversion of the **COUNTY's** technical specifications and Engineer's Estimate for the Project into **WSF'S** standard format for **WSF's** use; and (iv) related public outreach to support the Project. **WSF's** Project Manager will also provide one hard copy set of as-built drawings of the Project ADA parking improvements to the **COUNTY** at the completion of the Project work.

4. FUNDING, BUDGET AND PAYMENT PROCEDURES

4.1 Cost Sharing and Budget

- A. Subject to the terms and conditions set forth herein, each Party's share of the total funding obligation under this Agreement shall be fifty percent (50%) total of the final contract price for all Project construction services performed by a third-party contractor described in Article 1, Purpose & Scope, of this Agreement, including sales tax;
- B. The Parties acknowledge that if (i) the total bid price of the apparent highest bidder or the final contract price for the Project exceeds the **WSF** Engineer's Estimate for the Project by twenty percent (20%) or more; or (ii) there is no bid or only one bid received for the Project, the Parties will meet to jointly decide whether to a) award the contract, b) alter the project scope and re-advertise the contract, or c) postpone the project.

4.2 Payments

- A. **WSF** will make all payments to the third-party contractor for the Project work. Accordingly, the **COUNTY** shall reimburse **WSF** for the **COUNTY's** share of the final contract price for all Project construction services performed by the third-party contractor, as specified in Article 4.1 above.

4.3 Indirect Cost Rate

There is no Indirect Cost Rate applied to this Agreement because the Parties have agreed to pay for their respective engineering services and have agreed to the cost-sharing formula, per Article 4.1.

4.4 Exclusions from Reimbursable Amounts

Each Party shall be responsible for its own expenses in conducting project design, contract bidding, award and execution, construction oversight, and contract administration activities.

4.5 Invoicing and Payment

A. **WSF's** designated Representative, or other designated **WSF** official, shall coordinate requests for reimbursements from the **COUNTY** and will provide monthly invoices to the **COUNTY**.

B. **WSF** shall invoice the **COUNTY** monthly based on **WSF** payments to the third party contractor. The **COUNTY** shall issue reimbursement payments upon receipt of invoices from **WSF**. Billings will not be more frequent than one per month. It is agreed that payment of any particular item will not constitute agreement as to the appropriateness of any item and that at the time of final billing all required adjustments will be made.

C. **WSF** shall send all invoices to:

San Juan County Public Works
915 Spring St. / P.O. Box 729
Friday Harbor, WA 98250

Questions about **WSF** invoices should be directed to the **WSF** Capital Accountant, at 206. 515. 3966. The **COUNTY** will make payments within thirty (30) calendar days from date of receipt of an invoice from **WSF**.

- D. Upon termination of the Agreement as provided in Article 9, Termination, the **COUNTY** shall reimburse **WSF** for the **COUNTY's** share of the final contract price for all Project construction services performed by the third-party contractor less all payments previously made. No payment shall be made by the **COUNTY** for any expenses incurred or work done following the effective date of termination unless authorized, in writing, by the **COUNTY**.
- E. Final payment of any balance due **WSF** prior to the effective date of termination will be made upon ascertainment of such balance by **WSF** and certification thereof to the **COUNTY**.

5. REPORTING RESPONSIBILITIES

To enable each Party to meet its record-keeping obligations, the following provisions shall apply under this Agreement.

5.1 Invoice Documentation

WSF shall provide supporting documentation for its monthly invoices. Upon the **COUNTY's** request, **WSF** shall provide any additional accounting records or other documents to satisfy requests from federal funding agencies (if any) and to comply with the **COUNTY's** audit requirements. The **COUNTY** may inspect any work performed pursuant to this Agreement to assure that requested cost reimbursements are eligible under this Agreement.

5.2 Availability of Records

Each Party shall maintain records to support all project costs incurred in accordance with procedures prescribed by the Washington State Auditor's Office and the applicable federal funding agencies. The records shall be open to inspection by WSDOT and the federal government during normal business hours, and shall be retained and made available for such inspection for a period of not less than six (6) years from the final payment to **WSF**. Copies

of said records shall be furnished to the other Party and/or the federal government upon request.

5.3 Audit

If an audit is requested by either Party or required by any applicable federal agency requirements, each Party agrees to cooperate fully with the other Party's auditor or an independent auditor chosen and retained by the other Party. In the event that the COUNTY has paid WSF in excess of the COUNTY's final funding commitment under this Agreement, the excess amount will be repaid to the COUNTY within thirty (30) calendar days from the date the COUNTY notifies WSF of the audit results or, upon mutual agreement by the Parties, used as an offset against other amounts owing to WSF for other activities undertaken by WSF for the COUNTY under separate agreements or task orders. Should the audit reveal that the COUNTY has underpaid WSF, the COUNTY will pay the balance due to WSF within thirty (30) calendar days from the date the audit is completed. Each Party will be responsible for its own expenses incurred in initiating or responding to an audit by its own auditor or an independent auditor.

6. FEDERAL CONTRACT PROVISIONS

There are no federal funds utilized in this Agreement.

7. DESIGNATED REPRESENTATIVES

Each Party's designated Representatives are named on Exhibit B, Parties' Representatives, attached hereto and by this reference incorporated herein. The contact information may be revised or updated at any time by notice to the other Party.

8. DISPUTE RESOLUTION

- A. The Parties will work collaboratively as provided herein to resolve disagreements arising from activities performed under this Agreement. Disagreements will be resolved promptly and at the lowest level of authority.
- B. The designated Representatives, as named in Exhibit B, shall use their best efforts to resolve disputes and issues arising out of or related to this Agreement. Each designated Representative shall notify the other in writing of any problem or dispute that the designated Representative identifies for formal resolution. This written notice shall include:
1. A description of the issue to be resolved;
 2. A description of the difference between the Parties on the issue; and
 3. A summary of steps taken by designated Representative to resolve the issue.
- C. The designated Representatives shall meet within three (3) business days of receiving the written notice and attempt to resolve the dispute. In the event the Representatives cannot resolve the dispute (and that dispute is not subject to some other formal appeal process), the Assistant Secretary for Transportation for Washington State Ferries or his/her designee and the County Manager or his/her designee shall meet within seven (7) business days of receiving notice from a designated Representative and engage in good faith negotiations to resolve the dispute. Neither Party may seek relief under this Agreement in a court of law until and unless each of these procedural steps is exhausted. The preceding sentence shall not apply to the extent that any applicable statute of limitations will or may run during the time that may be required to exhaust the procedural steps set forth above; Provided, however, the Parties agree that any legal rights of the Parties will not be prejudiced while the procedural steps set forth above are satisfied.

9. TERMINATION

9.1 Termination For Default

Either Party may terminate this Agreement, in whole or in part, in writing, if the other Party substantially fails to fulfill any or all of its obligations under this Agreement through no fault of the other Party; Provided that insofar as practicable, the Party terminating the Agreement will give:

- A. Written notice of intent to terminate at least thirty (30) calendar days prior to the date of termination, stating the manner in which the other Party has failed to perform the obligations under this Agreement; and
- B. An opportunity for the other Party to cure the default within thirty (30) calendar days following receipt of the Notice of Termination. In such case, if the non-defaulting Party deems that a longer cure period is appropriate and justified, the Notice of Termination will state the time period in which cure is permitted and any other appropriate conditions.
- C. If the defaulting Party fails to remedy the default or the breach to the satisfaction of the other Party within the time period established in the Notice of Termination or any authorized extension thereof, this Agreement shall be deemed terminated as of the last date of the specified cure period.
- D. In the event of termination by default, the defaulting Party shall be obligated to compensate the other Party for all Agreement close-out costs and the portion of work which has been satisfactorily rendered to the date of termination, as determined by the non-defaulting Party. If a notice of termination for default has been issued and it is later determined for any reason that the responsible Party was not in default, then the termination shall be deemed to be a Termination for Convenience.

E. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of a provision of this Agreement, including failure to require full and timely performance of any provision, shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing, signed by authorized parties, and attached to the original Agreement.

9.2 Termination for Convenience

This Agreement may be terminated for convenience by either Party by giving at least thirty (30) calendar days prior written notice of termination to the other Party, stating the effective date of termination. In such event, the **COUNTY** shall reimburse **WSF** for all costs payable under this Agreement incurred prior to termination and all non-cancelable obligations.

10. GENERAL PROVISIONS

10.1 Rights and Remedies

The rights and remedies of the Parties to this Agreement are in addition to any other rights and remedies provided by law.

10.2 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 required 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 **WSF**, 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.

10.3 No Third Party Rights

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. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties.

10.4 Binding on Successors

All of the terms, provisions and conditions of this Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective successors, permitted assign and legal representatives.

10.5 Compliance with Laws

Each Party shall comply, and to the best of its ability shall ensure, that its employees, agents, consultants and representatives comply with all federal, state, and local laws, regulations, and ordinances applicable to the work and services to be performed.

10.6 Governing Law and Venue

This Agreement will be governed by, and construed and enforced in accordance with, the laws of the state of Washington. Any legal action brought resulting from this Agreement shall be brought in the Superior Court of Thurston County, Washington.

10.7 No Joint Relationship

No separate entity and no joint relationship or partnership is formed as a result of entering into this Agreement. In performing work and services hereunder, **WSF** and its employees, agents, consultants and representatives shall be acting as agents of **WSF** and shall not be deemed or construed to be employees or agents of the **COUNTY** in any manner whatsoever. Likewise, in performing work and services hereunder, **COUNTY** and its employees,

agents, consultants and representatives shall be acting as agents of **COUNTY** and shall not be deemed or construed to be employees or agents of **WSF** in any manner whatsoever.

No employee of any Party shall hold him/herself out as, or claim to be an officer or employee of the other Party by reason of this Agreement and shall not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of, the other Party. Each Party shall be solely responsible for any claims for wages or compensation by its employees, agents, and representatives, including consultants, and shall hold the other Party harmless therefrom.

10.8 Notices

All notices or requests required or permitted under this Agreement shall be in writing, shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid, or by facsimile transmission and shall be deemed received three (3) business days following the date when mailed or on the date when delivered or faxed (provided the fax machine has issued a printed confirmation of receipt). All notices or requests shall be sent to the Party's designated Representative as identified in Exhibit B.

10.9 Assignment

No Party shall assign any interest, obligation, or benefit in this Agreement or transfer any interest in the same, whether by assignment or novation, without prior written consent by the other Party.

10.10 Amendments / Supplements

The Parties reserve the right to amend this Agreement as necessary. No addition or modification to this Agreement shall be binding upon the Parties unless reduced to writing and signed by an authorized representative of each of the Parties.

10.11 Entire Agreement

This Agreement, including its Recitals and Exhibits, embodies the Parties' entire Agreement on the matters covered by it, except as supplemented by subsequent amendments to this Agreement. All prior negotiations and draft written agreements are merged into and superseded by this Agreement.

10.12 Execution of Agreement

This Agreement may be executed in multiple counterparts, any of which shall be regarded for all purpose as original.

IN WITNESS WHEREOF, the Parties hereto have signed this Agreement, by their duly authorized representatives, as of the day and year first written above.

**WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION
FERRIES DIVISION**

By: Patty Rubstello
Patty Rubstello
WSDOT Assistant Secretary
Washington State Ferries
Date: 08/17/2021

Approved For WSF:

By: Ben Dietz
Ben Dietz
Contracts & Legal Services Mgr.
Date: August 13, 2021

**SAN JUAN COUNTY PUBLIC WORKS
Colin Huntemer
Director**

By: Colin Huntemer
Colin Huntemer (Aug 12, 2021 15:11 PDT)
Date: Aug 12, 2021

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

By: [Signature]
Date: Aug 11, 2021

**FINAL APPROVAL
Michael J. Thomas
San Juan County Manager**

By: Mike Thomas
Mike Thomas (Aug 13, 2021 07:33 PDT)
Date: Aug 13, 2021

EXHIBIT A

AGREEMENT NO. GCB 3441

**RE: ORCAS ISLAND FERRY TERMINAL
ADA PARKING IMPROVEMENTS, PHASE 2**

(SJC Agreement No. 21RD.009)

SCOPE OF WORK

COUNTY

Surveying
Right of Way
Plan Production
Construction Cost Estimate
Permitting
Utility Coordination
Public Engagement
Construction Engineering Support

WSF

Plan Production Support (Lighting plans and Temporary Erosion Control Plan)
PS&E and Bid Documents Compilation
Project Advertisement, Bid Process Management, and Contract Award and Execution
Construction Management
Public Engagement
Payments to Contractor

EXHIBIT B

**AGREEMENT NO. GCB 3441
RE: ORCAS ISLAND FERRY TERMINAL
ADA PARKING IMPROVEMENTS, PHASE 2
(SJC Agreement No. 21RD.009)**

REPRESENTATIVES

For Agreement administration, the Parties' representatives shall be as follows:

WASHINGTON STATE FERRIES

Project Management

Attn: David Sowers, Director
Terminal Engineering Department
Washington State Ferries
2901 Third Ave. Suite 500
Seattle, Washington 98121-3014

Telephone: 206. 515. 3701
Fax: 206. 515. 3740
E-mail: SowersD@wsdot.wa.gov

For Invoicing

Attn: Eric Bozarth, Capital Accountant
Accounts Payable
Washington State Ferries
2901 Third Ave. Suite 500
Seattle, Washington 98121-3014

Telephone: 206. 515. 3966
Fax: 206.515. 3969
E-mail: BozartE@wsdot.wa.gov

SAN JUAN COUNTY

Project Management

Attn.: Colin Huntemer, Director
San Juan County Public Works
915 Spring St. / P.O. Box 729
Friday Harbor, Washington 98250

Telephone: 360. 370. 0514
Mobile: 360. 378. 7850
E-mail: colinh@sanjuanco.com

For Invoicing

(same as for Project Mgmt)

Telephone: 360. 370. 0500
Fax: N/A
E-mail: accountingpw@sanjuanco.com

NOTE: The Parties may periodically update this Exhibit to reflect the Parties' updated / current contact information. Each updated Exhibit shall be attached to the Agreement and shall replace / supersede the prior Exhibit, without a formal Agreement supplement.











Orcas Island Ferry Terminal ADA Parking Improvements_GCB 3441

Final Audit Report

2021-08-13

| | |
|-----------------|--|
| Created: | 2021-08-11 |
| By: | Carolina Ramos (carolinar@sanjuanco.com) |
| Status: | Signed |
| Transaction ID: | CBJCHBCAABAAbSA6rWGcJyL2Mpu9YL-wbLXnO8MzT1zS |

"Orcas Island Ferry Terminal ADA Parking Improvements_GCB 3441" History

-  Document created by Carolina Ramos (carolinar@sanjuanco.com)
2021-08-11 - 0:19:50 AM GMT- IP address: 64.119.6.98
-  Document emailed to Jon Cain (jonc@sanjuanco.com) for signature
2021-08-11 - 0:22:37 AM GMT
-  Email viewed by Jon Cain (jonc@sanjuanco.com)
2021-08-11 - 6:54:24 PM GMT- IP address: 104.47.64.254
-  Document e-signed by Jon Cain (jonc@sanjuanco.com)
Signature Date: 2021-08-11 - 7:03:16 PM GMT - Time Source: server- IP address: 64.119.6.98
-  Document emailed to Colin Huntmer (colinh@sanjuanco.com) for signature
2021-08-11 - 7:03:17 PM GMT
-  Email viewed by Colin Huntmer (colinh@sanjuanco.com)
2021-08-12 - 10:10:59 PM GMT- IP address: 104.47.64.254
-  Document e-signed by Colin Huntmer (colinh@sanjuanco.com)
Signature Date: 2021-08-12 - 10:11:18 PM GMT - Time Source: server- IP address: 64.119.6.98
-  Document emailed to Mike Thomas (miket@sanjuanco.com) for signature
2021-08-12 - 10:11:19 PM GMT
-  Email viewed by Mike Thomas (miket@sanjuanco.com)
2021-08-13 - 2:31:22 PM GMT- IP address: 104.47.64.254
-  Document e-signed by Mike Thomas (miket@sanjuanco.com)
Signature Date: 2021-08-13 - 2:33:08 PM GMT - Time Source: server- IP address: 172.58.46.156

✔ Agreement completed.

2021-08-13 - 2:33:08 PM GMT

Signature: *Patty K Rubatello*

Email: rubstep@wsdot.wa.gov





Orcas Island Ferry Terminal ADA Parking Improvements_GCB 3441 - For WSF Signature

Final Audit Report

2021-08-17

| | |
|-----------------|--|
| Created: | 2021-08-17 |
| By: | Ben Dietz (dietzbe@wsdot.wa.gov) |
| Status: | Signed |
| Transaction ID: | CBJCHBCAABAAGxcWf80xEvMu0F3XYKleD7yPAh5Sbj3- |

"Orcas Island Ferry Terminal ADA Parking Improvements_GCB 3441 - For WSF Signature" History

-  Document created by Ben Dietz (dietzbe@wsdot.wa.gov)
2021-08-17 - 10:20:00 PM GMT- IP address: 198.238.213.154
-  Document emailed to Patty Rubstello (rubstep@wsdot.wa.gov) for signature
2021-08-17 - 10:30:13 PM GMT
-  Email viewed by Patty Rubstello (rubstep@wsdot.wa.gov)
2021-08-17 - 10:59:28 PM GMT- IP address: 198.238.213.156
-  Document e-signed by Patty Rubstello (rubstep@wsdot.wa.gov)
Signature Date: 2021-08-17 - 11:00:50 PM GMT - Time Source: server- IP address: 198.238.213.156
-  Agreement completed.
2021-08-17 - 11:00:50 PM GMT