

WASHINGTON STATE FERRIES

INTERMODAL TRAVELER KIOSK

AGREEMENT NO. GCA 3591

THIS AGREEMENT is made and entered into this 3rd day of June, 2003 ("Effective Date"), by and between **WASHINGTON STATE FERRIES**, a division of the Washington State Department of Transportation (hereinafter called "**WSF**") and **WHATCOM COUNCIL OF GOVERNMENTS** (hereinafter called the "**COG**").

WITNESS THAT:

WHEREAS, **WSF** and the **COG** desire to jointly participate in a project entitled the Intermodal Traveler Kiosk Project; and

WHEREAS, the **COG** has obtained limited federal funding to plan, procure and place traveler information kiosks; and

WHEREAS, it is beneficial to the region's community to establish such kiosks at **WSF**'s terminals; and

WHEREAS, RCW 39.34 provides for interlocal cooperation between governmental entities and authorizes interlocal agreements to accomplish mutually beneficial purposes in the public interest;

NOW THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, the parties agree as follows:

1. **PURPOSE.** The purpose of this Agreement is to define an appropriate location for three or more, freestanding or wall-mounted kiosks on **WSF** owned properties, to establish installation and maintenance responsibilities and to define a time frame for this Agreement. The locations are set forth in Exhibit A attached hereto and by this reference incorporated herein.
2. **FINANCING.** The **COG** shall provide ready-to-install kiosks.

3. **ADMINISTRATION.** **WSF** shall administer the installation phase of these kiosks and maintenance and liability for the kiosks. The **COG** shall administer all other aspects of the project. The parties are not creating any new or separate organization or entity to administer the provisions of this Agreement.
4. **INSTALLATION.** At its own expense, **WSF** agrees to install the kiosks at the locations listed in Exhibit A as to be readily viewed by the traveling public, and in a timely manner, which in no case should exceed ninety (90) days from date of receipt said structures. Any additional kiosks installed on **WSF** property under this Agreement will be treated similarly.
5. **OWNERSHIP AND MAINTENANCE.** The **COG** shall own all of the kiosk structures installed on **WSF** premises for the duration of this Agreement. Upon expiration or earlier termination of this Agreement; at **WSF's** discretion, the **COG** shall either:
 - a. Remove and retain ownership of the kiosk structures; **Provided**, if the **COG** fails to remove such structures, then **WSF** may remove and dispose of the structures, and charge the **COG** the reasonable cost of such work; or
 - b. Leave the kiosk structures in place for **WSF** use and benefit, in which case **WSF** shall assume full ownership of the kiosks.

WSF shall maintain the physical structure of the kiosks. The **COG** will arrange for maintaining current information displayed on or within the kiosks. The **COG** shall ensure that all such information is current and re-stocked on a scheduled basis, and also on an as-needed basis, as determined by **WSF's** Terminal Agent at each designated location. The **COG** shall not place (or allow to be placed) any commercial advertising on the kiosks, unless otherwise approved by **WSF**, so as not to conflict with **WSF's** existing system-wide Advertising Concession Contract.

6. **TERM.**

- 6.1 **Original.** This Agreement shall commence on the Effective Date written above and shall expire on December 31, 2013 (per the ten-year average design life of the kiosk), unless the Agreement is terminated or extended by the parties pursuant to the terms herein.

- 6.2 **Extension.** The parties may extend this Agreement, by a written Supplement, for a period of time to be agreed upon in advance between the parties. Unless the parties agree otherwise, all terms and conditions of the Agreement shall remain in full force and effect during any such extension.
- 6.3 **Hold-over.** If the parties fail to enter into an extension prior to the expiration of this Agreement, but continue to perform the services described herein, then this Agreement shall automatically extend / hold-over on a on a month-to-month basis, pending a written extension agreement between the parties or a termination notice from either party. All terms and conditions of the Agreement shall remain in full force and effect during any such extension.
7. **PROPERTY.** No real property shall be acquired or held under this Agreement. Any and all plans, drawings, notes, and other documents drafted by the parties pursuant to this Agreement shall be shared jointly between the parties.
8. **MODIFICATION AND TERMINATION.**
- 8.1 **Modification.** Any change, addition or other modification to this Agreement shall not be valid or binding upon any party hereto unless such change, addition or modification is in writing and executed by an authorized representative of the parties hereto.
- 8.2 **Termination.** Either party hereto may terminate this Agreement by at least thirty (30) days' written notice to the other party. In such event, the terminating party shall not be liable to the other party for any costs whatsoever, except as otherwise provided herein.
9. **REDUCTION IN FUNDING.** In the event that funding is withdrawn, reduced or limited in any way by the Federal Highway Administration after the effective date of this Agreement, and prior to the Agreement's normal completion, the COG may reduce availability of kiosk units hereunder in proportion to the funds withdrawn, reduced or limited. If the level of funding withdrawn, reduced or limited is so great that the parties jointly deem the continuation of this Agreement is no longer desirable, the parties may summarily terminate this Agreement.

10. **ASSIGNMENT.** The parties hereto shall not assign or delegate any or all duty, obligation, right or interest in this Agreement.
11. **LEGAL RELATIONS.** Each party shall indemnify and hold harmless the other party from and against any and all claims, actions, damages, liability, and expense, including, without limitation, reasonable attorney's fees, incurred as a result of such party's actions under this Agreement; **Provided**, if such claims, actions, damages, liability, or expense arise from concurrent negligence of both parties, including instances where this Agreement is subject to the provisions of Section 4.24.115 of the Revised Code of Washington, then the obligation to indemnify under this Agreement shall be effective only to the extent of each party's own negligence. Neither party shall be required under this Article to indemnify the other party for its sole negligence.
12. **MISCELLANEOUS PROVISIONS.**
- 12.1 **Notices.** All notices hereunder may be delivered or mailed. If mailed, they shall be sent to respective addresses shown on Exhibit "B" attached hereto and by this reference incorporated herein:
- 12.2 **Severability.** If any provision of this Agreement is held to be invalid, illegal or unenforceable for whatever reason, that shall not affect or impair, in any manner, the validity, legality or enforceability of the remainder of this Agreement.
- 12.3 **Status of Employees.** This Agreement shall not create any employment or worker's compensation rights, duties or obligations. No agent, employee or other representative of the parties shall be deemed an employee of any other party hereto for any reason.
- 12.4 **Status of Agreement.** This interlocal Agreement is in addition to, and is not intended to replace, substitute, modify or otherwise amend any other agreement between the parties. Those other agreements continue in effect according to the terms of those agreements.
- 12.5 **Rights and Remedies.** The rights and remedies provided in this Agreement are in addition to any other rights and remedies that may be provided by law.

- 12.6 **Third Parties.** The parties do not intend to create any rights or benefits in any entity, organization or person that is not a party hereto.
- 12.7 **Entire Agreement.** This document is the complete and exclusive agreement among the parties. It supersedes all oral or written proposals and/or other communications among the parties regarding this project.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement as of the Effective Date.

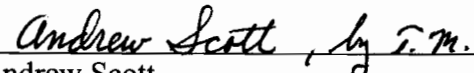
WASHINGTON STATE FERRIES
Washington State Department of Transportation

By: 
Mike Thorne
Director / CEO

WHATCOM COUNCIL OF GOVERNMENTS

By: 
James G. Miller
Executive Director

Approved as to form for WSF:

By: 
Andrew Scott
Assistant Attorney General

Date: 5/22/03

EXHIBIT A

WASHINGTON STATE FERRIES INTERMODAL TRAVELER KIOSK AGREEMENT NO. GCA 3591

KIOSK LOCATIONS

Anacortes Terminal
2100 Ferry Terminal Rd Suite A
Anacortes WA 98221

Clinton Terminal
64 S. Ferrydock Road
Clinton WA 98236

Keystone Terminal
1400 S. State Route 20
Coupeville WA 98239

Friday Harbor Terminal
South 90th Front Street
Friday Harbor, WA 98250

NOTE:

Washington State Ferries and Whatcom Council of Governments may periodically update this Exhibit to reflect kiosk locations during the Agreement. Each updated Exhibit shall be attached to the Agreement and shall replace / supersede the prior Exhibit, without a formal Agreement supplement. The actual, effective locations shall govern this Agreement notwithstanding any delay in an Exhibit update.

EXHIBIT B

**WASHINGTON STATE FERRIES
INTERMODAL TRAVELER KIOSK
AGREEMENT NO. GCA 3591**

REPRESENTATIVES AND ADDRESSES

WASHINGTON STATE FERRIES

Washington State Ferries
2911 2nd Avenue
Seattle, WA 98121-1012

Nicole Patrick (Operational Issues)
Operations Planning Project Manager

Phone: 206-515-3857
Fax: 206-515-3824
E-mail: Patricn@wsdot.wa.gov

Tim McGuigan (Contract Issues)
Contracts / Legal Services Manager

Phone: 206. 515. 3601
Fax: 206. 515. 3605
E-mail: McGuigan@wsdot.wa.gov

WHATCOM COUNCIL OF GOVERNMENTS

Whatcom Council of Governments
314 East Champion Street
Bellingham, WA 98225

Phone: 360-676-6974
Fax: 360-738-6232
E-mail: Jim@wcog.org

Gordon Rogers
Deputy Director/Project Manager

(Operational Issues)

Phone: 360-676-6974
Fax: 360-738-6232
E-mail: Gordon@wcog.org

NOTE:

Washington State Ferries and Whatcom Council of Governments may periodically update this Exhibit to reflect current representatives and addresses during the Agreement. Each updated Exhibit shall replace / supersede the prior Exhibit, without a formal Agreement supplement. The actual, effective addresses and contacts shall govern this Agreement notwithstanding any delay in an Exhibit update.