

September 13, 2011

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pdc

Sponsor: Joe McDermott

Proposed No.: 2011-0368

1 **AMENDMENT TO PROPOSED ORDINANCE 2011-0368, VERSION 1**

2 On page 2, delete lines 34 through 40 and insert:

3 "SECTION 1. The executive is hereby authorized to enter into an interlocal
4 agreement with the King County Ferry District, substantially in the form of Attachment A
5 to this ordinance, to provide supplementary water taxi service to augment the enhanced
6 transit services being provided by Metro transit pursuant to the Enhanced Transit Service
7 Agreement to effectively and efficiently mitigate viaduct and seawall construction related
8 traffic congestion during the Early Safety and Mobility projects of the Alaskan Way
9 Viaduct and Seawall replacement program. The executive may not enter into this
10 agreement until the county and the Washington state Department of Transportation have
11 amended the Enhanced Transit Service Agreement to add the West Seattle water taxi and
12 related commuter shuttle bus routes to the list of eligible transit routes."

13 Delete Attachment A, Interlocal Agreement Between King County and the King County
14 Ferry District for the Provision of Supplemental Water Taxi Service as an Additional
15 Means of Mitigation Alaskan Way Viaduct Reconstruction Related Traffic Congestion,
16 and replace with Attachment A, Interlocal Agreement Between King County and the
17 King County Ferry District for the Provision of Supplemental Water Taxi Service as an

18 Additional Means of Mitigation Alaskan Way Viaduct Reconstruction Related Traffic
19 Congestion, dated September 13, 2011.

20 **EFFECT: Amends Section 1 of the proposed ordinance to correct a reference to the**
21 **other agency that is entering into the interlocal agreement approved by the**
22 **proposed ordinance, and adding a requirement that the Washington State**
23 **Department of Transportation commitment to pay for West Seattle Water Taxi**
24 **services be enacted before the County enters into the agreement with the Ferry**
25 **District. Adds a footnote to Exhibit B, Table B of Attachment A, to clarify a cost**
26 **reference.**

27

Attachment A

**INTERLOCAL AGREEMENT
BETWEEN KING COUNTY
AND THE KING COUNTY FERRY DISTRICT
FOR THE PROVISION OF SUPPLEMENTARY WATER TAXI SERVICE
AS AN ADDITIONAL MEANS OF MITIGATING ALASKAN WAY VIADUCT
RECONSTRUCTION RELATED TRAFFIC CONGESTION**

This Interlocal Agreement for the Provision of Supplementary Water Taxi Service (the "Agreement") is entered into by King County, a home rule charter County of the State of Washington, (the "County") through its Department of Transportation, Metro Transit Division ("Metro Transit") and the King County Ferry District, a municipal corporation of the State of Washington (the "Ferry District"), either of which entity may be referred to hereinafter individually as "Party" or collectively as the "Parties," and is subject to approval by the King County Council and the Ferry District's Board of Supervisors.

WHEREAS, the Alaskan Way Viaduct ("AWV" or "Viaduct") is a part of SR 99, a non-limited access highway, which serves as a primary north-south route to and through downtown Seattle, carrying approximately 110,000 vehicles per day; and

WHEREAS, the Alaskan Way Seawall (the "Seawall") supports the Alaskan Way surface street and a variety of utilities and also provides lateral support for some of the foundations of the Viaduct; and

WHEREAS, both the Viaduct and the Seawall require improvements to protect public safety and maintain the transportation corridor; and

WHEREAS, the required improvements to the Viaduct and Seawall are being addressed by the Washington State Department of Transportation ("WSDOT" or the "State") in cooperation with the County and the City of Seattle (the "City"); and

WHEREAS, construction related to the improvements being made to the Viaduct and the Seawall are expected to increase congestion in the affected areas which, if left unmitigated, would have a negative impact on users of the highway, other nearby surface streets, and I-5; and

WHEREAS, the State and the County are parties to an Enhanced Transit Services agreement, GCA 5820 (the "ETS Agreement") that authorizes Metro Transit to implement various traffic congestion mitigation measures to be undertaken in conjunction with the construction of the State's Early Safety and Mobility Projects of the Alaskan Way and Seawall Replacement Program (the "Projects" or "Moving Forward Projects"), including the provision of additional transit service in areas affected by the Projects; and

WHEREAS, the Ferry District was created by the County to increase and expand transportation options for the general public, including area residents, commuters, and visitors, through the provision of ferry and water taxi services; and

WHEREAS, among the services it provides, the Ferry District operates water taxi and water taxi commuter shuttle services between downtown Seattle and West Seattle (the "Water Taxi"); and

WHEREAS, the State and the County have determined that the Water Taxi provides direct connections to alternative transit routes that would provide an additional means of mitigating the negative impacts of the Viaduct reconstruction work by allowing commuters and other Viaduct users to bypass anticipated traffic congestion associated with the Viaduct construction work; and

WHEREAS, the State and the County have agreed to amend the ETS Agreement to allow for the Water Taxi to be included as one of the transportation modes eligible for enhancement under the ETS Agreement, as determined at Metro Transit's discretion, in order to provide an additional means of addressing vehicle traffic congestion during Viaduct and Seawall related construction activities; and

WHEREAS, the King County Department of Transportation's Marine Division (the "Marine Division") is authorized to operate the Water Taxi for the Ferry District pursuant to an interlocal operating agreement and it is expected that any viaduct mitigation related service enhancements to the Water Taxi service will also be operated by the Marine Division; and

WHEREAS, the County wishes to contract with the Ferry District in order to provide a mechanism to implement and fund supplementary Water Taxi service in furtherance of the Viaduct construction related traffic congestion mitigation goals and objectives of the ETS Agreement;

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

1. PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to set forth the terms and conditions under which the Ferry District will provide supplementary Water Taxi service to augment the enhanced transit services being provided by Metro Transit pursuant to the ETS Agreement in order to effectively and efficiently mitigate Viaduct and Seawall construction related traffic congestion during the Early Safety and Mobility Projects of the Alaskan Way Viaduct and Seawall Replacement Program.

2. FERRY DISTRICT OBLIGATIONS

- 2.1 **Provision of Water Taxi Service.** The Ferry District will provide supplementary Water Taxi service as described in Exhibit A (Scope of Work) and Exhibit B (Service Phasing and Cost Estimates), which exhibits are attached hereto and incorporated herein by this reference.
- 2.2 **Reporting Requirements.** The Ferry District shall report on the number of seats provided and the number of passengers carried on the Water Taxi according to the schedule described in Exhibit A, Table B and in substantially the same form as provided for in Table C.
- 2.3 **Cooperation.** The Ferry District shall cooperate fully in executing any documents required under this Agreement.

3. METRO TRANSIT OBLIGATIONS

- 3.1 **Reimbursement of Costs.** Metro Transit will reimburse the Ferry District for the actual direct costs associated with the Ferry District's performance of any supplementary Water Taxi services provided pursuant to this Agreement.
- 3.2 **Invoices.** Metro Transit shall submit invoices to the State in a timely fashion in accordance with the ETS Agreement (GCA 5820, an Agreement for Enhanced Transit Services, for the Early Safety and Mobility Projects of the Alaskan Way and Seawall Replacement Program) in order to secure the funds necessary to reimburse the Ferry District for the supplementary Water Taxi services provided pursuant to this Agreement.

4. PAYMENT AND BILLING

- 4.1 **Funding Source, Cost Estimates, and Reimbursement Cap.** Any supplementary Water Taxi services provided pursuant to this Agreement will be reimbursed by Metro Transit. Reimbursement of the Ferry District for costs incurred pursuant to this Agreement shall not exceed a maximum amount of One Million Three Hundred Thousand Dollars (\$1,300,000.00) (the "Reimbursement Cap). The costing methodology and initial cost estimates for the supplementary Water Taxi services to be provided pursuant to this Agreement are set forth at Exhibit B.
- 4.2 **Invoices and Billing.** The Ferry District shall submit invoices to Metro Transit for the Water Taxi services provided pursuant to this Agreement during the first and fourth quarters of the years 2012, 2013 and the first quarter of 2014 according to the following schedule:

1st quarter 2012: 5 May 2012
4th quarter 2012: 5 February 2013
1st quarter 2013: 5 May 2013
4th quarter 2013: 5 February 2014
1st quarter 2014: 5 May 2014

5. NOTIFICATION AND IDENTIFICATION OF CONTACTS

5.1 Contract Administration Representatives. This Agreement shall be administered on behalf of the Ferry District by the Director of the Marine Division and on behalf of Metro Transit by the Manager of the Service Development Section of Metro Transit, or their designees, whose contact information is provided in Subsection 5.2 of this Agreement.

5.2 Contact Persons and Addresses.

For Metro Transit: Victor Obeso, Manager, Service Development Section (or designee)
King County Metro Transit
201 South Jackson Street, M/S KSC-TR-0426
Seattle, WA 98104-3856
(206) 263-3109
Victor.Obeso@kingcounty.gov

For the Ferry District: Scott Davis, Director, Marine Division (or designee)
King County Department of Transportation
201 South Jackson Street, M/S KSC-TR-0816
Seattle, WA 98104-3856
(206) 263-4248
Scott.Davis@kingcounty.gov

5.3 Notice. All written notices required in this Agreement shall be either personally delivered, sent by email, or sent by facsimile transmission (with confirmation receipt printed) to the persons identified in Subsection 5.2 of this Agreement.

5.4 Changes in Contact Persons and/or Addresses. Either Party may, from time to time, by notice in writing, designate a different contact person and/or a different mailing address to whom notices and other communications pertaining to this Agreement should be directed.

6. **REQUIRED APPROVALS, EFFECTIVE DATE AND TERM OF AGREEMENT**

- 6.1 **Legislative Approvals.** This Agreement is subject to approval of the King County Council and the Ferry District Board of Supervisors.
- 6.2 **Effective Date and Duration.** If approved by the King County Council and the Ferry District Board of Supervisors, this Agreement shall be effective upon execution by both Parties and will remain in effect through June 30, 2014, unless otherwise amended or earlier terminated by either Party pursuant to the terms of this Agreement.

7. **TERMINATION**

- 7.1 **Termination for Default.** Either Party may by written notice to the other Party declare this Agreement in default in the event the defaulting Party fails to perform a material provision of the Agreement; provided, however, that a reasonable opportunity of no less than fourteen (14) days shall be provided to cure any default prior to initiating termination pursuant to this subsection 7.1. Any notice of termination issued pursuant to this subsection 7.1 shall be provided no less than ten (10) days in advance of the effective date of the termination.
- 7.2 **Termination for Nonappropriation or Loss of State or County Funding.** In addition to termination for default, the County may terminate this Agreement for non-appropriation or loss of State or County funding, or any other loss of funding necessary to cover the costs of this Agreement by giving not less than sixty (60) calendar days' written notice thereof to the Agency.
- 7.3 **Termination for Convenience.** The County may terminate this Agreement for convenience and without cause by giving the Ferry District written notice of such termination. Said notice shall be provided not less than sixty (60) days in advance of the effective date of the termination.

8. **INSURANCE**

The Ferry District, after taking into account the scope of work and services which may be performed pursuant to this Agreement, shall maintain Comprehensive Marine General Liability to include Wharfingers Liability, Marina Operators Legal Liability, Stevedore's Liability and Charter's Liability. The Ferry District shall also carry Hull & Machinery and Protection and Indemnity coverage, Vessel Pollution Liability, Jones Act coverage and any other insurance coverage as may be required with prudent limits of liability as established by a Ferry District risk assessment. Any such insurance shall insure the Ferry District, its contractors, and the County and its officers, officials, agents and employees

against loss arising out of or in connection with activities performed in furtherance of this Agreement by the Ferry District and/or its contractors.

The Ferry District's insurance shall be primary to and not contributing with any insurance or self insurance that may be carried by the County or Metro Transit. Coverage obtained by the Ferry District in compliance with the provisions of this Section, shall not be deemed as having relieved the Ferry District of any liability.

9. INDEMNIFICATION

To the maximum extent permitted by law, the Ferry District shall defend, indemnify and hold harmless King County, its elected officials, officers, employees, and agents from and against all claims, demands, suits, penalties, losses, damages, liens, attorney's fees, costs and liabilities of any kind whatsoever which arise out of or are in any way related to the provision of services and performance of its obligations pursuant to this Agreement whether by its officers, employees, agents, or contractors. Notwithstanding any provision to the contrary, the terms of this Section 9 (Indemnification) shall survive any expiration or earlier termination of this Agreement.

10. LEGAL RELATIONS

10.1 No Third Party Beneficiaries. It is understood that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other person or entity.

10.2 No Partnership or Joint Venture. No joint venture, agent-principal relationship 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 or agents of the other Party as a result of this Agreement. Each Party shall be solely and completely responsible for all acts and omissions of its respective officers, employees, contractors, and agents; provided, however, that the Ferry District shall be responsible for all acts and omissions of County employees when those employees are acting in their capacity as agents or contractors for the Ferry District.

10.3 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

10.4 Jurisdiction and Venue. The King County Superior Court, situated in Seattle, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

10.5 Mutual Negotiation and Construction. This Agreement and each of the terms and provisions hereof shall be deemed to have been explicitly negotiated between, and mutually drafted by both Parties.

10.6 Severability. If any provision of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall not be affected thereby if such remainder would then continue to serve the purposes and objectives originally contemplated by the Parties.

10.7 Waiver of Default. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Agreement 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 duly authorized representatives of the Parties, and attached to the original Agreement.

10.8 Assignment. Neither this Agreement, nor any interest herein, may be assigned by either Party without the prior written consent of the other Party.

10.9 Binding on Successors and Assigns. This Agreement and all of its terms, provisions, conditions, and covenants, together with any exhibits and attachments now or hereafter made a part hereof, shall be binding on the Parties and their respective successors and assigns.

10.10 Rights and Remedies. Both Parties' rights and remedies in this Agreement are in addition to any other rights and remedies provided by law.

10.11 Entire Agreement. This Agreement embodies the Parties' entire understanding and agreement on the issues covered by it, except as may be supplemented by subsequent written amendment to this Agreement, and supersedes any prior negotiations, representations or draft agreements on this matter, either written or oral.

10.12 Survival. The provisions of this Section 10 (Legal Relations) shall survive any expiration or earlier termination of this Agreement.

11. FORCE MAJEURE

Either Party to this Agreement shall be excused from performance of any responsibilities and obligations under this Agreement, and shall not be liable for damages due to failure to perform, during the time and to the extent that it is prevented from performing by a cause directly or indirectly beyond its control, including, but not limited to: any incidence of fire, flood, snow, earthquake, or acts of nature; strikes or labor actions; accidents, riots, insurrection, terrorism, or acts of war; by order of any court of competent jurisdiction or authorized civil authority commandeering material, products, or facilities by the federal, state or local government; or national fuel shortage; when satisfactory

evidence of such cause is presented to the other Party to this Agreement, and provided that such non-performance is beyond the control and is not due to the fault or negligence of the Party not performing.

12. DISPUTE RESOLUTION

The Parties, through their designated representatives identified in Subsection 5.2 of this Agreement, shall use their best efforts to resolve any disputes pertaining to this Agreement that may arise between the Parties. If these designated representatives are unable to resolve a dispute, the matter shall be reviewed by the department director or similarly responsible official of both Parties or his or her designee. The Parties agree to exhaust these procedural steps before seeking to resolve disputes in a court of law.

13. NONDISCRIMINATION AND COMPLIANCE WITH APPLICABLE LAWS

The Ferry District, for itself and its successors and assigns, as part of the consideration hereof, agrees to comply with all applicable federal, state, and local laws, rules, and regulations, including those pertaining to civil rights and nondiscrimination, including but not limited to Ch. 49.60 RCW, and agrees to require the same of any subcontractors providing services or performing any of the work undertaken pursuant to this Agreement and/or using funds provided under this Agreement.

14. CHANGES AND MODIFICATIONS

Either Party may request changes to the provisions of this Agreement. Any such changes must be mutually agreed upon and incorporated by written amendment to this Agreement. No variation or alteration of the terms of this Agreement will be valid unless made in writing and signed by authorized representatives of the Parties hereto.

15. EXECUTION OF AGREEMENT – COUNTERPARTS

This Agreement may be executed in two (2) counterparts, both of which shall be regarded for all purposes as an original but both of which together will constitute one instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the latest date written below.

King County

KING COUNTY FERRY DISTRICT

By: _____
Kevin Desmond, General Manager
King County Department of Transportation
Metro Transit Division

By: _____
Joe McDermott, Chair
Board of Supervisors
King County Ferry District

Date: _____

Date: _____

INTERLOCAL AGREEMENT
BETWEEN KING COUNTY METRO TRANSIT AND THE
KING COUNTY FERRY DISTRICT FOR THE PROVISION OF
SUPPLEMENTARY WATER TAXI SERVICES

EXHIBIT A: SCOPE OF WORK

SCOPE OF WORK

The Ferry District will provide Water Taxi and associated Water Taxi commuter shuttle services during the winter months, from November through April, according to the conceptual service plan set forth in Exhibit B to the Agreement.

ETS Proposal

King County (Metro Transit) will submit an Enhanced Transit Service (ETS) Proposal to the Washington Department of Transportation ("WSDOT" or the "State") one-hundred-eighty (180) days before each transit service change. These proposals will include any supplementary winter operations of the Water Taxi that King County has elected to include in that year's service proposal, which would run between November and April, spanning the September and February service changes.

The Ferry District will confirm, subject to final budget approval, that the service included in the conceptual service plan will proceed as planned one-hundred-ninety-four (194) days before the September and February service change in order for Metro Transit to submit a timely proposal.

King County will confirm with the Ferry District that WSDOT has approved the Water Taxi portion of the proposal no less than one-hundred-ten (110) calendar days prior to the September or February service change. Table A below presents a schedule of activities and deliverables for the October 2011 service change.

Table A: Schedule for October 1, 2011 Implementation	
February 20, 2011	The Ferry District will, subject to final budget approval, confirm to Metro Transit that water taxi and water taxi commuter shuttle services will be provided as planned in the conceptual service plan.
June 13, 2011	Metro Transit will confirm to the District that the water taxi and water taxi commuter shuttle services portion of the proposal was approved by the state for the October 1, 2011 Service Change Date.
October 1, 2011	Service Change Date (Implementation of Enhanced Transit Services by Metro Transit)
January 1, 2012	Perform West Seattle water taxi and water taxi commuter shuttle services winter service (Continue implementation of winter West Seattle Water Taxi by District)

Performance Report

The Ferry District will prepare a Performance Report for Metro Transit containing data regarding boardings on the Water Taxi and Water Taxi capacity. The Ferry District will be responsible for collecting boardings and Water Taxi capacity data for these performance reports. The Ferry District will submit the Performance Reports to Metro Transit on or before the dates provided in Table B below.

Table B: Performance Report Schedule	
Performance Report Due	Reporting Time Period
2 April 2012	September 2011 to February 2012
22 August 2012	February 2012 to June 2012
April 2013	September 2012 to February 2013
August 2013	February 2013 to June 2013

Form of Performance Report

The Ferry District will submit the Performance Reports to Metro Transit in substantially the same form as provided for in the example in Table C below.

Table C: Example - Form of Ferry District Performance Reports

Route/Pathway	Average Weekday Boardings	
	Nov – Jan 2010	Nov – Jan 2011 (% Change)
West Seattle Water Taxi	750	800 (6.7%)

Pathway	Average Weekday Inbound Passenger Loads				Est. Number of daily riders experiencing transit capacity LOS of C or worse	
	% of riders experiencing a transit capacity LOS of C or worse		# of trips in period providing a transit capacity LOS of C or worse			
	Nov – Jan 2010	Nov – Jan 2011	Nov – Jan 2010	Nov – Jan 2011	Nov – Jan 2010	Nov – Jan 2011
West Seattle Water Taxi	38%	46%	14	18	890	1,190
Average Weekday Outbound Passenger Loads						
West Seattle Water Taxi	43%	39%	30	28	1,970	1,720

**INTERLOCAL AGREEMENT BETWEEN KING COUNTY AND THE KING
COUNTY FERRY DISTRICT FOR THE PROVISION OF SUPPLEMENTARY
WATER TAXI SERVICES**

EXHIBIT B: SERVICE PHASING AND COST ESTIMATES

1. Conceptual Service Plan

Table A is a summary of the Water Taxi service investments that are the basis for the Ferry District's cost estimates for the Work identified in Exhibit A (Scope of Work). The cost estimates are based on the following conceptual plan ("Conceptual Service Plan") that demonstrates the phasing of the Water Taxi services in the winters of 2012, 2012-13 and 2013-14. These enhancements are planned to be implemented during regularly scheduled service changes, typically occurring in November and April of any calendar year. A more detailed service plan, an Enhanced Transit Service Proposal ("ETS Proposal"), will be provided in advance of each service change consistent with the Scope of Work. Any service change proposals for the Water Taxi will be included in the ETS Proposals submitted according to the bus service change schedule, i.e. any Water Taxi service changes that will occur in November or April will be included in the September or February ETS Proposals respectively.

Table A. Conceptual Service Plan

Description of Service Plan Changes		
Year	Annual Service Description*	Annual Budget Hours
2012	Provide water taxi and water taxi commuter shuttle services between January and April and between November and December	800-850
2013	Provide water taxi and water taxi commuter shuttle services between January and April and between November and December	800-850
2014	Provide water taxi and water taxi commuter shuttle services between January and April	450-500
The total budget for water taxi hours are not to exceed 2,200 total hours		

2. Costing Methodology and Initial Estimates

This section outlines the Ferry District's costing methodology and initial cost estimates for Water Taxi services in connection with construction of the Projects during the period of January 2011 – June 2014.

The Marine Division cost estimates for Water Taxi service is based on an estimate of the costs associated with operating, and providing routine maintenance for, ferry service between West Seattle and downtown Seattle during a 5-month winter season. These estimates include the incremental costs of labor, fuel, routine operations, light maintenance and supplies, commencing no sooner than January 2012 and covering the construction period projected to end in June 2014. The estimates also include the costs of providing commuter shuttle service between the water taxi terminal at Seacrest Park and West Seattle neighborhoods. Commuter shuttle service operates on weekdays during peak commute hours (between approximately 6:00 a.m. and 10:00 a.m. and between approximately 3:00 p.m. and 7:30 p.m.).

The anticipated cost for the Water Taxi service enhancements starting in January 2012 and covering the periods of January, February and March of 2012, 2013 and 2014 and November and December of 2012 and 2013 is \$1,207,314. For details see Table B below.

Table B. Summary of Water Taxi Operating Costs

King County Department of Transportation, Marine Division Summary of 2011 West Seattle Water Taxi Passenger Ferry Hourly Costs	
Labor	\$242.97
Fuel	\$46.64
Operations and Maintenance	\$110.46
Land-side Shuttle Operations*	\$140.51
Total	\$540.58
*The rate of \$140.51/hour reflects the total anticipated shuttle cost for 2011 divided by the number of Water Taxi service hours. The commuter shuttle bus hourly rate for 2011 is \$83, as reflected in Amendment 1 to GCA 5820.	

Estimated Annual Cost for Planned Water Taxi Service			
	Estimated Annual Hours	Hourly Rate*	Estimated Total Annual Cost
2012 (Jan – Apr and Nov – Dec)	824	\$552.63	\$455,368
2013 (Jan – Apr and Nov – Dec)	824	\$565.62	\$466,069
2014 (Jan – Apr)	494	\$578.23	\$285,877
Total			\$1,207,314
*Assumes inflation rates of approximately 2.23% from the Office of Economic and Financial Analysis			