

AGREEMENT GCA 5870

This Agreement is made and entered into between the STATE OF WASHINGTON DEPARTMENT OF TRANSPORTATION (STATE) and SKAGIT TRANSIT, a municipal corporation (TRANSIT).

WHEREAS, the STATE is in the process of designing a park and ride lot that will contain a minimum of 355 parking stalls and several structures as defined below to be used by the regional bus system, hereinafter "Project," and

WHEREAS, the 2005 Legislature, pursuant to ESSB 6091, has funded one million dollars (\$1,000,000.00) for the Project's preliminary engineering costs, and

WHEREAS, due to the redesign of portions of the Project to avoid wetland impacts and the acquisition of additional property, and the need to produce a new estimate to reflect recent in-kind construction costs, the STATE needs additional funds to take the current 60% Plans, Specification, and Cost Estimate to the 100% design level as further described herein, hereinafter the "Work," and

WHEREAS, the TRANSIT has received funding for and is otherwise authorized to participate in the funding of the Work,

NOW, THEREFORE, pursuant to chapter 39.34 RCW, the Interlocal Cooperation Act, and in consideration of the terms, conditions, and performances contained herein, and the attached Exhibit A which is incorporated and made a part hereof, IT IS MUTUALLY AGREED AS FOLLOWS:

1. Plans, Specifications, and Cost Estimate (PS&E)

- 1.1 The STATE, on behalf of the TRANSIT, agrees to perform the Work to bring the Project PS&E to a design level of 100%. The design will include the completion of a Park and Ride facility with a minimum of 355 parking stalls, a bus island, an access road, one bus stop shelter and one bus operator break facility with two rest rooms. The design will also include landscape and illumination, conduit for utilities, including but not limited to water, sewer and electrical to serve the shelter and operator break facility.
- 1.2 The STATE will provide the TRANSIT with one (1) reproducible copy of the one hundred percent (100%) Ad ready PS&E for the Project a minimum of thirty (30) working days prior to the proposed Ad date. The TRANSIT will review the 100% Ad ready PS&E for the Project, resolve any concerns, and issue a letter of

approval, conditional approval or rejection of the 100% Ad ready PS&E for the Project within ten (10) working days after receipt of the copy. In the event the 100% Ad ready PS&E is either conditionally approved or rejected, the letter shall include the reasons for conditional approval or rejection.

- 1.3 If the TRANSIT rejects the 100% Ad ready PS&E, or the STATE cannot accept the TRANSIT's condition(s) of approval, the STATE will cancel the Project. The TRANSIT agrees to reimburse the STATE for the direct salary and direct non-salary costs incurred by the STATE associated with cancelling the Project and this Agreement shall terminate upon receipt of all reimbursement payments in accordance with Section 2.
- 1.4 If the TRANSIT approves the 100% Ad ready PS&E and has obtained funding for construction of the Project, the Parties agree that they must enter into two additional agreements; one agreement will be for the TRANSIT to reimburse the STATE to construct the Project and the other a Cooperative Agreement for the TRANSIT to maintain and operate the park and ride facility solely at its cost.
- 1.5 If the TRANSIT approves the 100% Ad ready PS&E but has not obtained funding for construction of the Project, the STATE will shelve the Project until such time as funding has been obtained.

2. Payment and Cost Increase

- 2.1 The TRANSIT, in consideration of the faithful performance of the Work performed by the STATE and/or its consultant, agrees to reimburse the STATE for the direct salary and direct non-salary costs of the Work, as estimated in Exhibit A.
- 2.2 The STATE shall provide detailed invoices to the TRANSIT for the Work or for costs incurred as provided in Section 1.3, Section 2.1, and Section 3.2.1, and the TRANSIT agrees to make payment within thirty (30) days from receipt of an invoice. A payment will not constitute agreement as to the appropriateness of any item. At the time of the final invoice, the Parties will resolve any discrepancies.

Payments shall be sent to:

WSDOT
Attn: Cashier
P.O. Box 47305
Olympia, WA 98504-7305

Billings shall be sent to:

Skagit Transit
c/o Marcia Smith
600 County Shop Lane
Burlington, WA 98233

- 2.3 In the event that unforeseen conditions require an increase in the cost from the total shown in Exhibit A, the Parties agree to modify Exhibit A by written amendment covering said increase.

3. General Provisions

- 3.1 Amendment: This Agreement may be amended or modified only by the mutual agreement of the Parties. Such amendments or modifications shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties. No verbal agreement may supersede, replace, or amend this section.
- 3.2 Termination: Neither the STATE nor the TRANSIT may terminate this Agreement without the written concurrence of the other Party, except as otherwise provided under Section 1.3.
- 3.2.1 If this Agreement is terminated prior to the fulfillment of the terms stated herein, the TRANSIT agrees to reimburse the STATE for the direct salary and direct non-salary costs the STATE has incurred for the Work up to the date of termination, as well as the costs of non-cancelable obligations.
- 3.2.2 Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
- 3.3 Indemnification: To the extent provided by law, each Party to this Agreement shall protect, defend, indemnify, and hold harmless the other Party, its officers, officials, employees and authorized agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, each Party's intentional or negligent acts or omissions while performing pursuant to the terms of this Agreement. No Party will be required to indemnify, defend, or save harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the intentional acts, negligence, or omissions of the other Party, its officers, officials, employees, or agents or involves those actions covered by RCW 4.24.115. Where such claims, suits, or actions result from the concurrent negligence of the Parties and their officers, officials, employees, or agents, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the Party's, its officers', officials', employees', or agents' own intentional acts, negligence, or omissions.
- 3.4 This indemnification shall survive any termination of this Agreement.
- 3.5 Disputes: In the event that a dispute arises under this Agreement, it shall be resolved as follows: The STATE and the TRANSIT shall each appoint a member to a disputes board, these two members shall select a third board member not affiliated with either Party. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. An attempt at such dispute resolution in compliance with aforesaid process shall be a prerequisite to

the filing of any litigation concerning the dispute. The Parties shall equally share in the cost of the third disputes board member; however, each Party shall be responsible for its own costs and fees.

- 3.6 Venue: In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties agree that any such action or proceedings shall be brought in Thurston County Superior Court. Further, the Parties agree that each will be solely responsible for payment of their own attorneys fees, witness fees, and costs.
- 3.7 Audits/Records: All records for the Work in support of all costs incurred shall be maintained by the STATE for a period of not less than three (3) years. The TRANSIT shall have full access to and right to examine said records, during normal business hours and as often as it deems necessary. Should the TRANSIT require copies of any records, it agrees to pay the costs thereof. The Parties agree that the Work performed herein is subject to audit by either or both Parties and/or their designated representatives, the state and/or federal government.
- 3.8 Term of Agreement: Unless otherwise provided herein, the term of this Agreement shall commence as of the date entered into and shall continue until all obligations for payment have been met.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Party's date signed last hereto below.

SKAGIT TRANSIT

By: Dale S. O'Brien

Name: Dale O'Brien

Title: Executive Director

Date: 1-21-09

**STATE OF WASHINGTON
DEPARTMENT OF
TRANSPORTATION**

By: Todd L. Harrison

Name: Todd L. Harrison, P.E.

Title: Assistant Regional Administrator

Date: 1-21-09

Approved as to Form

By: Richard Sangulian
Legal Counsel

Date: 1-21-09

Approved as to Form

By: Ann E. Selay
Assistant Attorney General

Date: 1-14-09

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EXHIBIT A COST ESTIMATE Sheet 1 of 1

PRELIMINARY ENGINEERING COSTS	
100% Complete Plans, Specifications, & Estimate, Advertising and Award (Including insuring compliance with Federal Transit Authority Standards)	\$ 135,000.00
Structural, Mechanical and Electrical Design of Bus Stop Shelter and Bus Operator Break Facility with Bathrooms.	\$ 100,000.00
Illumination and Electrical Design for lot	\$ 10,000.00
Preparation and Approval of Hydraulic Report	\$ 25,000.00
Landscape Design	\$ 17,500.00
Environmental Documentation and Permits	\$ 5,000.00
Preparation and Execution of Water, Sewer and Electrical Utility Agreements	\$ 3,500.00
Preparation and Execution of Local Agency Agreements between WSDOT and Skagit Transit, City of Burlington and Burlington-Edison School District	\$ 4,000.00
TOTAL ADDITIONAL FUNDING REQUIRED	\$ 300,000.00

Note: The overhead cost recovery rate will not be applied per Waiver of Indirect Cost Rate dated July 14, 2008.



December 30, 2008

TO: Todd Harrison
Assistant Administrator NW Region/Mount Barker Area

FROM: Bob Covington, CPA
Director, Accountability and Financial Services

SUBJECT: Request for Waiver of Indirect Cost Rate on GCA5870

We have reviewed your request for waiver of the indirect cost rate for GCA5870, an agreement between the Washington State Department of Transportation (WSDOT) and Skagit Transit (SKAT).

The following information you provided forms the basis for determining whether to waive the indirect cost rate:

- The State is in the process of designing the SR 11 Chuckanut Park and Ride Lot. It will contain parking stalls as well as several structures to be used by the regional bus system.
- The 2005 Legislature, pursuant to ESSB 6091, funded \$1,000,000.00 for the project's preliminary engineering costs. Additional work as described below now requires additional funds in order to take the current 60% Plans, Specification, and Cost Estimate to the 100% design level.
 - The PE Office has to redesign portions of the project to avoid wetland impacts and the acquisition of additional property.
 - The PE Office has been asked by Skagit Transit to include certain structures in the design.
 - The PE Office has to produce a new estimate reflecting recent construction cost increases.
- Skagit Transit has agreed to pay the additional costs for the above described work. These costs are estimated at \$300,000.00.
- A waiver is in place for GCA5745 with SKAT for the Construction phase of the project. GCA5870 provides for SKAT to contribute to the preliminary engineering phase.

Based on this information, your request is granted for waiver of the indirect cost rate on GCA5870. Please attach a copy of the memo to the agreement and use it to justify not collecting the indirect cost rate on this project.