

**CONTRIBUTION AGREEMENT
FARE AFFORDABILITY AND
GREEN HOUSE GAS EMISSIONS REDUCTION INITIATIVES**

THIS AGREEMENT dated for reference the 31st day of March, 2023.

BETWEEN:

**HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,
represented by the Minister of Transportation and Infrastructure**

(the "Province")

AND:

BRITISH COLUMBIA FERRY SERVICES INC., a body corporate, incorporated under
the laws of the Province of British Columbia under Certificate of Incorporation No.
0667014

("BC Ferries")

(singly, a Party and together, the "Parties")

WHEREAS:

- A. Safe and affordable public transportation supporting businesses and communities and the orderly movement of people and goods that rely on BC Ferries are shared priorities of BC Ferries and the Province.
- B. The Province provided BC Ferries under a separate contribution agreement dated November 11, 2020 a contribution of \$308 million to support a safe restart of operations during performance term five. The expiry date of that contribution agreement coincides with the end of performance term five on March 31, 2024.
- C. The purpose of the funding in this Agreement is to help safeguard affordability of BC Ferries fares for all ferry users during performance term six beginning on April 1, 2024 and ending on March 31, 2028.
- D. The Province has set a goal of limiting the average annual fare increase to 3% for BC Ferries during performance term six.
- E. The Province will provide BC Ferries with a Total Contribution of \$500 million over the term of this Agreement to support achieving the Fare Affordability Initiative and Green House Gas Emission Reduction Initiative (together, the "Initiatives" and singly an "Initiative").

- F. For performance term six, the Commissioner will make a preliminary decision on the price cap by March 31, 2023 and make a final decision on the price cap by September 30, 2023, as required by the *Coastal Ferry Act*.
- G. The Province has made a commitment to BC Ferries prior to March 31, 2023 to fund BC Ferries \$500 million in performance term six to allow the Commissioner the opportunity to consider this funding in making a final decision on the price cap by September 30, 2023.
- H. Further to the preceding, the Province and BC Ferries wish to enter into this Agreement.

NOW THEREFORE in consideration of the premises and covenants and agreements set out in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the Parties), the Parties agree as follows:

DEFINITIONS

1.01 In this Agreement and the Recitals to this Agreement:

- (a) "business day" means any day which is not a Saturday, a Sunday or a day on which Provincial government offices are closed in British Columbia;
- (b) "Commissioner" has the meaning given in the *Coastal Ferry Act*;
- (c) "Coastal Ferry Services Contract" has the same meaning given in the *Coastal Ferry Act*.
- (d) "Contribution Payments" means the payments by the Province to BC Ferries in accordance with Table 1 of section 3.02, and in accordance with the terms and conditions of this Agreement;
- (e) "Event of Default" means any event of default described in section 10.01 of this Agreement;
- (f) "Expiry Date" means March 31, 2028;
- (g) "FAA" means the *Financial Administration Act*, R.S.B.C. 1996, c.138;
- (h) "Fare Affordability Initiative" has the meaning given in Recitals C and D;
- (i) "Green House Gas Emissions Reduction Initiative" means those eligible expenses and activities incurred in accordance with Schedule 1;
- (j) "performance term" has the meaning given in the *Coastal Ferry Act*;

- (k) “price cap” has the meaning given in the *Coastal Ferry Act*;
- (l) “Reference Date” means the date so identified on the first page of this Agreement;
- (m) “Term” means the term of this Agreement described in section 2.01;
- (n) “Total Contribution” means the amount of Five Hundred Million (\$500,000,000) Canadian Dollars committed by the Province prior to March 31, 2023 to BC Ferries to support the Fare Affordability Initiative and to support the Green House Gas Emissions Reduction Initiative during performance term six; and
- (o) “Year” means April 1 to March 31 during performance term six.

TERM

2.01 The term of this Agreement will commence on the Reference Date and will end on the Expiry Date, unless extended by the Parties in writing, or unless terminated earlier under section 10.02.

CONTRIBUTION

3.01 The Province will pay BC Ferries in accordance with the Contribution Payments in Table 1 of section 3.02.

3.02 As of the Reference Date, BC Ferries and the Province have agreed to the following Contribution Payments to be made by the Province to BC Ferries, in accordance with Table 1, based on BC Ferries’ cash flow requirements necessary to:

- (a) firstly meet the Fare Affordability Initiative, and
- (b) secondly to meet the Green House Gas Emissions Reduction Initiative

Table 1 - Contribution Payments

Year	April 1 2024- March 31, 2025	April 1, 2025-March 31, 2026	April 1, 2026 – March 31, 2027	April 1, 2027-.March 31, 2028	Total Contribution
Date	September 30, 2024	September 30, 2025	September 30, 2026	September 30, 2027	4 Years
Payment	\$50 Million	\$100 Million	\$150 Million	\$200 Million	\$500 Million

- 3.03 BC Ferries may, from time to time during the Term, provide the Province with direction to amend the Contribution Payments amounts in Table 1 of section 3.02, together with providing an amended Table 1 to the Province, to ensure BC Ferries to first meet the Fare Affordability Initiative, and secondarily for BC Ferries to meet the Green House Gas Emissions Reduction Initiative, always provided that the combined Contribution Payments do not exceed the Total Contribution.
- 3.04 BC Ferries' direction to amend the Contribution Payments Schedule in section 3.03 will be accompanied with an updated Cash Flow Statement certified by BC Ferries' Chief Financial Officer. The Province will amend the Contribution Payments for any portions of the Total Contribution that have not already been paid to BC Ferries in accordance with the direction.
- 3.05 The Contribution is to be used by BC Ferries solely for purposes of the Initiatives set forth in Recital D of this Agreement and for no other purpose.
- 3.06 Any investment income earned by BC Ferries on the Contribution Payments, will be retained by BC Ferries, and is solely to be used for the Initiatives and for no other purpose.
- 3.07 The portion of the Total Contribution that is allocated to the Green House Gas Emissions Reduction Initiative will be applied only to eligible expenses and activities identified in Schedule 1.
- 3.08 The Contribution Payments made under this Agreement will be paid by either electronic funds transfer or wire transfer as required.
- 3.09 Notwithstanding any other provision of this Agreement, in no event will the Province be or become obligated to pay to BC Ferries pursuant to this Agreement an amount exceeding the Total Contribution.
- 3.10 BC Ferries must repay to the Province within 60 days of the expiry or earlier termination of this Agreement any portion of the Total Contribution and its investment income that:
- (a) has not been expended by BC Ferries pursuant to the Initiatives by March 31, 2028, or upon the earlier termination of this Agreement, unless otherwise agreed in writing by the Province; or
 - (b) was not applied toward the Initiatives or was not applied to eligible expenses and activities in accordance with Schedule 1.

- 3.11 The Parties agree that the Total Contribution and the Contribution payments will not:
- (a) result in any financial, route or schedule change under the Coastal Ferry Services Contract between the Province and BC Ferries;
 - (b) affect the role of the British Columbia Ferries Commissioner under the *Coastal Ferry Act*; or
 - (c) affect BC Ferries' rights under the *Coastal Ferry Act* or the Coastal Ferry Services Contract.

PUBLIC STATEMENTS

- 4.01 BC Ferries will not issue news releases or media statements nor make any public statements or speeches with respect to this Agreement, about the Contribution, its Annual Instalments or any Province involvement in the Initiatives without the Province's prior written approval, which may be withheld by the Province at its discretion.
- 4.02 BC Ferries will ensure that the Province:
- (a) is provided all relevant news releases, media statements or public statements and speeches in advance of any approval referenced in Section 4.01;
 - (b) is given a reasonable opportunity to review such news releases, media statements or public statements and speeches, being of no less than 3 working days.
- 4.03 Without limiting Section 4.01, BC Ferries will acknowledge the Contribution in statements made about this Agreement to the public with the following statement:
- "We gratefully acknowledge the financial support of the Province of British Columbia through the Ministry of Transportation and Infrastructure."*
- 4.04 BC Ferries will not use any logo, trademark, official mark or other branding of the Province (collectively, "Branding") except and in accordance with the Province's prior written approval. Any and all use by BC Ferries of any Branding will be in the form provided by the Province and will comply with the graphic standards and any conditions communicated by the Province to BC Ferries from time to time.

COVENANTS OF BC FERRIES

5.01 In recognition and consideration of the Contribution from the Province to BC Ferries, BC Ferries covenants and agrees that:

- (a) it will deliver a copy of this Agreement to the Commissioner for her information upon execution;
- (b) it will comply with the provisions of this Agreement;
- (c) it will apply the Contribution Payments and the investment income earned therefrom solely to the Initiatives described in this Agreement,
- (d) with respect to this Agreement, it will establish and maintain for a period of not less than seven years from the expiration or termination of this Agreement accurate books of account and records (including supporting documents) in relation to the application by BC Ferries of the Contribution following generally accepted accounting principles;
- (e) prepare and deliver to the Province such written annual reports, in a form and content satisfactory to the Province, acting reasonably:
 - (i) on the status of BC Ferries' operations and finances as they relate to the operational and fiscal impacts of the Fare Affordability Initiative and Green House Gas Emissions Reduction Initiative; and
 - (ii) an investment earnings report on the Contribution Payments received by BC Ferries as set out in this Agreement;

as certified by the BC Ferries Chief Financial Officer. The final reports in the Term shall be forwarded to the Province within 45 days following the end of the Term;

- (f) where reasonably requested by the Province, BC Ferries will make available to the Province such books, accounts, records, invoices, receipts, and vouchers referred to above and permit the Province to examine and audit and take copies and extracts from such documents;
- (g) where reasonably requested by the Province, BC Ferries will allow the Province, at the Province's own expense and discretion, to conduct a technical audit to verify that the Contribution was implemented in accordance with this Agreement;

- (h) where reasonably requested by the Province, BC Ferries will allow the Province, at the Province's own expense and discretion, to conduct an audit to verify the accuracy of reports submitted under subsection 5.01 (e);
- (i) it will ensure that prompt corrective action is taken as necessary in response to the findings and recommendations of any audit conducted; and
- (j) it will indemnify and save harmless the Province and its employees and agents from any losses, claims, damages, actions, causes of action, costs and expenses that the Province or any of its employees or agents may sustain, incur, suffer or be put to at any time, either before or after this Agreement ends, which are based upon, arise out of or occur, directly or indirectly, by reason of, any negligent act or omission by BC Ferries or by any of its agents, employees, officers, directors, or subcontractors in relation to this Agreement, other than the acceptance by BC Ferries of the Total Contribution or Contribution Payments from the Province in accordance with the provisions of this Agreement.

APPROPRIATION

- 6.01 Notwithstanding any other provision of this Agreement, the payment of money by the Province to BC Ferries pursuant to this Agreement is subject to:
- (a) there being sufficient monies available in an appropriation, as defined in the FAA, to enable the Province in any fiscal year or part thereof when any such payment may be required, to make that payment; and
 - (b) Treasury Board, as defined in the FAA, not having controlled or limited, pursuant to the FAA, expenditure under any appropriation referred to in section 6.01(a).

ASSIGNMENT

- 7.01 BC Ferries will not, without the prior written consent of the Province, assign, either directly or indirectly, this Agreement or any right of BC Ferries under this Agreement.

RELATIONSHIP

- 8.01 BC Ferries is an entity independent of the Province.
- 8.02 No partnership, joint venture, agency or other legal entity will be created by or will be deemed to be created by this Agreement or any actions of the Parties pursuant to this Agreement.

- 8.03 BC Ferries will not be a dependant contractor, the servant, employee or agent of the Province under this Agreement.
- 8.04 BC Ferries will not, in any manner whatsoever, commit or purport to commit the Province to the payment of money to any person, firm or corporation under this Agreement.

REPRESENTATIONS AND WARRANTIES

- 9.01 BC Ferries represents and warrants to the Province, with the intent that the Province will rely thereon in entering into this Agreement, that:
- (a) there are no actions or proceedings pending (including appeals or applications for review) or to its knowledge threatened, before any court, arbitrator, administrative agency or governmental body which, if determined against it, would result in a change occurring in its properties, assets, condition (financial or otherwise), business or operations which would materially adversely affect BC Ferries' ability to fulfil its obligations under this Agreement;
 - (b) it has the power and capacity to accept, execute and deliver this Agreement; and
 - (c) this Agreement is binding upon, and enforceable against, BC Ferries in accordance with its terms.
- 9.02 All representations, warranties, covenants and agreements made in this Agreement and all certificates and other documents delivered by or on behalf of BC Ferries are material and will conclusively be deemed to have been relied upon by the Province, notwithstanding any prior or subsequent investigation by the Province.
- 9.03 The provisions of sections 9.01 and 9.02 will continue in full force and effect notwithstanding the fulfillment by BC Ferries of any or all of its obligations under this Agreement.
- 9.04 All statements contained in any certificate or other document delivered by or on behalf of BC Ferries to the Province under, or in connection with, this Agreement will be deemed to be representations and warranties by BC Ferries under this Agreement.

DEFAULT

10.01 Any of the following will constitute an event of default under this Agreement:

- (a) BC Ferries fails to substantially comply with a material provision of this Agreement, the Province provides written notice of the failure to comply to BC Ferries, and BC Ferries does not cure the failure to comply within 30 business days of receipt of notice from the Province;
- (b) any representation or warranty made by BC Ferries in accepting this Agreement is materially untrue or incorrect;
- (c) any information, statement, certificate, report or other document furnished or submitted by or on behalf of BC Ferries pursuant to or as a result of this Agreement is materially untrue or incorrect;
- (d) a change occurs with respect to any one or more, including all, of the properties, assets, condition (financial or otherwise), business or operations of BC Ferries which, in the opinion of the Province, acting reasonably, materially adversely affects the ability of BC Ferries to fulfil its obligations under this Agreement;
- (e) an order is made, or a resolution is passed, or a petition is filed for the liquidation or winding up of BC Ferries;
- (f) BC Ferries becomes insolvent or commits an act of bankruptcy or makes an assignment for the benefit of its creditors or otherwise acknowledges its insolvency;
- (g) BC Ferries substantially ceases to operate; and
- (h) BC Ferries commits an act or omission that otherwise would have been a material breach of the most stringent of its current codes of conduct or a breach of applicable law related to fraud, misuse of funds, bribery or corruption.

- 10.02 If an Event of Default occurs then, the Province may, at its option:
- (a) require BC ferries to remedy the default within 10 business days of notification;
 - (b) refer the default to the dispute resolution process outlined in section 20 of this Agreement;
 - (c) terminate this Agreement by written notice from the Province to BC Ferries;
 - (d) specify amounts, not to exceed the Total Contribution or portion thereof provided to BC Ferries pursuant to this Agreement, that have not been accounted for and applied by BC Ferries be repaid to the Province in accordance with Section 3.10 and
 - (e) require BC Ferries to make public the fact that an Event of Default has occurred.

REPORTS

- 11.01 BC Ferries shall submit, no later than April 30, 2025 and each subsequent Year, the following documentation to the Province:
- (a) the allocation of the Contribution Payment received between the Initiatives in the past Year, and the forecasted allocation for the remaining Term and updates to those forecasts each subsequent Year. For greater clarity forecasts are not to be reported in the final report;
 - (b) a financial report detailing how the Contribution Payment was used in the past Year. The report shall include a detailed breakdown of eligible expenses and activities in relation to the Contribution Payment allocated and applied to the Green House Gas Emissions Reduction Initiative;
 - (c) a report on Green House Gas Emissions Reduction Initiative project tasks to-date in sufficient detail, including outputs and key performance indicators, to allow progress to be evaluated during the Term;
 - (d) a certification by the BC Ferries Chief Financial Officer that any amount relating to claims for payment of eligible expenditures and activities for Green House Gas Emissions Reduction Initiatives have actually been incurred and paid by BC Ferries; and
 - (e) a certification by the BC Ferries Chief Financial Officer as to the total amount of Contribution Payments received by BC Ferries pursuant to this Agreement.

NOTICES

- 12.01 Any notice, document, statement, report, demand or grant desired or required to be given or made pursuant to this Agreement will be in writing and may be given or made if delivered personally to the party to whom it is to be given or made, or if couriered or mailed in Canada with postage prepaid addressed to:

if to the Province:

Brian Jonker, Executive Director, Marine Branch
Ministry of Transportation and Infrastructure
940 Blanshard St
Victoria, British Columbia, Canada, V8W 3E6

Attn: Brian Jonker, Executive Director, Marine Branch

and if to BC Ferries:

BC Ferries
Suite 500-1321 Blanshard Street
Victoria, BC V8W 0B7

Attn: Brian Anderson, Vice President, Strategy & Community
Development

- 12.02 Any notice, document, statement, report or demand desired or required to be given or made pursuant to this Agreement may be transmitted by email transmission from either Party to the email addresses provided below, or such other email address which a Party may provide to the other, in writing, in which case any email sent will be deemed to have been received by the intended recipient upon return email acknowledgment by the recipient:

If to the Province: Brian.Jonker@gov.bc.ca

and

If to BC Ferries: Brian.Anderson@BCFerries.com

- 12.03 Either Party may, from time to time, give written notice to the other Party of any change of their representatives, address, facsimile number or email address of the Party giving such notice and after the giving of such notice, the address, facsimile number or email address therein specified will, for purposes of this Agreement be conclusively deemed to be the address, facsimile number or email address of the Party giving such notice.

NON-WAIVER

- 13.01 No term or condition of this Agreement and no breach by one party of any such term or condition will be deemed to have been waived unless such waiver is in writing signed by the other party.
- 13.02 The written waiver by one party of any breach by the other party of any term or condition of this Agreement will not be deemed a waiver of such term or condition or of any subsequent breach by the other party of the same or any other term or condition of this Agreement.

ENTIRE AGREEMENT

- 14.01 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement.

FURTHER ACTS AND ASSURANCES

- 15.01 Each of the Parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever for the better and absolute performance of the terms and conditions of this Agreement.

TIME OF ESSENCE

- 16.01 Time will be of the essence of this Agreement.

SURVIVAL OF PROVISIONS

- 17.01 All of the provisions of this Agreement in favour of the Province and all of the rights and remedies of the Province, either at law or in equity, will survive any expiration or sooner termination of this Agreement.

INTERPRETATION

- 18.01 The headings appearing in this Agreement have been inserted for reference and as a matter of convenience and in no way define, limit or enlarge the scope of any provision of this Agreement.
- 18.02 Any reference to a statute in this Agreement, whether or not that statute has been defined, includes all regulations at any time made under or pursuant to that statute and amendments to that statute.
- 18.03 This Agreement will be interpreted and construed with such changes in number and gender as the context so requires.

- 18.04 The Schedules to this Agreement are integral parts of this Agreement as if set out at length in the body of this Agreement.
- 18.05 Any discretion or obligation of the Province under this Agreement may be exercised or performed by the Minister of Transportation and Infrastructure, the Deputy Minister of Transportation and Infrastructure, or any person authorized to act for, or on behalf of, either of them.

SUCCESSORS AND ASSIGNS

- 19.01 This Agreement will enure to the benefit of and be binding upon BC Ferries and its successors and permitted assigns and the Province and its assigns.

DISPUTE RESOLUTION

- 20.01 This process has been established as a protocol to assist in resolving disputes without creating legal obligations on either party, except to the extent set forth herein. It is not an arbitration agreement established under the *Arbitration Act* R.S.B.C. 1996, c. 55.
- 20.02 BC Ferries and the Province shall first meet to discuss and attempt to resolve the dispute within 10 calendar days of it having been identified through the representatives listed in section 12.01.
- 20.03 If there is no resolution within 5 calendar days of the meeting set forth in section 20.02, BC Ferries shall set out its position and proposed resolution in writing (the "BC Ferries' Proposal"), referring to the applicable Articles, Sections, or Subsections of this Agreement (including any Schedule thereto), and shall forward BC Ferries' Proposal to the "Implementation Steering Committee" within 10 calendar days. The Implementation Steering Committee, to be established by the Parties, shall consist of five persons: two BC Ferries executive members identified by BC Ferries' Chief Executive Officer, and the Assistant Deputy Minister and Executive Director responsible for the Marine Branch at the Ministry of Transportation and Infrastructure and the Assistant Deputy Minister, Strategic Initiatives at the Ministry of Finance.
- 20.04 If there is no resolution within 10 calendar days of the meeting of the Implementation Steering Committee set forth in Section 20.03, the dispute will be referred to the "Oversight Steering Committee". The Oversight Steering Committee, to be established by the Parties, shall consist of the Chief Executive Officer of BC Ferries and the Deputy Ministers of the Ministries of Transportation and Infrastructure and Finance.

- 20.05 If there is no resolution within 20 calendar days of the meeting of the Oversight Steering Committee, then the dispute shall be referred to and finally resolved by arbitration pursuant to the *Arbitration Act*, R.S.B.C. 1996, c. 55. The place of arbitration will be Victoria, British Columbia.

MISCELLANEOUS

- 21.01 The Parties acknowledge that the Contribution is meant to accrue to the public benefit.
- 21.02 BC Ferries represents and warrants that the signatory to this Agreement has been duly authorized to execute and deliver this Agreement on its behalf.
- 21.03 BC Ferries represents and warrants that the execution, delivery, and performance of this Agreement have been duly authorized and, when executed and delivered, will constitute a legal, valid, and binding obligation of BC Ferries enforceable in accordance with its terms.
- 21.04 Nothing in this Agreement is to be construed as authorizing any person, including a Third Party, to contract for, or to incur any obligation on behalf of the Province or to act as agent for the Province. BC Ferries will take the necessary action to ensure that any contract between it and any Third Party contains a provision to that effect.
- 21.05 This Agreement is governed by, and is to be interpreted in accordance with, the applicable provincial laws and the laws in force in the Province of British Columbia. The Parties attorn to the jurisdiction of the Courts of British Columbia and all courts competent to hear appeals from the Courts of British Columbia.
- 21.06 Nothing in this Agreement is to be construed as interfering with, or fettering in any manner, the exercise by the Province of any statutory power or duty.

EXECUTION BY COUNTERPARTS

- 22.01 This Agreement may be entered into by each party signing a separate copy of this Agreement (including a photocopy, facsimile copy or pdf copy transmitted by email attachment) and delivering it to the other party by facsimile transmission or by email.

Schedule 1

Greenhouse Gas Emissions Reduction Initiatives

Eligible Expenses and Activities

The following are eligible expenses and activities to the Greenhouse Gas Emissions Reduction Initiatives.

- Renewable and Alternate Fuels
- Electrification
- Operational Efficiencies
- Advanced Technologies
- Fleet Modernization