

Contract Number _____

for

**General Public Rural Intercity Bus
Transportation Services for the Omak to
Ellensburg Corridor**

Between the

**Washington State Department of
Transportation**

and

Effective Date: June 1, 2016

RFP-2016-0222 Intercity Bus Contract Omak to Ellensburg

Exhibit C-Sample Contract

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CONTRACT NUMBER _____

for

This Contract is entered into by and between the state of Washington, acting by and through the Washington State Department of Transportation, an agency of Washington State government (WSDOT) located at 301 Maple Park Avenue, Olympia, WA 98504-7400 and _____, a _____ licensed to conduct business in the state of Washington (Contractor), located at _____, for the purpose of providing general public rural intercity bus transportation services.

RECITALS

WHEREAS, Federal funding is authorized under the Moving Ahead for Progress in the 21st Century Act (MAP-21), Enacted as Public Law 112-141, July 6, 2012; or other Federal laws the Federal Transit Administration (FTA) administers to the extent FTA so determines;

WHEREAS, the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA_LU) (Pub. L. 109-59) signed into law on August 10, 2005, and codified in 49 USC chapter 53 provides for Federal Funds to carry out the Section 5311 Non-urbanized Area Formula Program;

WHEREAS, WSDOT, pursuant to 49 USC § 5311 receives an annual apportionment of Federal transit program grant funds from the Federal Government;

WHEREAS, WSDOT pursuant to 49 USC § 5311(f) is required to spend 15% of its annual Section 5311 apportionment “to carry out a program to develop and support intercity bus transportation;

WHEREAS, the Federal Transit Administration (FTA) initiated a 2-year Pilot Program allowing WSDOT to use the capital costs of private sector unsubsidized intercity bus service as in-kind match for the operating costs of connecting rural intercity bus feeder service funded under 49 USC 5311(f);

WHEREAS, WSDOT has solicited Requests for Proposals (RFPs) from transportation providers to coordinate rural connections between small public transportation operations and intercity bus carriers; and

WHEREAS, the Contractor has been selected by WSDOT to provide rural intercity bus transportation feeder services through the competitive Request for Proposal (RFP) process;

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AGREEMENT

NOW THEREFORE, WSDOT awards to Contractor this Contract, the terms and conditions of which shall govern Contractor's performance in providing the Services described in this Contract. This Contract is not for personal use.

IN CONSIDERATION of the mutual promises as hereinafter set forth, the parties agree as follows:

ARTICLE I. DEFINITIONS; ACRONYMS

All capitalized terms used in this Contract but not expressly defined herein, have the respective meanings set forth in this Section.

"Business Days and Hours" shall mean Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

"Contract" shall mean this document and all amendments hereto.

"Effective Date" shall mean the date this Contract is in full force and effect, which is the date written on the cover page of this Contract.

"Federal" shall mean the United States government.

"Federal Transit Authority" or "FTA"

"In-Kind Match" shall mean the unsubsidized matching funds provided by Greyhound Bus Lines or other scheduled intercity bus provider.

"Laws and Regulations" means all applicable laws, codes, ordinances, rules, restrictions, regulations, and orders of the Federal, State, regional, or any local government, and any judicial or administrative order or decree that are in effect as of the Contract date or any time thereafter during the term of this Contract.

"Compensation" shall mean all payments made by WSDOT to the contractor for the provision of general public scheduled rural intercity bus service as described in the Agreement to Vendor by WSDOT under this Contract.

"Contractor" shall mean successful bidder, its employees and agents. Contractor also includes any firm, provider, organization, individual, or other entity performing the business activities under this Contract. It shall also include any Subcontractor retained by Contractor as permitted under the terms of this Contract.

"Contractor Project Manager" shall mean a representative of Contractor who is assigned as the primary contact person whom the WSDOT Project Manager shall work with for the duration of this Contract.

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“Project” shall mean the project as describe in the Scope of Work herein attached to this contract.

“Project Equipment” shall mean the buses, bus shelters and bus stops provided by WSDOT affiliated to this project.

“Revenue Service Mile” shall mean the actual scheduled in-service operating mile carrying a fare paying passengers from route origin point to route terminating point.

“RCW” shall mean the Revised Code of Washington.

“Service Area” shall mean the service route as described in Exhibit I of the project

“Services” shall mean labor, work, analysis, or similar activities provided by the Contractor to accomplish the Scope of Work under this Contract.

“Subcontractor” shall mean one not in the employment of Contractor, who is performing all or part of the business activities under this Contract under a separate contract with Contractor. The term “Subcontractor” means Subcontractor(s) of any tier.

“State” shall mean the State of Washington.

“Total Gross Operating Expenses” shall mean all expenses incurred including Direct Operating and Administration costs.

“Total Net Operating Expenses” shall mean all Total Gross Operating Expenses incurred less Ineligible Expenses and Passenger Fares collected.

“WSDOT” shall mean Washington State Department of Transportation, any division, section, office, unit or other entity within WSDOT, and any of the officers or other officials lawfully representing WSDOT.

“WSDOT Contract Administrator” shall mean that WSDOT employee designated to receive legal notices, and to administer, amend, or terminate this Contract.

“WSDOT Project Manager” shall mean the WSDOT employee designated to manage and provide oversight of the day-to-day activities under this Contract. The WSDOT Project Manager shall be the primary contact with Vendor concerning Vendor’s performance under this Contract; Provided that, the WSDOT Project Manager does not have authority to accept legal notices on behalf of WSDOT or amend this Contract.

ARTICLE II. PURPOSE; TERM

2.1 Purpose.

The purpose of this Contract is to purchase general public rural intercity bus transportation services within the state of Washington from the Contractor and to state the terms, conditions, and mutual understandings of the parties as to the manner in which the Services will be provided.

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2.2 Term.

- a) The period of performance under this Contract will be from June 1, 2016 through June 30, 2018, unless sooner terminated as provided herein.
- b) WSDOT, at its sole discretion, may initiate extending the Contract for up to an additional two- (2) year term and shall be at WSDOT's option and shall be effected by WSDOT giving written notice of its intent to extend this Contract to Vendor not less than thirty (30) calendar days prior to the then-current Contract term's expiration and Vendor accepting such extension prior to the then-current Contract term's expiration.

ARTICLE III. STATEMENT OF WORK

3.1 Scope of Work.

The Contractor shall provide the Services in accordance with Schedule B, "Scope of Work," attached hereto and by this reference incorporated herein, and to provide the Services within the Service Area, in accordance with the terms and conditions of this Contract.

ARTICLE IV. PRICING; INVOICE; TAXES; PAYMENT

4.1 Compensation.

4.1.1 Contractor agrees that the total compensation for the Services provided, including expenses payable to Contractor for satisfactory performance of the work under this Contract, shall not exceed the amount of Federal Funds allotted for the Services provided under this Contract.

4.1.2 WSDOT shall pay the Contractor for allowable Contract expenses determined by the Request for Proposal and the associated "Cost per Revenue Service Mile Rate" accepted by WSDOT, multiplied by the actual revenue service route miles incurred for the billing period less passenger fare revenue.

4.1.3 All Contract expenses eligible for payment must be incurred within the term of the Contract.

4.1.4 No advance payment shall be made for the Services furnished by Contractor pursuant to this Contract.

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4.2 Taxes.

4.2.1 Contractor must pay all taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. WSDOT, as an agency of State government, is exempt from property tax.

4.2.2 Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments under this Contract.

4.2.3 All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Contractor or Contractor's staff shall be Contractor's sole responsibility.

4.3 Invoices and Payment.

4.3.1 The total amount paid to Contractor by WSDOT under this Contract shall not exceed the amount Price. Payments made by WSDOT to Contractor are full compensation for all Services.

4.3.2 Payments shall be made by WSDOT on an incremental, monthly or quarterly basis and upon submission by the Contractor and approval by WSDOT, of properly prepared invoices based on actual work performed and supporting reports and financial summaries of actual revenues and costs. Any reports and financial summaries submitted to WSDOT must include: shall be due and payable within thirty (30) calendar days after receipt by WSDOT of a properly prepared invoice.

- (a) Contract number _____;
- (b) Contractor name, address, phone number, and Federal Tax Identification Number;
- (c) Description of Services provided;
- (d) Revenue service miles;
- (e) Maintenance and cleaning of bus shelters & bus stop signs & posts;
- (f) Total invoice Price;
- (g) A certification that the service levels reported on the payment request represent eligible transportation services as described in Exhibit I, Scope of Work;
- (h) A record of the actual transportation services provided during the billing period; and
- (i) A record of actual service revenues and transportation expenses itemizing direct operating, and administrative expenses for the billing period.

Incorrect or incomplete invoices will be returned by WSDOT to Contractor for correction and reissue.

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4.3.5 Such invoices may be submitted no more than once a month. If approved by WSDOT, said invoices shall be paid by WSDOT within 30 days of receipt of the invoice. The Contractor's final payment request for funding must be received by WSDOT by July 15, 2015, within 30 days of the completion of the Project or within 30 days of the termination of this Contract, whichever is sooner. Any payment request for funds received after by July 15, 2015 will not be eligible for reimbursement

4.3.6 The Contract number _____ must appear on all bills of lading, packages, and correspondence relating to this Contract.

4.3.7 WSDOT shall not honor drafts, nor accept goods on a sight draft basis.

4.3.8 If WSDOT fails to make timely payment, Contractor may invoice WSDOT one percent (1%) per month on the amount overdue or a minimum of one dollar (\$1.00). Payment will not be considered late if payment is deposited electronically in Contractor's bank account or if a check or warrant is postmarked within thirty (30) calendar days of execution of this Contract, or receipt of Contractor's properly prepared invoice, whichever is later.

4.3.9 In the event an overpayment is made to Contractor under this Contract, the Contractor shall refund to WSDOT the full amount of any such erroneous payment or overpayment within thirty (30) calendar days of the date of the written notice of such erroneous payment or overpayment, as issued by WSDOT. If Contractor fails to refund the erroneous payment or overpayment within that thirty (30) day period, WSDOT may charge late payment fees as set forth in **Section 4.3.8** herein. The provisions in this Article shall survive the expiration or termination of this Contract.

ARTICLE V. CONTRACTOR'S RESPONSIBILITIES

5.1 FTA Requirements.

This Contract includes, in part, certain Standard Terms and Conditions required by FTA. All contractual provisions required by FTA, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any WSDOT request, which would cause WSDOT to be in violation of any FTA term or condition.

5.2 FTA Standard Terms and Conditions

Contractor agrees to comply with the FTA Standard Terms and Conditions set forth in Exhibit B to this Contract.

5.3 Qualified Workers.

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Contractor shall be responsible to ensure that all its employees and Subcontractor employees are properly trained, certified, or licensed as appropriate and are properly qualified by education and experience to perform the work. Contractor shall avoid overstaffing the work or shuffling personnel assigned.

5.4 Licensing Standards.

Contractor shall comply with all applicable local, State, and Federal licensing, accreditation and registration requirements and standards necessary in the performance of this Contract including but not limited to the state licensing requirements and definitions set forth in chapter 19.02 RCW.

5.5 Prevailing Wages.

Contractor shall comply with all applicable State laws, regulations, requirements, and procedures pertaining to prevailing wages, including but not limited to those established by the Washington State Department of Labor and Industries.

ARTICLE VI. SUBCONTRACTING

6.1 General.

Unless otherwise authorized in writing and in advance by WSDOT, the Contractor will not assign any portion of the Project or execute any contract, amendment, or change order thereto, or obligate itself in any manner with any assignee with respect to its rights and responsibilities under this Contract.

6.2 Terms and Conditions.

The Contractor is solely responsible and liable for ensuring that the terms and conditions set forth in this Contract are incorporated into any partnering or subcontracting relationships with other entities for work related to this Contract. Liability includes management responsibility and quality assurance for work performed and financial responsibility for payments to and by partner organizations or subcontractor to others.

6.3 Right to Reject.

For work to be performed for WSDOT, WSDOT reserves the right to reject any of the Contractor's employees, suppliers, or Subcontractors with due cause. Any and all costs or expenses associated with replacement of any person or entity shall be borne by the Contractor.

ARTICLE VII. TREATMENT OF ASSETS

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7.1 Title.

Title to all property furnished by WSDOT under this Contract shall remain in WSDOT.

7.2 Limitations on Use.

Any WSDOT property furnished to Contractor shall, unless otherwise provided herein or approved in writing by WSDOT, be used only for the performance of this Contract.

7.3 Damage, Loss, or Destruction of WSDOT Property.

7.3.1 Contractor shall be responsible for any loss of or damage to property of WSDOT that result from Contractor's acts or activities, or that result from Contractor's failure to maintain and administer that property in accordance with sound management practices.

7.3.2 Upon loss or destruction of, or damage to any WSDOT property, Contractor shall notify WSDOT and shall take all reasonable steps to protect that property from further damage.

7.4 Surrender of WSDOT Property.

Contractor shall surrender to WSDOT all WSDOT property prior to settlement upon completion, termination, or cancellation of this Contract.

7.5 Survival.

The provisions in this Section shall survive the expiration or termination of this Contract.

VIII. REPRESENTATIONS AND WARRANTIES

8.1 Contractor Commitments, Warranties and Representations.

Any written commitment by Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment shall constitute a breach of this Contract and shall render Contractor liable for damages under the terms of this Contract. For purposes of this Section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor in this Contract or contained in any Contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in this Contract, or used to effect the sale to WSDOT.

8.2 Covenant Against Contingent Fees.

Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, *except* bona fide employees or a bona fide established

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commercial or selling agency of Contractor. In the event Contractor breaches this Section, WSDOT shall have the right to either immediately terminate or annul this Contract without liability to WSDOT, or, in WSDOT's discretion, deduct from payments due to Contractor, or otherwise recover from Contractor, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE IX. CONTRACT MANAGEMENT AND ADMINISTRATION

9.1 Notices.

9.1.1 Any notice or demand or other communication required or permitted to be given under this Contract or applicable law shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested, to the parties at the addresses as follows:

9.1.2 The notice address and/or addressee as provided herein may be changed by written notice given as provided above.

9.1.3 Contractor agrees to accept service of process at the address provided herein; Provided that, such address is located in the state of Washington. Otherwise, Contractor designates the Secretary of State of the state of Washington as an agent for the purpose of service of process. Such service shall be deemed personal service.

9.1.4 For purposes of complying with any provision in this Contract or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

9.1.5 Notices shall be effective upon receipt or four (4) business days after mailing, whichever is earlier.

9.1.6 In the event that a subpoena or other legal process commenced by a third party in any way concerning the Products or Services provided pursuant to this Contract is served upon Contractor or WSDOT, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and WSDOT further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party; Provided that, such cooperation does not require WSDOT to expend funds.

9.1.7 The provisions in this Article shall survive the expiration or termination of this Contract.

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9.2 Contractor Account Manager.

Contractor shall appoint a Contractor Account Manager for WSDOT's account under this Contract who will provide oversight of Contractor activities conducted hereunder. The Contractor Account Manager will be the principal point of contact for WSDOT concerning Contractor's performance under this Contract. Contractor shall notify the WSDOT Contract Administrator and the WSDOT Project Manager, in writing, when there is a new Contractor Account Manager assigned to this Contract. The Contractor Account Manager information is:

Name:
Title:
Address:
Phone:
Fax:
E-mail:

9.3 WSDOT Project Manager.

WSDOT shall appoint a WSDOT Project Manager for this Contract and will provide oversight of the activities conducted hereunder. The WSDOT Project Manager will be the principal contact for Contractor concerning business activities under this Contract. WSDOT shall notify Contractor, in writing, when there is a new WSDOT Project Manager assigned to this Contract. The WSDOT Project Manager information is:

Name:
Title:
Address:
Phone:
Fax:
E-mail:

9.4 WSDOT Contract Administrator.

WSDOT shall appoint a WSDOT Contract Administrator for this Contract who is designated as the WSDOT employee to receive legal notices, and to administer, amend, or terminate this Contract. WSDOT shall notify Contractor, in writing, when there is a new WSDOT Contract Administrator assigned to this Contract. The WSDOT Contract Administrator information is:

Name:
Title:

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Address:

Phone:

Fax:

E-mail:

ARTICLE X. INDEMNITY AND INSURANCE

10.1 Indemnity.

10.1.1 The Contractor shall indemnify and hold harmless WSDOT, its agents, employees, and officers and process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs (hereinafter referred to collectively as “claims”), of whatsoever kind or nature brought against WSDOT arising out of, in connection with or incident to the execution of this Contract and/or the Contractor’s performance or failure to perform any aspect of this Contract. This indemnity provision applies to all claims against WSDOT, its agents, employees and officers arising out of, in connection with or incident to the negligent acts omissions of the Contractor, its agents, employees and officers. Provided, however, that nothing herein shall require the Contractor to indemnify and hold harmless or defend the WSDOT, its agents, employees or officers to the extent that claims are caused by the negligent acts or omissions of the WSDOT, its agents, employees or officers. The indemnification and hold harmless provision shall survive termination of this Contract.

10.2.1 The Contractor specifically assumes potential liability for actions brought by Contractor’s employees and/or subcontractors and solely for the purposes of this indemnification and defense, the Contractor specifically waives any immunity under the State Industrial Insurance Law, Title 51 Revised Code of Washington. This waiver has been mutually negotiated by the parties.

10.3.1 The indemnification provisions in this Section shall survive the expiration or termination of this Contract.

10.2 Insurance.

10.2.1 The Contractor shall prior to start of service obtain, at its sole cost and expense, both (1) Comprehensive General Liability Insurance which must include Personal Injury, Contractual and Employer’s Liability with limits of not less than \$5,000,000 per occurrence for bodily injury and property damage combined and (2) Automobile Liability Insurance covering third party’s property(s) with limits of liability not less than \$5,000,000 per occurrence for bodily

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injury and property damage combined. (3) Automobile Collision and Comprehensive coverage sufficient to cover the full replacement costs of WSDOT provided buses.

10.2.2 The Contractor agrees that all insurance shall be in the form and with such carriers satisfactory to WSDOT. The insurance carrier must be authorized to do business within the State of Washington and be able to issue the insurance required above. Insurance is to be placed with a carrier that has a Best's rating of A- or higher. The risk manager for the State of Washington must approve any exception. The insurance policies shall be endorsed to include WSDOT, and their officers, officials, agents, and employees, as additional loss payee. Such insurance policies shall contain "severability of interest" (cross liability) wording and shall be primary to and not contributing with any insurance or self-insurance, which may be carried by WSDOT.

10.2.3 Where appropriate, the Contractor shall obtain Worker's Compensation insurance in the amount and type required by law. Within fifteen (15) calendar days of contract execution and prior to starting service operations, the Contractor shall provide to WSDOT certificates of insurance, in a form satisfactory to WSDOT, reflecting full compliance with the requirements of this Section, which shall provide for not less than forty-five (45) days advance written notice to WSDOT in the event of cancellation or material change in the policies of insurance required. Coverage in the minimum amount set forth herein shall not be construed to relieve the Contractor from liability in excess of such coverage..

10.2.4 Contractor shall pay premiums on all insurance policies. Such insurance policies shall name WSDOT as an additional insured on all general liability, automobile liability, and umbrella policies. Such policies shall also reference this Contract number _____ and shall have a condition that they not be revoked by the insurer until forty-five (45) calendar days after notice of intended revocation thereof shall have been given to WSDOT by the insurer.

10.2.4 All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.

10.2.5 Contractor shall include all Subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

10.2.6 Contractor shall furnish to WSDOT copies of certificates of all required insurance within thirty (30) calendar days of this Contract's Effective Date, and copies of renewal certificates of all required insurance within thirty (30) days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at WSDOT's sole option; result in this Contract's termination.

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By requiring insurance herein, WSDOT does not represent that coverage and limits will be adequate to protect Contractor. Such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to WSDOT in this Contract.

ARTICLE XI. TERMINATION

11.1 Termination for Default.

11.1.1 WSDOT may suspend or terminate this Contract for default, in whole or in part, and all or any part of the federal financial assistance provided herein, at any time by written notice to the Contractor, if the Contractor materially breaches or fails to perform any of the requirements of this Contractor, including:

(a) Takes any action pertaining to this Contract without the approval of WSDOT, which under the procedures of this Contract would have required the approval of WSDOT;

(b) Fails to make reasonable progress on the Contract or other violation of this Contract that endangers substantial performance of the Contract; or

(c) Fails to perform in the manner called for in this Contract or fails to comply with, or is in violation of, any provision of this Contract. WSDOT shall serve a notice of termination on the Contractor setting forth the manner in which the Contractor is in default hereunder. If it is later determined by WSDOT that the Contractor had an excusable reason for not performing, such as events which are not the fault of or are beyond the control of the Contractor, such as a strike, fire or flood, WSDOT may: (a) allow the Contractor to continue work after setting up a new delivery of performance schedule, or (b) treat the termination as a termination for convenience.

11.1.2 WSDOT, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) business days, or such longer period as determined by WSDOT, in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If the Contractor fails to remedy to WSDOT's satisfaction the breach or default within the timeframe and under the conditions set forth in the notice of termination, WSDOT shall have the right to terminate this Contractor without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude WSDOT from also pursuing all available remedies against Contractor and its sureties for said breach or default.

11.1.3 In the event that WSDOT elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by WSDOT shall not limit WSDOT's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

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11.2 Termination by WSDOT.

11.2.1 WSDOT and the Contractor may suspend or terminate this Contract, in whole or in part, and all or any part of the federal and/or state financial assistance provided herein, at any time by written notice to the other party in accordance with 49 CFR Part 18 § 18.44, 49 CFR Part 19 § 19.61, or 48 CFR Part 31, whichever is applicable. WSDOT and the Contractor shall agree upon the Contractor termination provisions including but not limited to the settlement terms, conditions, and in the case of partial termination the portion to be terminated. Written notification must set forth the reasons for such termination, the effective date, and in case of a partial termination, the portion to be terminated. However, if, in the case of partial termination, WSDOT determines that the remaining portion of the award will not accomplish the purposes for which the award was made WSDOT may terminate the award in its entirety. The parties may terminate this Contract for convenience for reasons including, but not limited to, the following:

(a) The requisite federal and/or state funding becomes unavailable through failure of appropriation or otherwise;

(b) WSDOT determines, that the continuation of the Contract would not produce beneficial results commensurate with the further expenditure of funds;

(c) The Contractor is prevented from proceeding with the Contract as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense; or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources;

(d) The Contractor is prevented from proceeding with the Contract by reason of a temporary preliminary, special, or permanent restraining order or injunction of a court of competent jurisdiction where the issuance of such order or injunction is primarily caused by the acts or omissions of persons or agencies other than the Contractor;

(e) The Federal Government determines that the purposes of the statute authorizing the Contract would not be adequately served by the continuation of federal financial assistance for the Contract; or

(f) The Federal Government terminates this Contract due to a determination that the Contractor has: (1) willfully misused federal assistance funds by failing to make adequate progress on the Contract, (2) failed to make reasonable and appropriate use of the Contract real property, facilities, or equipment, or (3) failed to comply with the terms of this Contract. In the event of a termination under this subsection, and the Federal Government exercises its right to require WSDOT to refund any or all of the federal funds provided for the Contract, the Contractor shall return all monies reimbursed to it by WSDOT, in the amount required by the Federal Government, within sixty (60) days of its receipt of a certified letter from.

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11.2.2 In the case of termination for convenience under subsections 1-5 above, WSDOT shall reimburse the Contractor for all costs payable under this Contract that the Contractor properly incurred prior to termination. The Contractor shall promptly submit its claim for reimbursement to WSDOT. If the Contractor has any property in its possession belonging to WSDOT, the Contractor will account for the same, and dispose of it in the manner WSDOT directs.

11.3 Termination for Convenience.

When, at the sole discretion of WSDOT, it is in the best interest of the State, WSDOT Contract Administrator may terminate this Contract, in whole or in part, by fourteen (14) calendar day written notice to Vendor. If this Contract is so terminated, WSDOT is liable only for payments required by the terms of this Contract for Software and Services received and Accepted by WSDOT prior to the effective date of termination.

11.4 Termination Procedure.

11.4.1 In addition to the procedures set forth below, if WSDOT terminates this Contract, Contractor shall follow any procedures WSDOT specifies in WSDOT's Notice of Termination.

11.4.2 Unless otherwise provided herein, WSDOT shall pay to Contractor the agreed-upon Price, if separately stated, for the Products or Services received and for which Acceptance has been given by WSDOT; Provided that, in no event shall WSDOT pay to Vendor an amount greater than Vendor would have been entitled to if this Contract had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of **Article XII. Disputes and Remedies** section of this Contract. WSDOT may withhold from any amounts due Vendor such sum as WSDOT determines to be necessary to protect WSDOT from potential loss or liability.

ARTICLE XII. DISPUTES AND REMEDIES

12.1 Dispute Resolution.

12.2.1 Disputes, arising in the performance of this Contract, which are not resolved by agreement of the parties, shall be decided in writing by the Public Transportation and Commute Options (PT&CO) Contracts and Grants Administrator, a representative of WSDOT. This decision shall be final and conclusive unless within ten (10) business days of WSDOT's service of the decision, the Contractor mails or otherwise furnishes a written appeal to the WSDOT Manager of Public Transportation and Commute Options. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Manager of Public Transportation and Commute Options shall be binding upon the Contractor and the Contractor shall abide by the decision.

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12.2.2 Should either party to this Contract suffer injury or damage to person, property, or right because of any act or omission of the other party or any of that party's employees, agents or others for whose acts it is legally liable, a claim for damages therefore shall be made in writing to such other party within thirty (30) days after the first observance of such injury or damage

12.3 Performance by WSDOT.

Unless otherwise directed by WSDOT, Contractor shall continue performance under this Contract while matters in dispute are being resolved. The provisions in this Section shall survive the expiration or termination of this Contract.

12.4 Non-Exclusive Remedies.

All remedies provided in this Contract are distinct and cumulative to any other right or remedy under this document or afforded by law or equity, and may be exercised independently, concurrently, or successively and shall not be construed to be a limitation of any duties, obligations, rights and remedies of the parties hereto. No action or failure to act by the WSDOT or Contractor shall constitute a waiver of any right or duty afforded any of them under this Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

12.5 Limitation of Liability.

12.5.1 The parties agree that neither Contractor nor WSDOT shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages, except a claim related to bodily injury or death, or a claim or demand based on a patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This Section does not modify any other conditions as are elsewhere agreed to herein between the parties. The damages specified in this Contract shall not be construed to be consequential, incidental, indirect, or special damages as that term is used in this Section.

12.5.2 Neither Contractor nor WSDOT shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of the responsible party, or its agent, employee, contractor, or subcontractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than WSDOT acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

12.5.3 Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's or its agent, employee, contractor, or subcontractor's respective fault or negligence.

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12.5.4 The provisions in this Section shall survive the expiration or termination of this Contract.

ARTICLE XIII. RECORDS; AUDITS; PUBLIC RECORDS

13.1 Contractor's Records and Retention.

During the course of the Contract and for six (6) years thereafter, the Contractor agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to the Project as WSDOT may require. Reporting and record-keeping requirements are set forth in 49 CFR Part 19. Project closeout does not alter these recording and record-keeping requirements. Should an audit, enforcement, or litigation process be commenced, but not completed, during the aforementioned six-year period then the Contractor's obligations hereunder shall be extended until the conclusion of that pending audit, enforcement, or litigation process.

13.2 Review of Contractor's Records.

The Contractor agrees to permit WSDOT, the State Auditor, the United States Department of Transportation, and the Comptroller General of the United States, or their authorized representatives, to inspect all Contract work materials, payrolls, and other data, and to audit the books, records, and accounts of the Contractor and its contractors pertaining to the Contract. The Contractor agrees to require each third party contractor whose contract award is not based on competitive bidding procedures as defined by the United States Department of Transportation to permit WSDOT, the State Auditor, the United States Department of Transportation, and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that third party contract, and to audit the books, records, and accounts involving that third party contract as it affects the Contract, as required by 49 USC § 5325(g).

13.3 Subcontractor Records.

Contractor shall incorporate in its subcontracts this Section's records retention and review requirements.

13.4 General Audit Requirements.

The Contractor agrees to perform the financial and compliance audits required by the Single Audit Act Amendments of 1996, 31 USC §§ 7501 et seq., in accordance with OMB Circular A-133, Revised, "Audits of States, Local Governments, and Non-Profit Organizations",

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and the latest applicable OMB A-133 Compliance Supplement provisions for the USDOT, and any further revision or supplement thereto. The Contractor agrees that audits will be carried out in accordance with U.S. Government Accountability Office "Government Auditing Standards". The Contractor agrees to obtain any other audits required by WSDOT. Project closeout will not alter the Contractor's audit responsibilities.

13.5 Public Records.

Contractor acknowledges that WSDOT is subject to chapter 42.56 RCW and that this Contract shall be a public record as defined in chapter 42.56 RCW. Any documents and records that are prepared by Contractor and delivered to WSDOT or relied upon by WSDOT to make a decision, may be determined to be public records, and as such may be subject to public disclosure. Any specific information that is claimed by Contractor to be Proprietary Information must be clearly identified as such by Contractor. To the extent consistent with chapter 42.56, WSDOT shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Contractor's Proprietary Information, WSDOT will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, WSDOT will release the requested information on the date specified.

13.5 Survival.

The provisions in this Article shall survive the expiration or termination of this Contract.

ARTICLE XIV. GENERAL

14.1 Recitals.

The Recitals set forth herein are hereby incorporated into this Contract.

14.2 Exhibits and Attachments.

All exhibits and attachments referenced in this Contract are hereby incorporated into this Contract.

14.3 Survivorship.

All license and purchase transactions executed pursuant to the authority of this Contract shall be bound by all of the terms, conditions, and Price set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that, by their sense and context, are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

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14.4 Assignments.

14.4.1 Unless otherwise authorized in advance and in writing by WSDOT, the Contractor will not assign any portion of the Project or execute any contract, amendment, or change order thereto, or obligate itself in any manner with any assignee with respect to its rights and responsibilities under this Contract.

14.4.2 WSDOT may assign this Contract to any public agency, commission, board, or the like, within the political boundaries of the state of Washington.

14.5 Publicity.

14.5.1 The award of this Contract to Contractor is not in any way an endorsement of Contractor or Contractor's products by WSDOT and shall not be so construed by Contractor in any advertising or other publicity materials.

14.5.2 Contractor agrees to submit to WSDOT, all advertising, sales promotion, and other publicity materials relating to this Contract or any Product furnished by Contractor wherein WSDOT's name is mentioned, language is used, or Internet links are provided from which the connection of WSDOT's name therewith may, in WSDOT's judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of WSDOT *prior* to such use.

14.5.3 Either party may use the other party's name and logo (except for the state Seal) in advertising, sales promotion, and other publicity materials relating to this Contract, without royalty, solely with the advanced formal written approval of both parties, provided that this Contract and the relationship between the parties is not misrepresented.

14.5.4 The provisions in this Section shall survive the expiration or termination of this Contract.

14.6 Independent Status of Contractor.

The Contractor's relation to the WSDOT shall be at all times as an independent contractor.

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent contractor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit, which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.

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14.7 Entire Agreement.

This document contains all covenants, stipulations, and provisions agreed upon by WSDOT. No agent or representative of WSDOT has authority to make, and WSDOT shall not be bound by or be liable for, any statement, representation, promise, or agreement not set forth herein or made by written amendment hereto.

14.8 Modifications and Amendments.

Either party may request changes to this Contract. Any changes to the terms of this Contract must be mutually agreed upon and incorporated by written amendment to this Contract. Such amendments or modifications to the terms of this Contract shall not be binding or valid unless made in writing and signed by the authorized representatives of both parties.

14.9 Waiver.

Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. In no event shall any WSDOT payment of grant funds to the Contractor constitute or be construed as a waiver by WSDOT of any Contractor breach or default. Such payment shall in no way impair or prejudice any right or remedy available to WSDOT with respect to any breach or default. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written instrument signed by the WSDOT Contract Administrator and the Vendor Contracting Officer.

14.10 Severability.

If any covenant or provision of this Contract shall be adjudged void, such adjudication shall not affect the validity or obligation of performance of any other covenant or provision, or any part thereof, which in itself is valid if such remainder conforms to the terms and requirements of applicable law and the intent of this Contract. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision except as herein allowed.

14.11 Governing Law.

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Contract, the parties hereto agree that any such action shall be initiated in the Superior Court of the State of Washington situated in Thurston County. The Contractor hereby accepts the issuing and service of process by registered mail at the mailing address shown in the heading of this Contract under "Contractor" and "Washington State Department of Transportation". The parties agree that the laws of the State of Washington shall apply.

14.12 Order of Precedence.

State of Washington
Department of Transportation

{insert name of contract}
Contract # _____

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In the event of any conflicts, resolution shall be resolved in the following order of precedence:

14.12.1 Any applicable Federal law.

14.12.2 Any applicable State.

14.12.3 This Contract (DP01231), and any amendment thereto.

14.13 Uniform Commercial Code (UCC) Applicability.

14.13.1 Except to the extent the provisions of this Contract are clearly inconsistent, this Contract shall be governed by any applicable sections of the UCC as set forth in Title 62A RCW.

14.13.2 To the extent this Contract entails delivery or performance of services, such services shall be deemed “goods” within the meaning of the UCC, except when to do so would result in an absurdity.

14.13.3 In the event of any clear inconsistency or contradiction between this Contract and the UCC, the terms and conditions of this Contract take precedence and shall prevail unless otherwise provided by law.

14.14 Attorneys’ Fees and Costs.

In the event either the Contractor or WSDOT incurs attorney’s fees, costs or other legal expenses to enforce the provisions of this section of the Contract against the other party, all such fees, costs and expenses shall be recoverable by the prevailing party.

14.15 Contract Execution.

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

14.16 Counterparts.

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

In Witness Whereof, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

State of Washington
Department of Transportation

{insert name of contract}
Contract # _____

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Schedule A

FTA STANDAD TERMS AND CONDITIONS

Charter Bus Requirements

Contractor shall comply with 49 USC 5323(d) and (g) and 49 CFR 604, which state that recipients and subrecipients of FTA assistance may provide charter service for transportation projects that uses equipment or facilities acquired with Federal assistance authorized under the Federal transit laws (except as permitted by 49 CFR 604.2), or under 23 U.S.C. 133 or 142, only in compliance with those laws and FTA regulations, "Charter Service," 49 CFR part 604, the terms and conditions of which are incorporated herein by reference.

School Bus Requirements

Pursuant to 69 USC 5323(f) and 49 CFR 605, recipients and subrecipients of FTA assistance shall not engage in school bus operations exclusively for transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients shall not use federally funded equipment, vehicles or facilities.

Energy Conservation

Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

Clean Water

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

Lobbying

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of

State of Washington
Department of Transportation

{insert name of contract}
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Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

Access to Records and Reports

1. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a) 1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
2. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i) (11).

FTA does not require the inclusion of these requirements in subcontracts.

Federal Changes

Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

Clean Air

- 1) Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.
- 2) Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

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Contract Work Hours & Safety Standards Act

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph. (1) of this section, contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph. (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in paragraph. (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - the recipient shall upon its own action or upon written request of USDOL withhold or cause to be withheld, from any moneys payable on account of work performed by contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours & Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph. (2) of this section.

(4) Subcontracts - Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

No Government Obligation to Third Parties

(1) The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

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Program Fraud and False or Fraudulent Statements or Related Acts

(1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

(2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n) (1) on contractor, to the extent the US Government deems appropriate.

(3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Government Wide Debarment and Suspension (Non Procurement)

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractors, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by the recipient. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the recipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Contracts Involving Federal Privacy Act Requirements

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When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000) The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract: (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract. (2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

Civil Rights Requirements

The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 USC 2000d, Sec. 303 of the Age Discrimination Act (1975), as amended, 42 USC 6102, Sec. 202 of the Americans with Disabilities Act (1990), 42 USC 12132, and 49 USC 5332, contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age or disability. Contractor shall also comply with applicable Federal implementing regulations and other requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 USC 2000e, and 49 USC 5332, contractor shall comply with all applicable equal employment opportunity requirements of USDOL, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, USDOL," 41 CFR 60 et seq., (implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC 2000e), and any applicable Federal statutes, executive orders, regulations, and policies that may in the future affect construction activities undertaken in the course of the project. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, contractor shall comply with any implementing requirements FTA may issue.

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(b) Age - In accordance with Sec. 4 of the Age Discrimination in Employment Act (1967), as amended, 29 USC 623 and 49 USC 5332, contractor shall refrain from discrimination against present and prospective employees for reason of age. Contractor shall also comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with Sec. 102 of the Americans with Disabilities Act (ADA), as amended, 42 USC 12112, contractor shall comply with the requirements of US Equal Employment Opportunity Commission (EEOC), Regulations to Implement Equal Employment Provisions of the Americans with Disabilities Act, 29 CFR 1630, pertaining to employment of persons with disabilities. Contractor shall also comply with any implementing requirements FTA may issue.

(3) Contractor shall include these requirements in each subcontract financed in whole or in part with FTA assistance, modified only if necessary to identify the affected parties.

Transit Employee Protective Provisions

(1) Contractor shall comply with applicable transit employee protective requirements as follows:

(a) Transit Employee Protective Requirements for Projects Authorized by 49 USC 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with FTA assistance authorized by 49 USC 5311, the contractor shall comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program that is most current, and any alternative comparable arrangement specified by U.S. DOL for application to the project, in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, and any revision thereto. [New amendments to U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, were published at 73 Fed. Reg. 47046 et. Seq., August 13, 2008.]

(2) Contractor shall also include any applicable requirements in each subcontract involving transit operations financed in whole or in part with FTA assistance.

Disadvantaged Business Enterprise

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.

b. The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of

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this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. If a separate contract goal has been established, Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.

d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.

f. The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

Drug and Alcohol Abuse and Testing

The Contractor agrees to comply with the following Federal substance abuse regulations: a. Drug-Free Workplace. U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants)," 49 C.F.R. Part 32, that implements the Drug-Free Workplace Act of 1988, 41 U.S.C. §§ 701 et seq. b. Alcohol Misuse and Prohibited Drug Use. FTA Regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655, to the extent applicable.

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Access Requirements for Persons with Disabilities

Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

Notification of Federal Participation

To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

Interest of Members or Delegates to Congress

No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

Ineligible Contractors and Subcontractors

Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

Other Contract Requirements

To the extent not inconsistent with foregoing Federal requirements, this contract shall also include those standard clauses attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.

Compliance with Federal Regulations

Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not

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perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Access to Services for Persons with Limited English Proficiency

To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

Environmental Protections

Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

Federal Single Audit Requirements for State Administered Federally Aid Funded Projects Only

Non Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, Audits of States, Local Governments, and Non Profit Organizations. Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than \$750,000 in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in '3052.215(a), but records must be available for review or audit by appropriate officials of the Federal and State agencies.

CFDA number for the Federal Transportation Administration

A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by

State of Washington
Department of Transportation

{insert name of contract}
Contract # _____

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OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SFSAC by CFDA number, and inclusion of the prefix “ARRA” in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

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Schedule B

SCOPE OF WORK AND BUDGET

Scope of Work: To provide operating funding assistance for general public scheduled connecting rural intercity bus feeder service to existing unsubsidized intercity service providers. The rural intercity bus service will provide scheduled intercity connections to rural communities from Omak to Ellensburg with segments of unsubsidized intercity services operating from Seattle to Ritzville.

CONTRACTOR shall complete the following terms of the grant award prior to service initiation:

1. Finalize service schedule, including all time points and submit to WSDOT for written approval.

This task must be completed two weeks before service initiation.

2. Obtain and maintain necessary temporary or permanent certificate/authority from the Washington Utilities and Transportation Commission (WUTC), in order to provide service as described in the scope of work.

This task must be completed within one week of contract execution.

3. Develop communication protocols with transportation partners, including but not limited to Okanogan County Transportation & Nutrition, Link Transit, Amtrak, Northwestern Trailways, TranGo, Grant Transit Authority, and People for People to insure passenger transfers and other coordination activities are possible.

This task must be completed within two weeks of contract execution.

4. Obtain Sponsored Membership in the National Bus Traffic Association as a Greyhound Lines, Inc sponsored carrier before service begins in order to interline successfully with other carriers. More information can be found at: <http://www.bustraffic.org/>

This task must be completed within one week of contract execution.

5. Apply to Greyhound Lines, Inc to gain membership in their NBTS-National Bus Ticketing System or current system.

This task must be completed within one week of contract execution.

6. Obtain Federal Motor Carrier Safety Administration (FMCSA) authorization to enter into interlining agreements with Greyhound and other carriers connecting along the route. Because the Contractor will be connecting with an interstate carrier, they will fall under FMCSA authority and will be assigned a U.S. DOT number designating interstate authority.

This task must be completed within one week of contract execution.

7. Maintenance of Project Equipment to include:
 - Adopted and approved Asset Management Plan

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- Maintenance preventative and repair schedules for WSDOT provided coaches
- Maintenance of bus shelters to include cleaning schedule, waste collection, ground maintenance of bus stop locations, cleaning of graffiti from signs & shelters

Please provide this information for any vehicles used as part of the contract, including back-up vehicles, and those that may be used by a subcontractor if they are operating part of the schedule.

This task must be completed two weeks before service initiation.

8. Develop a basic marketing plan including the following elements:
 - a. Promotion of *Apple Line* branding identities (WSDOT reserves the right at its sole discretion to change the branded name of an individual bus route).
 - b. Strategy for partnering with other well-known service and information resources in and around the communities from Omak to Ellensburg.
 - c. Inventory of key information gatekeepers (those likely to have high interaction with intercity transportation user groups).
 - d. Inventory of organizations, agencies, or other entities who may be willing to pre-purchase ride passes on a routine basis.
 - e. Twelve-month marketing budget, including schedule of marketing activities and expenditures.
 - f. Provide how the service will offer bilingual support for service schedules and marketing materials.

This task must be completed three weeks before service initiation.

9. Develop and print service materials in addition to posting this information on a website. Provide schedule and route information and marketing materials to regional transportation partners.

This task must be completed three weeks before service initiation.

After service initiation, the selected Proposer must be willing to agree to the following tasks:

1. Following written approval from WSDOT, the Contractor shall initiate service within 5 business days of receiving WUTC authority for the route and sustain service delivery throughout the remaining contract period.
2. The CONTRACTOR shall provide safe, clean, reliable, courteous, accessible and professional transit services at all times during the contract period.
3. CONTRACTOR shall meet both the letter and spirit of the Americans with Disabilities Act (ADA) requirements. All vehicles offering service for this project must be wheelchair lift equipped, and the Contractor will ensure that each operator completes a

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pre-trip inspection sheet that includes cycling the wheelchair lift before the daily pullout of all revenue vehicles. Contractor is responsible for providing alternate transportation for a passenger when a lift fails.

4. The CONTRACTOR'S bus public address systems must be operational and utilized by the operator during revenue operation.
5. The CONTRACTOR shall arrange no less than two (2) project assessment meetings during the first Nine (9) months of service for the purpose of evaluating service performance and progress toward objectives. At a minimum, representatives from local transportation providers and WSDOT shall be invited to participate in the project assessment meetings. At the project assessment meetings, the CONTRACTOR shall provide the following information:
 - a. Projected versus actual ridership, revenue, and expenses.
 - b. Description of all completed, active, and planned marketing activities.
4. Submit invoices no later than 45 days after the reported service period has ended. Invoices must be accompanied by progress reports. Invoices must be submitted at least quarterly, and not more frequently than monthly.
5. Provide rider comment cards on buses and submit copies of comments received quarterly.
6. Conduct rider surveys on a bi-annual basis during the contract period. WSDOT will provide the survey mechanism and analysis of the data and share the results with the CONTRACTOR.