

**Contract Number KXXX**  
**for**  
**Retail Sales of Good to Go! Passes**

**between the**

**Washington State**  
**Department of Transportation**

**and**

**XXXXXXXX**

**Effective Date:**

**July \_\_, 2015**

**CONTRACT NUMBER Kxxxx**

**for**

***Good To Go! Pass Retail Sales***

This Contract (“Contract”) is entered into by and between the state of Washington, acting by and through the Department of Transportation, Toll Division (“WSDOT”), and xxxxxx a corporation licensed to conduct business in the state of Washington (“Retailer”), located at xxxxx for the purpose of providing retail sales and distribution of *Good To Go! Pass*.

Retailer submitted a timely and complete Application to sell *Good To Go! Passes* (Exhibit 1).

WSDOT evaluated Retailer’s application and has determined that Retailer meets the qualifications to sell *Good To Go! Passes*.

WSDOT has determined that entering into a Contract with Retailer will meet WSDOT’s needs and will be in WSDOT’s best interest.

NOW THEREFORE, pursuant to the authority under Chapter RCW 47.56, IN CONSIDERATION of the mutual promises as hereinafter set forth, the parties agree as follows:

**1. Definition of Terms**

The following terms as used throughout this Contract shall have the meanings set forth below.

“**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, all schedules and exhibits and all amendments hereto.

“**Department**” shall mean the same as WSDOT.

“**Effective Date**” shall mean the first date this Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this Contract.

“**Exhibit 1**” shall mean xxxxxx’s Application.

“**RCW**” shall mean the Revised Code of Washington.

“**Schedule A: Price List**” shall mean the attachment to this Contract that identifies the authorized Services and Prices available under this Contract.

“**Specifications**” shall mean the technical and other specifications set forth in the Application , Exhibit 1.

“**State of Washington**” Unless otherwise restricted, includes all members of the State of Washington, State Purchasing Cooperative including where applicable: State agencies, political subdivisions of Washington qualified non-profit corporations, institutions of

higher education (e.g., colleges, universities, community & technical colleges) who choose not to purchase independently under RCW 23.B.10.029.

“**Retailer**” shall mean xxxxxxxx, its employees and agents. Retailer 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 Retailer as permitted under the terms of this Contract.

**Retailer Account Manager**” shall mean a representative of Retailer who is assigned as the primary contact person whom the WSDOT Project Manager shall work with for the duration of this Contract and as further defined in the section titled **Retailer Account Manager**.

“**WSDOT**” shall mean the state of Washington, Department of Transportation, any division, section, office, unit or other entity of WSDOT or 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 Retailer concerning Retailer’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.

**2. Term**

The initial contract term is anticipated to be for one year commencing upon effective date. The Contract will allow WSDOT the option of up to four (4) additional one (1) year term.

**3. Pricing**

3.1. Retailer agrees to the initial purchase price and maximum retail sales price in Schedule A: Price list.

3.2. WSDOT may increase the Retailer Purchase Price for additional Passes as necessary to cover cost increases. Should WSDOT increase the Retailer Purchase Price, the Maximum Retail Sales Price for additional Passes will increase by an amount equal to the increase in Retailer’s Purchase Price.

**4. Taxes**

Retailer must pay all taxes as required by law including, but not limited to, applicable Sales Tax on sales of *Good to Go!* Passes, Washington Business and Occupation Tax, other taxes based on Retailer’s income or gross receipts, or personal property taxes levied or assessed on Retailer’s personal property.

**5. Invoice and Payment**

- 5.1. For the initial order, Retailer must purchase an initial order, of no less than 500, pre-packaged *Good To Go!* Passes paying for the passes and any shipping charges in advance.
- 5.2. For subsequent orders, the passes and any shipping charges must be paid for before the *Good To Go!* Passes will be shipped to the Retailer.
- 5.3. WSDOT may take up to 12 weeks to fulfill orders.

**6. Services Provided By the Retailer**

Retailer shall agree to sell the *Good To Go!* Passes for no more than the *Retailer Sales Price* identified in Exhibit A – Price List, before sales tax. They must accept all major forms of payment including credit, debit, cash, check and EBT. Conflicts shall be resolved in the **Order of Precedence set forth in Section 11 below.**

**7. Reporting**

- 7.1 Retailer shall submit weekly sales reports to WSDOT. Reports shall be delivered to the designated WSDOT Project Manager or their designee.
- 7.2 Retailer shall notify WSDOT of any change of sales locations 15 (fifteen) business days prior to making such change.

**8. Retailer Commitments, Warranties and Representations**

Any written commitment by Retailer within the scope of this Contract shall be binding upon Retailer. Failure of Retailer to fulfill such a commitment may constitute breach and shall render Retailer liable for damages under the terms of this Contract. For purposes of this section, a commitment by Retailer includes: (i) Prices, quantities, displays and advertising committed to; and (ii) any representation made by Retailer in its Application.

**9. Legal Notices**

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, to the parties at the addresses provided in this section.

**To Retailer at:**

**To WSDOT at:**

State of Washington

Department of Transportation

**Attn:**

**Attn: Jolena Missildine**

PO Box 47408

Olympia, WA 98504-7408

Phone:

Phone: (360) 705-xxxx8

E-mail:

E-mail: [missildj@wsdot.wa.gov](mailto:missildj@wsdot.wa.gov)

**10. WSDOT Project Manager**

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

Address: 401 2<sup>nd</sup> Avenue S, Suite 300, Seattle, WA 98104

Phone: 206.716.1116

Fax: 206.464.1189

E-mail:

[emily.pace@wsdot.wa.gov](mailto:emily.pace@wsdot.wa.gov)

**11. Retailer Account Manager**

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

Retailer Account Manager:

Address:

Phone:

E-mail:

**12. Section Headings, Incorporated Documents and Order of Precedence**

12.1. The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.

- 12.2. Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein.
- Schedule A
  - Application (Exhibit 1);
  - Any SOW entered into pursuant to this Contract;
  - The terms and conditions contained on WSDOT's purchase documents, if used; and
  - All Retailer or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Retailer made available to WSDOT as part of the application and contracting processes.
- 12.3. In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:
- Applicable federal and state statutes, laws, and regulations;
  - Sections of this Contract;
  - Schedule A;
  - Exhibit 1, Application;
  - The terms and conditions contained on WSDOT's order documents, if used; and
  - All Retailer or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Retailer made available to WSDOT as part of the application and contracting processes.

### **13. Entire Agreement**

This Contract and its attachments set forth the entire agreement between the parties with respect to the subject matter hereof and understandings, agreements, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, Price, quality, or Specifications of this Contract will be effective without the written consent of both parties.

### **14. Authority for Modifications and Amendments**

No modification, amendment, alteration, addition, or waiver of any section or condition of this Contract shall be effective or binding unless it is in writing and signed by WSDOT and Retailer Contracting Officers. Only WSDOT Contract Administrator shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this Contract or SOW on behalf of WSDOT.

**15. Independent Status of Retailer**

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners 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. Retailer 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.

**16. Governing Law**

This Contract shall be governed in all respects by the law and statutes of the state of Washington. The jurisdiction for any action hereunder shall be exclusively in the Superior Court for the state of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.

**17. Publicity**

- 17.1. The award of this Contract to Retailer is not in any way an endorsement of Retailer or Retailer's Services by WSDOT or *Good To Go!* and shall not be so construed by Retailer in any advertising or other publicity materials.
- 17.2. Retailer agrees to submit to WSDOT for approval, all advertising, sales promotion, and other publicity materials relating to this Contract and Services furnished by Retailer wherein WSDOT and/or *Good To Go!*'s name is mentioned. Retailer 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.
- 17.3 Retailer agrees to produce and display *Good To Go!* point of purchase materials in the store(s) for the duration of the Contract. Retailers must include information about the *Good To Go!* Program in customer communication vehicles at least two (2) times throughout the six (6)-month period.

**18. Records Retention and Right of Inspection**

- 18.1 Retailer shall retain all business records related to this Contract for a period of six (6) years following the date of Termination. At no additional cost, these records, including materials generated under the Contract shall be subject at all reasonable times to inspection, review or audit by WSDOT, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved

18.2 Retailer shall provide right of access to its facilities to WSDOT, or any of WSDOT's officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

**19. Indemnification and Hold Save Harmless**

Retailer shall defend, indemnify, and save WSDOT harmless from and against any claims, including reasonable attorneys' fees resulting from such claims, by third parties for any or all injuries to persons or damage to property of such third parties arising from acts or omissions of Retailer, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents. Retailer's obligation to defend, indemnify, and save WSDOT harmless shall not be eliminated or reduced by any alleged concurrent WSDOT negligence. This section survives termination of this Contract.

**20. Compliance with Civil Rights Laws**

During the performance of this Contract, Retailer shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. §12101 et seq.; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Retailer's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled, or terminated in whole or in part under the Termination for Default sections, and Retailer may be declared ineligible for further contracts with WSDOT.

**21. Severability**

If any term or condition of this Contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Contract are declared severable.

**22. 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. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written instrument signed by the parties.

**23. Termination for Default**

23.1. If either WSDOT or Retailer violates any material term or condition of this Contract or fails to fulfill its obligations under this Contract in a timely and proper manner, then the aggrieved party shall give the other party written notice of such failure or violation. The responsible party will correct the violation or failure within *thirty (30) calendar days* or as otherwise mutually agreed in writing. If the failure or violation is not corrected, this Contract may be terminated immediately

by written notice from the aggrieved party to the other party. The option to terminate shall be at the sole discretion of the aggrieved party. WSDOT reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Retailer from incurring additional obligations of funds during investigation of any alleged Retailer compliance breach and pending corrective action by Retailer or a decision by WSDOT to terminate the Contract.

- 23.2. In the event of termination of this Contract by WSDOT due to Retailer breach, default or negligence, Retailer shall be liable for all damages, including, but not limited to: (i) all administrative costs directly related to the cancelation and replacement of this Contract advertising, applicable fees, charges or penalties, staff time costs; and, (ii) any other costs to WSDOT resulting from Retailer's default, breach or negligence. WSDOT shall have the right to deduct from any monies due to Retailer, or that thereafter become due, an amount for damages that Retailer will owe WSDOT for Retailer's default, breach or negligence.
- 23.3. If the Failure to Perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a **Termination for Convenience**.
- 23.4. This section shall not apply to any failure(s) to perform that results from the willful or negligent acts or omissions of the aggrieved party.

#### **24. Termination for Convenience**

Either party may terminate this Contract by *fourteen (14) calendar days* written notice to other party. Within seven (7) days of the notice of termination, retailer must provide WSDOT with a final sales report and return all unsold Good To Go! Passes for a refund at the price Retailer paid for the passes.

#### **25. Return of Merchandise**

- 25.1. Retailer must allow customers to return unopened *Good To Go!* Passes in accordance with their return/refund policies. If a Retailer has return/refund policies where a customer could return an unopened *Good To Go!* Pass without receiving a refund of the entire purchase price, Retailer must provide WSDOT with a copy of the applicable policies prior to those policies taking effect as to the sale of *Good To Go!* Passes.
- 25.2. Retailer must notify customers that opened/inoperable *Good To Go!* Passes purchased are to be taken to a *Good To Go!* Customer Service Center for replacement during the warranty period of 90 days. The date on the purchase receipt will be used to determine the start date of the warranty period.
- 25.3. Retailer may request that WSDOT buy back unsold *Good To Go!* Passes at Retailer's original purchase price. Except upon Contract termination under Section 23 of this contract, WSDOT is under no obligation to repurchase *Good To*

