

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Penalty Assessment
Against

2C CAPTAINS, INC. DBA LET'S
TOUR SEATTLE

In the Amount of \$7,900

DOCKET TE-131923

SETTLEMENT AGREEMENT

1 This settlement agreement (Agreement) is entered into by both parties to this proceeding for the purpose of resolving all issues raised in the above docket.

I. PARTIES

2 The parties to this Agreement are 2C Captains, Inc. d/b/a Let's Tour Seattle ("2C Captains" or "Company"), and the Staff of the Washington Utilities and Transportation Commission ("Staff") (collectively, "the Parties").

II. RECITALS

3 2C Captains is a passenger transportation company regulated by the Washington Utilities and Transportation Commission (Commission). Staff conducted a compliance review of 2C Captains' operations in September 2013. Subsequently, and based on the findings in the compliance review, the Commission issued a penalty assessment against 2C Captains in the amount of \$7,900 for violations of Washington Administrative Code (WAC)

480-30-221, which requires passenger transportation companies to comply with Title 49, Code of Federal Regulations (CFR), and specifically 49 CFR Parts 391, related to qualifications of drivers, and 49 CFR Part 396, related to inspection, repair, and maintenance. 2C Captains requested a hearing on mitigation of the penalty on October 30, 2013, setting forth reasons for mitigation. Staff filed a letter opposing mitigation of the penalty on November 11, 2013. The Commission set the matter for hearing on December 11, 2013.

4 The Parties entered into a settlement discussion. The Parties reached an agreement in principle and informed the Commission of their settlement on December 5, 2013. The settlement is memorialized in this Agreement.

III. AGREEMENT

5 The Parties have reached agreement on the issues raised in the above docket and present their agreement for the Commission's consideration and approval. The Parties therefore adopt the following Agreement, which the Parties enter into voluntarily, to resolve the matters in dispute between them and to expedite the orderly disposition of this proceeding.

6 2C Captains admits 79 violations of the following Commission rule and federal regulations: WAC 480-30-221, 49 CFR 391.45(b)(1), 49 CFR Part 396.3(b), 49 CFR Part 396.11(a) and 49 CFR Part 396.17(a) as set forth in the penalty assessment.

7 The Parties agree that 2C Captains will pay to the Commission a penalty of \$2,500, with a \$5,400 penalty suspended and subject to waiver on the conditions that (1) the Company is found in full compliance with the regulations set out in the preceding paragraph

at the next compliance review, and (2) the Company achieves a Satisfactory Safety Rating in the compliance review. These conditions are further described in Paragraph 9, below.

8 The Parties agree that 2C Captains will pay the \$2,500 penalty over six months, in five monthly installments of \$400, and a final installment of \$500. Each installment shall be due on the first day of the month, with the initial installment due on the first day of the month following Commission approval of this Agreement. If 2C Captains fails to pay any of the payments as outlined in the agreement, the remaining penalty amount shall be due and payable immediately.

9 The Parties agree that Staff will conduct a full compliance review of 2C Captains in April 2014, covering six months of operations from the date of the last compliance review, which will include a review of the regulations at issue in this matter, namely: 49 CFR 391.45(b)(1), 49 CFR Part 396.3(b), 49 CFR Part 396.11(a) and 49 CFR Part 396.17(a). Upon completion of the compliance review, Staff will recommend, by a filing in this docket, that the Commission waive the suspended penalty if the compliance review (1) shows the Company in full compliance with these regulations, and (2) results in a “Satisfactory” Safety Rating. If these conditions are not met, Staff will recommend that the Commission impose the suspended penalty.

IV. GENERAL PROVISIONS

10 The Parties agree that this Agreement is in the public interest. The Parties further agree that this Agreement reflects the settlement of all contested issues between them in this proceeding. The Parties understand that this Agreement—including the admissions contained herein—is not binding unless and until accepted by the Commission. If the Commission does not accept this Agreement, including all of its terms and conditions

without change, then the Parties shall be free to assert their pre-settlement positions and agree that neither this Agreement nor any statements or admissions contained herein shall be admissible or used for any purpose in this docket or any other proceeding for any purpose.

11 The Parties agree to cooperate in submitting this Agreement promptly to the Commission for acceptance. The Parties agree to support adoption of this Agreement in proceedings before the Commission. No party to this Agreement or its agents, employees, consultants, or attorneys will engage in advocacy contrary to the Commission's adoption of this Agreement.

12 The Parties agree (1) to provide each other the right to review in advance of publication any and all announcements or news releases that the other party intends to make about the Agreement (with the right of review to include a reasonable opportunity to request changes to the text of such announcements) and (2) to include in any news release or announcement a statement that the Staff's recommendation to approve the settlement is not binding on the Commission itself.

13 Nothing in this Agreement shall limit or bar any other entity from pursuing legal remedies against 2C Captains or 2C Captains' ability to assert defenses to such claims.

14 The Parties have entered into this Agreement to avoid further expense, inconvenience, uncertainty, and delay. The Parties recognize that this Agreement represents a compromise of the Parties' positions. As such, conduct, statements, and documents disclosed during negotiations of this Agreement shall not be admissible as evidence in this or any other proceeding, except in any proceeding to enforce the terms of this Agreement or any Commission order fully adopting those terms. This Agreement shall not be construed against either party because it was a drafter of this Agreement.

15 By executing this Agreement, no Party shall be deemed to have approved, admitted, or consented to the facts, principles, methods, or theories employed in arriving at the terms of this Agreement, nor shall any Party be deemed to have agreed that any provision of this Agreement is appropriate for resolving issues in any other proceeding, except to the extent expressly set forth in the Agreement.

16 The Parties have negotiated this Agreement as an integrated document to be effective upon execution. This Agreement supersedes all prior oral and written agreements on issues addressed herein. Accordingly, the Parties recommend that the Commission adopt this Agreement in its entirety.

17 The Parties may execute this Agreement in counterparts and as executed shall constitute one agreement. A signed signature page sent by facsimile or email is as effective as an original document.

18 The Parties shall take all actions necessary as appropriate to carry out this Agreement.

19 In the event that the Commission rejects all or any portion of this Agreement, or accepts the settlement upon conditions not proposed in this Agreement, each party reserves the right to withdraw from this Agreement by written notice to the other party and the Commission. Written notice must be served within 10 business days of the Order rejecting part or all of this Agreement or imposing conditions not proposed in this Agreement. In such event, neither party will be bound or prejudiced by the terms of this Agreement, and

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the Parties agree to request the prompt reconvening of a prehearing conference and to cooperate in developing a procedural schedule.

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

**2C CAPTAINS, INC. D/B/A LET'S
TOUR SEATTLE**

ROBERT W. FERGUSON
Attorney General



MICHAEL A. FASSIO
Assistant Attorney General
Counsel for the Washington Utilities and
Transportation Commission

Dated: December 30, 2013.



CHARLES RUSSELL
Owner
2C Captains, Inc. d/b/a Let's Tour Seattle

Dated: 23 Dec, 2013.