

For City of Yakima Use Only:	
Project No.	
BID No.	11615-P

**ELLENSBURG-YAKIMA COMMUTER SERVICE CONTRACT**

**THIS ELLENSBURG-YAKIMA COMMUTER SERVICE CONTRACT** (hereinafter “Contract”) is made and entered into by and between the **City of Yakima**, a Washington municipal corporation (hereinafter “City”), and **TDM, Inc. DBA A&A Motorcoach** authorized by the Washington State Utilities and Transportation Commission under an approved UTC License/Exemption to provide transportation services in the Yakima to Ellensburg Corridor (hereinafter “Contractor”).

**WHEREAS**, Yakima Transit has determined that City of Yakima residents need public transportation services to the City of Ellensburg for education and employment; and, that residents of the City of Ellensburg need public transportation services to the City of Yakima for education, medical/health, shopping, and employment.

**WHEREAS**, the City applied for funding through the Washington State Department of Transportation’s (WSDOT) Consolidated Grant Program for the needed services.

**WHEREAS**, the funding was awarded to the City of Yakima in order to comply with Washington State statutes that the service is required to be provided by a provider other than the City of Yakima. The City of Yakima acts as a grant recipient overseeing the program and providing funding support for the program.

**WHEREAS**, the grant award and contract are a mutual benefit to both parties and in the best interest to the City of Yakima.

**WHEREAS**, Through the Request for Proposal Process, it has been determined that the Contractor has the experience and expertise necessary to perform the services.

**NOW, THEREFORE**, in consideration of the mutual covenants, promises, and agreements set forth herein, it is agreed by and between the City and Contractor as follows:

- 1. Term.** This Agreement shall commence on September 1, 2016, when the Washington State Utilities and Transportation Commission (WUTC) provides certification of forbearance, and shall terminate June 30, 2017. The city may exercise an option to renew this agreement for up to three additional grant-cycle biennium (July 1, 2017 – June 30, 2019; July 1, 2019 – June 30, 2021; and, July 1, 2021 – June 30, 2023), unless terminated earlier by either party in accordance with **Section 37** of this Agreement. Term shall be based on the grant cycle with optional 2-year extensions, for the next three grant cycles. Extensions shall be contingent upon funding. Funding for each grant cycle isn’t determined until February or March, just before the next grant cycle starts.

September 1, 2016 – June 30, 2017 (one year, ends the current grant cycle)

July 1, 2017 – June 30, 2019 (two years)

July 1, 2019 – June 30, 2021 (two years)

July 1, 2021 – June 30, 2023 (two years)



**2. Scope of Services.** Contractor shall provide the City with commuter bus services between the cities of Yakima and Ellensburg Monday - Friday with seven round trips during the season and six round trips during the off-season (see **Attachment B** - Ellensburg-Yakima Commuter Service Schedule). The drivers are expected to stop at every bus stop utilizing the time points established in the Bus Book Bus Schedule. The schedule is anticipated to change each season based on service needs, the ability to meet the time points, funding partner's needs, and other factors.

The days of operation required under this contract include every day of the weekday. Service shall not be provided on nationally recognized holidays. Service shall also be reduced when school is not in session at Central Washington University. Dates and scheduling is established in **Attachment B** and shall be adjusted throughout the year to match Central Washington's school schedule.

In order to maintain the reliability of the program, Contractor shall maintain a daily contingency plan in the event that a driver is sick or not able to drive and have additional vehicles with the appropriate capacity available in case of breakdowns, repairs, or needed maintenance.

The scope of services may be modified by mutual written agreement of the parties.

**3. Compensation.**

A. Compensation for Services. As consideration for the services performed pursuant to this Agreement, the City agrees to compensate Contractor at the rate of **\$92.50** per vehicle revenue hour for services provided. In no event shall the City pay for services that exceed hours scheduled in **Attachment B**.

B. Payment for Compensation. Contractor shall provide the City with an itemized invoice/billing no later than thirty (30) calendar days from the end of each month. In the event of a dispute between the parties with regard to this issue, either party may pursue damages or compensation owed, and the provisions of Section 37B shall apply.

The City shall make payment to Contractor within twenty (20) calendar days upon receipt of each invoice/billing. In the event the City believes that the services provided by Contractor do not conform to its obligations under this Contract, the City may provide Notice of Default pursuant to Section 37B herein.

C. Payment in the Event of Termination. In the event that either party terminates this Agreement pursuant to Section 37, Contractor shall be compensated for services provided under this Agreement up to the effective termination date and time.

**4. Price Increases.** If requested by the Contractor in writing, no later than February 28<sup>th</sup> prior to the end of each biennium, the City will consider increasing the Contractor's trip rates per the Seattle-Tacoma-Bremerton Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) 12-month year over year period ending June 30 of the year of the request. The City, in its sole discretion, will decide whether to approve or deny the rate increase request or any part thereof. Price increases for any other justifiable reason will be considered on a case-by-case basis. Price increase requests will not be considered or granted until any outstanding reports have been submitted to the City. If approved, a rate increase shall take effect at the start of the next biennium.

**5. Passenger Payments.**

A. Fares. Fares shall be charged to each individual using the service. The fare to be charged shall be \$5.00 for each one-way trip (\$10.00 round trip). **Children under age 6 ride free with a fare-paying adult.** No fare changes will be made unless expressly agreed to, in writing, by the City and Contractor. No



passengers shall be entitled to a free trip without prior approval from the City of Yakima based on circumstances that warrants a courtesy trip.

B. Monthly Passes. Passengers may purchase a monthly pass, which shall act as payment for services provided from other established vendors. No monthly passes shall be sold on the buses or by the drivers or Contractor.

C. Service in Yakima. Passengers may use the commuter service within the Yakima Area (between the Firing Center P&R and the Yakima Airport) at a reduced fare when not headed to Ellensburg. The cost for that fare is \$1.00 for commuter services provided between the Yakima Airport and the Firing Center P&R.

D. Fares. Drivers shall collect fares using Yakima Transit fare boxes.

**6. Revenue Service Vehicles.**

A. The Contractor shall provide ADA accessible vehicles appropriate for the service being provided that can operate adequately in the terrain and during extreme weather conditions consistent with the Yakima Valley and meet the passenger demands up to 50 passengers during the peak schedule and up to 15 passengers during the off-peak schedule (*See Attachment B*).

B. All vehicle in operation must be able to accept installation of cameras along with GIS/GPS and Wi-Fi equipment to allow for the vehicle to be tracked on the City of Yakima's GIS website. Contractor shall allow reasonable access to install, repair, or replace this type of equipment and collect related data.

C. Contractor shall maintain, secure, and utilize Yakima Transit's fare collection equipment in their vehicles. This includes not only fare boxes, but also passenger counter devices that might be installed.

**7. Marketing.** The City of Yakima shall be responsible for marketing the service. Contractor shall provide reasonable responses to the public.

**8. Reporting Requirements.** The monthly invoice submitted by the Contractor must be accompanied by progress reports for the period detailing actual vehicle miles, actual vehicle revenue miles, actual vehicle hours, actual vehicle revenue hours, unlinked passenger trips, and passenger miles traveled to provide the service rendered in performance of the contract broken down for each month. All necessary reporting must be submitted to Yakima Transit with any invoice or request for payment. Any deviation from this requirement must be specifically approved in writing by Yakima Transit's Manager in advance. Invoices will not be paid until this information has not been submitted to the City of Yakima. The information submitted needs to fully and accurately represent the service. Reporting shall consist of every boarding and deboarding at each stop. As an express commuter service, no stops are authorized other than the ones listed in the schedule *Attachment B-1*.

**9. Coordination of the Work.** The City designates the Transit Manager or a designee as its representative authorized to act on its behalf in the direction of the work under this Agreement. Contractor designates their President or a designee as its representative authorized to act on its behalf in the direction of the work under this Agreement. This authority of the designated official does not extend to issuing directives outside the scope of, or contradictory, to the provisions of this Agreement. Said representative shall have full authority to direct all affairs in respect to the work performed under this Agreement. Any designation beyond those specifically stated herein to act on the authority of either party shall be in writing provided to the other party and revoked in the same manner.



**10. Independent Contractor Status of Contractor.** Contractor and the City understand and expressly agree that Contractor and its employees are independent contractors in the performance of each and every part of this Agreement. Contractor, as an independent contractor, assumes the entire responsibility for carrying out and accomplishing the services required under this Agreement. Additionally, and as an independent contractor, Contractor and its employees shall make no claim of City employment nor make any claim against the City for any related employment benefits, social security, retirement benefits or benefits of any kind that are normally an incident of employment. Nothing contained herein shall be interpreted as creating a relationship of servant, employee, partnership, or agency between Contractor or any officer, employee, or agent of Contractor and the City.

**11. Taxes and Assessments.** Contractor shall be solely responsible for compensating its employees and for paying all related taxes, deductions, and assessments, including but not limited to, federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Agreement.

**12. Federal Requirements and Changes.** The Contractor shall at all times comply with all applicable Federal Transit Administration (FTA) regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement (Form FTA MA-21 dated October 1, 2014) between Yakima Transit and FTA, as they may be amended or promulgated from time to time during the term of this Agreement as well as the terms and conditions of the grant agreement (GCB 2078) between Yakima Transit and WSDOT. The Contractor's failure to so comply shall constitute a material breach of this Agreement.

**13. Indemnification and Hold Harmless.**

A. Contractor agrees to protect, defend, indemnify, exonerate, and hold harmless the City, its elected officials, agents, officers, employees from any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings and all judgments, awards, costs and expenses (including attorneys' fees and disbursements) resulting from Contractor's performance and/or nonperformance of this Agreement.

B. In the event both the Contractor and the City are negligent, the Contractor's liability for indemnification of the City shall be limited to the contributory negligence for any resulting suits, actions, claims, liability, damages, judgments, costs, and expenses (including reasonable attorney's fees) that can be apportioned to the Contractor, its officers, employees, agents, and/or subcontractors.

C. Nothing contained in this Section or this Agreement shall be construed to create a liability or a right of indemnification in any third party.

**14. Commercial Liability Insurance.**

Contractors Liability Insurance: The contractor shall obtain and maintain in full force and effect during the term of the contract, commercial general liability coverage with insurance carriers admitted to do business in the State of Washington. The insurance companies must carry a Best's Rating of A- VII or better. At all times during the life of this contract, Contractor agrees to maintain, on a primary and non-contributory basis and at its sole expense, the insurance coverages, limits, and endorsements noted below. All such insurance shall not be subject to any deductible or self-insured retention (SIR). There shall be no cancellation, material change, reduction in limits or intent not to renew the insurance coverage(s) without 30 days written notice from the contractor or its insurer(s) to the City Yakima. The requirements contained herein, as well as the City of Yakima's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this contract. The policies will be written on an occurrence basis, subject to the following **minimum** limits of liability:

11615-P Yakima-Ellensburg Commuter Services



<u>Commercial General Liability:</u>	Combined Single Limit:	\$1,000,000 Per Occurrence
		\$2,000,000 Annual Aggregate
<u>Commercial Auto Liability:</u>	Combined Single Limit:	\$1,000,000 Per Occurrence
<u>Umbrella:</u>		\$12,000,000

The City of Yakima, its agents, employees, authorized volunteers, elected and appointed officials are included as Primary/Non-Contributory additional insureds.

If Contractor carries higher coverage limits, such limits shall be shown on the Certificate of Insurance and Endorsements and City of Yakima shall be named as an additional insured for such higher limits.

The Contractors' insurance coverage shall be primary insurance as respects those who are Additional Insureds under this agreement. Any private insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Contractor's insurance and shall not contribute to it.

The contractor will provide a Certificate of Insurance to the City as evidence of coverage. A copy of the additional insured endorsement attached to the policy will be included with the certificate. This Certificate of insurance shall be provided to the Purchasing Manager, prior to commencement of this work.

If at any time during the life of the contract or any extension, the contractor fails to maintain the required insurance in full force and effect, all work under the contract shall be discontinued immediately. Any failure to maintain the required insurance will be considered an inability to perform the work and will be sufficient cause for the City to terminate the contract.

The contractor shall also maintain workers compensation through the State of Washington.

Contractor's Waiver of Employer's Immunity under Title 51 RCW. Contractor intends that its indemnification, defense, and hold harmless obligations set forth above shall operate with full effect regardless of any provision to the contrary in Title 51 RCW, Washington's Industrial Insurance Act. Accordingly, to the extent necessary to fully satisfy the Contractor's indemnification, defense, and hold harmless obligations set forth above. Contractor specifically waives any immunity granted under Title 51 RCW, and specifically assumes all potential liability for actions brought by employees of the Contractor against the City and its officers, employees, agents, and volunteers. The parties have mutually negotiated this waiver. Contractor shall similarly require that its subcontractors, and anyone directly or indirectly employed or hired by Contractor, and anyone for whose acts Contractor may be liable in connection with its performance of this Agreement to comply with the terms of this paragraph, waive any immunity granted under Title 51 RCW, and assume all potential liability for actions brought their respective employees. The provisions of this section shall survive the expiration or termination of this Agreement.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence.

**15. Delegation of Professional Services.** The services provided for herein shall be performed by Contractor, and no person other than regular associates or employees of Contractor shall be engaged upon such work or services except upon prior written consent of the City, which consent shall not be unreasonably withheld, and except for incidental transit services for unmet demand.



**16. Property Rights.** All information concerning the City and said project, which is not otherwise a matter of public record or required by law to be made public, is confidential, and the Contractor will not, in whole or part, now or at any time disclose that information without the express written consent of the City.

**17. Contract Documents.**

The **minimum** services that the Contractor will provide include services described in Section V. of the RFP, which is incorporated herein by this reference. The services are included within the base fee.

A. The rights granted under this Agreement, which includes Attachments A-C, include the terms, conditions, covenants and representations contained in the following documents, all of which are incorporated herein by reference as though fully set forth:

- a. All Federal terms and conditions;
- b. The RFP, together with all exhibits, addenda and amendments thereto;
- c. Contractor's Proposal and all accompanying exhibits submitted therewith by Contractor's response to the RFP; and
- d. This Agreement and the documents referenced in this Paragraph shall be construed consistently with each other in order to best effectuate the intent of the Owner and Contractor as set forth in this Agreement.

In case of conflict or ambiguity, the documents shall have the following priority for the purpose of interpreting the terms, covenants, conditions, or duties therein: Federal Terms and Conditions, this Agreement, the Proposal accepted by the Owner, and the RFP. The parties acknowledge that there are no other representations, agreements, or conditions not specifically referred to or set forth in the foregoing documents which are a part of this Agreement. These Contract Documents are on file in the Office of the Purchasing Manager, 129 N. 2nd St., Yakima, Washington, 98901.

**18. General Compliance Assurance.**

The CONTRACTOR agrees to give reasonable guarantees that it and its subcontractors, lessees, and any third-party contractors under this AGREEMENT, will comply with all requirements imposed by, or pursuant to, 49 U.S.C. Ch. 53 and other applicable Federal regulations. The CONTRACTOR agrees to comply with the provisions of 49 CFR Part 18 or 49 CFR Part 19 or FAR, 48 CFR Chapter 1, subpart 31 whichever is applicable, and cost principles as defined in OMB circulars 2 CFR Part 200, A-87 and A-122. The CONTRACTOR agrees to comply with all instructions as prescribed in WSDOT's Guide to Managing Your Public Transportation Grant, and any amendments thereto. The CONTRACTOR agrees that the United States, any agency thereof, WSDOT and any of WSDOT's representatives, have not only the right to monitor the compliance of the CONTRACTOR with the provisions of this Assurance, but also have the right to seek judicial enforcement with regard to any matter arising under Federal transit laws and regulations, and this Assurance.

**19. Procurement**

The CONTRACTOR shall make purchases of any incidental goods or supplies essential to this AGREEMENT through procurement procedures approved in advance by CITY OF YAKIMA and consistent with the following provisions:

A. General Procurement Requirements. The CONTRACTOR shall comply with third-party procurement requirements of 49 U.S.C. Ch. 53 and other applicable Federal laws in effect now or as subsequently enacted; with the United States Department of Transportation (U.S. DOT) third-party procurement regulations of 49 CFR § 18.36 or 49 CFR § 19.40 through 19.48 and other applicable Federal regulations pertaining to third-party procurements and subsequent amendments thereto. The CONTRACTOR shall also



comply with the provisions of FTA Circular 4220.1F, "Third Party Contracting Guidance," November 1, 2008, and any later revision thereto, except to the extent FTA determines otherwise in writing, which by this reference are incorporated herein; and any reference therein to "Grantee" shall mean CONTRACTOR.

B. Full and Open Competition. In accordance with 49 USC § 5325(a), the CONTRACTOR agrees to conduct all procurement transactions in a manner that provides full and open competition as determined by FTA.

C. Preference for United States Products and Services. To the extent applicable, the CONTRACTOR agrees to comply with the following U.S. preference requirements:

- a. Buy America. The CONTRACTOR agrees to comply with 49 USC § 5323(j), with FTA regulations, "Buy America Requirements," 49 CFR Part 661, and any later amendments thereto.
- b. Cargo Preference—Use of United States-Flag Vessels. The CONTRACTOR agrees to comply with 46 USC § 55305 and U.S. Maritime Administration regulations, "Cargo Preference—U.S.-Flag Vessels," 46 CFR Part 381, to the extent those regulations apply to the Project.
- c. Fly America. The CONTRACTOR understands and agrees that the Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent service by U.S.-flag air carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 USC § 40118, and with U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 CFR §§ 301-10.131 through 301-10.143.

D. Preference for Recycled Products. To the extent applicable, The CONTRACTOR agrees to comply with U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials", 40 CFR Part 247, which implements section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended, 42 USC § 6962. Accordingly, the CONTRACTOR agrees to provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient, except to the extent that the Federal Government determines otherwise in writing.

E. Geographic Restrictions. The CONTRACTOR agrees to not use any state or local geographic preference, except those expressly mandated or encouraged by federal statute or as permitted by FTA.

F. Government Orders. In case any lawful government authority shall make any order with respect to the Project or Project Equipment, or any part thereof, or the PARTIES hereto or either PARTY, the CONTRACTOR shall cooperate with CITY OF YAKIMA in carrying out such order and will arrange its operation and business so as to enable CITY OF YAKIMA to comply with the terms of the order.

## 20. Charter Service Operations

The CONTRACTOR agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 USC chapter 53 or under 23 USC §§ 133 or 142, will engage in charter service operations without first notifying its WSDOT project manager in writing of its intent, and learning the reporting requirements, exceptions, exemptions, and potential violations related to the specific funding source(s) of the subject AGREEMENT. Subsequent to coordination with WSDOT, CONTRACTOR agrees that it shall not engage in charter service operations, except as authorized by 49 USC § 5323(d) and FTA regulations, "Charter Service," 49 CFR Part 604, and any Charter Service regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in



writing. The Charter Service Agreement the CONTRACTOR has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. If the CONTRACTOR has failed to select the Charter Service Agreement in its latest annual Certifications and Assurances to FTA and does conduct charter service operations prohibited by FTA's Charter Service regulations, the CONTRACTOR understands and agrees that: (1) the requirements of FTA's Charter Service regulations and any amendments thereto will apply to any charter service it or its subrecipients, lessees, third-party contractors, or other participants in the Project provide; (2) the definitions of FTA's Charter Service regulations will apply to the CONTRACTOR's charter operations, and (3) a pattern of violations of FTA's Charter Service regulations may require corrective measures and imposition of remedies, including barring the CONTRACTOR, subrecipient, lessee, third-party contractor, or other participant in the Project operating public transportation under the Project from receiving Federal financial assistance from FTA, or withholding an amount of Federal assistance as set forth in Appendix D to FTA's Charter Service regulations.

**21. School Bus Operations**

The CONTRACTOR agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 USC chapter 53 or under 23 USC §§ 133 or 142, will engage in school transportation operations for the transportation of students or school personnel exclusively in competition with private school transportation operators, except as authorized by 49 USC §§ 5323(f) or (g), as applicable, and FTA regulations, "School Bus Operations," 49 CFR Part 605 to the extent consistent with 49 USC §§ 5323(f) or (g), in accordance with any School Transportation Operations regulations or FTA directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing. The School Transportation Operations Agreement the CONTRACTOR has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. If the CONTRACTOR has failed to select the School Transportation Operations Agreement in its latest annual Certifications and Assurances to FTA and does conduct school transportation operations prohibited by FTA's School Bus Operations regulations, 49 CFR Part 605, to the extent those regulations are consistent with 49 USC §§ 5323(f) or (g), the CONTRACTOR understands and agrees that: (1) the requirements of FTA's School Bus Operations regulations, 49 CFR Part 605, to the extent consistent with 49 USC §§ 5323(f) or (g), will apply to any school transportation service it or its subrecipients, lessees, third-party contractors, or other participants in the project provide, (2) the definitions of FTA's School Bus Operations regulations will apply to the CONTRACTOR's school transportation operations, and (3) if there is a violation of FTA's School Bus Operations regulations to the extent consistent with 49 USC §§ 5323(f) or (g), FTA will bar the CONTRACTOR, subrecipient, lessee, third-party contractor, or other Project participant operating public transportation that has violated FTA's School Bus Operations regulations, 49 CFR Part 605, to the extent consistent with 49 USC §§ 5323(f) or (g), from receiving Federal transit assistance in an amount FTA considers appropriate and FTA may require remedial measures as FTA considers appropriate, in addition to barring a subrecipient from receiving further transit funds.

**22. Incorporation of Federal Terms**

A. Purchasing. This AGREEMENT's provisions include, in part, certain Standard Terms and Conditions required by FTA, whether or not expressly set forth herein. 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 AGREEMENT. The CONTRACTOR shall not perform any act, fail to perform any



act, or refuse to comply with any CITY OF YAKIMA request, which would cause CITY OF YAKIMA to be in violation of any FTA term or condition.

B. Federal Changes. The CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, whether or not they are referenced in this AGREEMENT and include any amendments promulgated by the FTA, during the term of this AGREEMENT. The CONTRACTOR's failure to so comply shall constitute a material breach of this AGREEMENT.

**23. No Obligation by the Federal Government**

A. CITY OF YAKIMA and the CONTRACTOR acknowledge and agree that regardless of any concurrence or approval by the Federal Government of the solicitation or award of this AGREEMENT, the Federal Government is not a party to this AGREEMENT unless it provides its express written consent. The Federal Government shall not be subject to any obligations or liabilities to the CONTRACTOR, subcontractor, lessee, or any other participant at any tier of the project (whether or not a PARTY to this AGREEMENT) pertaining to any matter resulting from this AGREEMENT.

B. No contract between the CONTRACTOR and its subcontractors, lessees, or any other participant at any tier of the project shall create any obligation or liability of CITY OF YAKIMA with regard to this AGREEMENT without CITY OF YAKIMA's specific written consent, notwithstanding its concurrence in, or approval of, the award of any contract or subcontract or the solicitations thereof. The CONTRACTOR hereby agrees to include this provision in all contracts it enters into for the employment of any individuals, procurement of any materials, or the performance of any work to be accomplished under this AGREEMENT.

**24. Personal Liability of Public Officers**

No officer or employee of CITY OF YAKIMA shall be personally liable for any acts or failure to act in connection with this AGREEMENT, it being understood that in such matters they are acting solely as agents of CITY OF YAKIMA.

**25. Ethics**

A. Code of Ethics. The CONTRACTOR agrees to maintain a written code or standards of conduct that shall govern the performance of its officers, employees, board members, or agents engaged in the award and administration of contracts, subagreements, leases, third-party contracts, or other arrangements supported by federal assistance. The code or standards shall provide that the CONTRACTOR's officers, employees, board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from any present or potential subcontractor, lessee, sub-recipient, or participant at any tier of the Project, or agent thereof. The CONTRACTOR may set *de Minimis* rules where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. These codes or standards shall prohibit the CONTRACTOR's officers, employees, board members, or agents from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain. As permitted by state or local law or regulations, such code or standards shall include penalties, sanctions, or other disciplinary actions for violations by the CONTRACTOR's officers, employees, board members, or agents, or by subcontractors, lessees, sub-recipients, other participants, or their agents. The CONTRACTOR must fully comply with all the requirements and obligations of chapter 42.52 RCW that govern ethics in state and local governments.



- a. Personal Conflict of Interest. The CONTRACTOR's code or standards shall prohibit the CONTRACTOR's employees, officers, board members, or agents from participating in the selection, award, or administration of a contract supported by Federal Funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the PARTIES set forth below has a financial or other interest in the firm or entity selected for award:
- i. The employee, officer, board member, or agent;
  - ii. Any member of his or her immediate family;
  - iii. His or her partner; or
  - iv. An organization that employs, or is about to employ, any of the above.
- b. Organizational Conflict of Interest. The CONTRACTOR's code or standard of conduct must include procedures for identifying and preventing real and apparent organizational conflicts of interest. An organizational conflict of interest exists when the nature of the work to be performed under a proposed third-party contract, subagreement, lease, or other arrangement at any tier may, without some restrictions on future activities, result in an unfair competitive advantage to the subrecipient, lessee, third-party contractor, or other participant at any tier of the Project or impair its objectivity in performing the work under this AGREEMENT.
- B. Debarment and Suspension. The CONTRACTOR agrees to comply, and assures the compliance of each sub-recipient, lessee, third-party contractor, or other participant at any tier of the project, with the requirements of Executive Orders Numbers 12549 and 12689, "Debarment and Suspension," 31 USC § 6101 note, and U.S. DOT regulations, "Non-procurement Suspension and Debarment" 2 CFR Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement)," 2 CFR Part 180. The CONTRACTOR agrees to, and assures that its subrecipients, lessees, third-party contractors, and other participants at any tier of the Project will, search the System for Award Management at <https://www.sam.gov> before entering into any third subagreement, lease, third-party contract, or other arrangement in connection with the Project, and will include a similar term or condition in each of its lower-tier covered transactions. CONTRACTOR understands that a suspension, debarment, or other similar action against a third party by CONTRACTOR is considered an adverse action that can result in a change in Project performance and agrees to provide immediate written notice to CITY OF YAKIMA if the CONTRACTOR suspends, debar, or takes similar action against a third party.
- C. Bonus or Commission. The CONTRACTOR affirms that it has not paid, and agrees not to pay, any bonus or commission to obtain approval of its application for federal financial assistance for this Project.
- D. Relationships with Employees and Officers of CITY OF YAKIMA. The CONTRACTOR shall not extend any loan, gratuity or gift of money in any form whatsoever to any employee or officer of CITY OF YAKIMA, nor shall the CONTRACTOR rent or purchase any equipment and materials from any employee or officer of CITY OF YAKIMA.
- E. Employment of Former WSDOT Employees. The CONTRACTOR hereby warrants that it shall not engage on a full-time, part-time, or other basis during the period of this AGREEMENT, any professional or technical personnel who are, or have been, at any time during the period of this AGREEMENT, in the employ of WSDOT without written consent of WSDOT.



F. Restrictions on Lobbying. The CONTRACTOR agrees to:

- a. Comply with 31 USC § 1352(a) and will not use Federal assistance to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer of Congress or employee of a member of Congress, in connection with making or extending the Grant AGREEMENT or Cooperative Agreement; and
- b. Comply, and assure compliance by each subcontractor at any tier, each lessee at any tier and each sub-recipient at any tier, with applicable requirements of U.S. DOT regulations, "New Restriction on Lobbying," 49 CFR Part 20, modified as necessary by 31 USC § 1352; and
- c. Comply with federal statutory provisions to the extent applicable prohibiting the use of Federal assistance Funds for activities designed to influence Congress or a state legislature on legislation or appropriations, except through proper, official channels.

G. Employee Political Activity. To the extent applicable, the CONTRACTOR agrees to comply with the provisions of the Hatch Act, 5 USC §§ 1501 through 1508, and §§ 7324 through 7326, and Office of Personnel Management regulations, "Political Activity of State or Local Officers or Employees," 5 CFR Part 151. The Hatch Act limits the political activities of state and local agencies and their officers and employees, whose principal employment activities are financed in whole or in part with Federal Funds including a loan, grant, or cooperative agreement. Nevertheless, in accordance with 49 USC § 5307 (k)(2)(B) and 23 USC § 142(g), the Hatch Act does not apply to a non-supervisory employee of a public transportation system (or of any other agency or entity performing related functions) receiving assistance pursuant to MAP-21 or SAFETEA-LU provisions and/or receiving FTA assistance to whom the Hatch Act does not otherwise apply.

H. False or Fraudulent Statements or Claims. The CONTRACTOR acknowledges and agrees that:

- a. Civil Fraud. The Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §§ 3801 et seq., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its activities in connection with the Project. Accordingly, by executing this AGREEMENT, the CONTRACTOR certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project covered by this AGREEMENT. In addition to other penalties that may apply, the CONTRACTOR also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the CONTRACTOR to the extent the Federal Government deems appropriate.
- b. Criminal Fraud. If the CONTRACTOR makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement in connection with this Project authorized under 49 USC Chapter 53 or any other federal law, the Federal Government reserves the right to impose on the CONTRACTOR the penalties of 49 USC §5323(1), 18 USC § 1001 or other applicable Federal law to the extent the Federal Government deems appropriate.
- c. CONTRACTOR understands that a false claim is considered an adverse action that can result in a change in Project performance

I. Trafficking in Persons. To the extent applicable, the CONTRACTOR agrees to comply with, and assures the compliance of each subrecipient with, the requirements of the subsection 106(g) of the



Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 USC § 7104(g), and the provisions of this Subsection 3.g of FTA Master Agreement (21) dated October 1, 2014, which by this reference is incorporated herein as if fully set out in this AGREEMENT, and any amendments thereto, which is accessible at <http://www.fta.dot.gov/documents/21-Master.pdf> consistent with U.S. OMB guidance, "Trafficking in Persons: Grants and Cooperative Agreements," 2 CFR Part 175.

**26. Compliance with Laws and Regulations**

The CONTRACTOR agrees to abide by all applicable state and federal laws and regulations including but not limited to, those concerning employment, equal opportunity employment, nondiscrimination assurances, Project record keeping necessary to evidence compliance, with such federal and state laws and regulations, and retention of all such records. The CONTRACTOR will adhere to all of the nondiscrimination provisions in chapter 49.60 RCW.

**27. Civil Rights**

The CONTRACTOR shall comply with all applicable civil rights laws, regulations and directives, except to the extent that the Federal Government determines otherwise in writing. These include, but are not limited to, the following:

A. Nondiscrimination in Federal Transit Programs. The CONTRACTOR agrees to comply, and assures compliance by each third-party contractor, lessee or other participant at any tier, with the provisions of 49 USC § 5332, which prohibits discrimination on the basis of race, color, creed, national origin, sex, disability, sexual orientation, gender identity, status as a parent, or age, and prohibits discrimination in employment or business opportunity;

B. Nondiscrimination-Title VI of the Civil Rights Act. The CONTRACTOR agrees to comply, and assure compliance by each third-party contractor at any tier, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 USC §§ 2000d et seq.; and U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act", 49 CFR Part 21. Except to the extent FTA determines otherwise in writing, the CONTRACTOR also agrees to follow all applicable provisions of the most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance; and U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 CFR § 50.3, and any other applicable Federal guidance that may be issued;

C. Equal Employment Opportunity. The CONTRACTOR agrees to comply, and assures compliance by each third-party contractor, lessee or other participant at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 USC §5332, with requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 USC § 2000e et seq., and Executive Order 11246 and Executive Order 13672, and any implementing Federal regulations and any subsequent amendments thereto. Except to the extent FTA determines otherwise in writing, the CONTRACTOR also agrees to comply with any applicable Federal EEO directives that may be issued. Accordingly:

- a. The CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, age, national origin, or any other group protected under federal or state laws. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, creed, sex, disability, sexual orientation, gender identity, status as a parent, age, or national origin. Such action shall include, but not be limited to, 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. The CONTRACTOR shall also comply with any implementing requirements FTA may issue.

- b. If the CONTRACTOR is required to submit and obtain Federal Government approval of its EEO program, that EEO program approved by the Federal Government is incorporated by reference and made part of this AGREEMENT. Failure by the CONTRACTOR to carry out the terms of that EEO program shall be treated as a violation of this AGREEMENT. Upon notification to the CONTRACTOR of its failure to carry out the approved EEO program, the Federal Government may impose such remedies, as it considers appropriate, including termination of federal financial assistance, or other measures that may affect the CONTRACTOR's eligibility to obtain future federal financial assistance for transportation projects.

D. Nondiscrimination on the Basis of Sex. The CONTRACTOR agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 USC §§ 1681 et seq. and with any implementing Federal regulations that prohibit discrimination on the basis of sex that may be applicable.

E. Nondiscrimination on the basis of Age. The CONTRACTOR agrees to comply with applicable requirements of:

- a. The Age Discrimination Act of 1975, as amended, 42 USC §§ 6101 et seq., and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs and Activities Receiving Federal Financial Assistance", 45 CFR Part 90, which prohibits discrimination on the basis of age.
- b. The Age Discrimination in Employment Act (ADEA) 29 USC §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act" 29 CFR Part 1625.

F. Disabilities-Employment. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 USC § 12112, the CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

G. Disabilities-Access. The CONTRACTOR agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794, which prohibit discrimination on the basis of handicap; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC §§ 12101 et seq., which requires the provision of accessible facilities and services to be made available to persons with disabilities; and the Architectural Barriers Act of 1968, as amended, 42 USC §§ 4151 et seq, which requires that buildings and public accommodations be accessible to persons with disabilities and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Recipient agrees to comply with applicable implementing Federal regulations and any later amendments thereto, and agrees to follow applicable Federal directives except to the extent FTA approves otherwise in writing. Among those regulations and directives are the following: U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37; U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27; Joint U.S. Architectural and Transportation Barriers Compliance Board U.S. DOT regulations; "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192



and 49 CFR Part 38; U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35; U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36; U.S. GSA regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19; U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630; U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Custom Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F; U.S. Architectural and Transportation Barriers Compliance Board (ATBCB) regulations, "Electronic and Information Technology Accessibility Standards" 36 CFR Part 1194; FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609; and Federal civil rights and nondiscrimination directives implementing the foregoing regulations, except to the extent the Federal Government determines otherwise in writing.

H. Drug or Alcohol Abuse. Confidentiality and Other Civil Rights Protections. The CONTRACTOR agrees to comply with the confidentiality and other civil rights provisions of the Drug Abuse Office and Treatment Act of 1972, as amended 21 USC §§ 1101 et seq.; with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended; 42 USC §§ 4541 et seq.; and comply with the Public Health Service Act of 1912, as amended, 42 USC §§ 290dd through 290dd-2, and any amendments to these laws. The CONTRACTOR understands the requirements of confidentiality concerning persons covered and/or receiving services and/or treatment regarding alcohol and drug abuse, as defined in the aforementioned acts as applicable, including any civil and criminal penalties for not complying with the requirements of confidentiality and that failure to comply with such requirements may result in termination of this AGREEMENT.

I. Access to Services for Persons with Limited English Proficiency. The CONTRACTOR agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 USC § 2000d-1 note, and with provisions of U.S. DOT Notice "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005.

J. Environmental Justice. The CONTRACTOR agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority populations and Low-Income Populations", 42 USC § 4321 note; and DOT Order 5610.2, "Department of Transportation Actions to address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377 et seq., April 15, 1997, and The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, except to the extent that the Federal Government determines otherwise in writing.

K. Other Nondiscrimination Statutes. The CONTRACTOR agrees to comply with all applicable provisions of other Federal laws, regulations, and directives pertaining to and prohibiting discrimination and other nondiscrimination statute(s) that may apply to the Project including chapter 49.60 RCW.

**28. Participation of Disadvantaged Business Enterprises**

To the extent applicable, the CONTRACTOR shall take the following measures to facilitate participation by disadvantaged business enterprises (DBE) in the Project:



A. The CONTRACTOR agrees to comply with section 1101(b) of MAP-21, 23 USC §101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 CFR Part 26; and Federal transit law, specifically 49 USC § 5332.

B. The CONTRACTOR agrees that it shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any third-party contract, or sub-agreement supported with federal assistance derived from the U.S. DOT or in the administration of its DBE program or the requirements of 49 CFR Part 26. The CONTRACTOR agrees to take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of all third-party contracts and sub-agreements supported with federal assistance derived from the U.S. DOT. The CONTRACTOR's DBE program, as required by 49 CFR Part 26 and approved by the U.S. DOT, is incorporated by reference and made part of this AGREEMENT. Implementation of the DBE program is a legal obligation, and failure to carry out its terms shall be treated as violation of this AGREEMENT. Upon notification to the CONTRACTOR of its failure to implement its approved DBE program, the U.S. DOT may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC § 1001, and/or the Program Fraud Civil Remedies Act, 31 USC §§ 3801 et seq.

## 29. Energy Conservation and Environmental Requirements

A. Energy Conservation. The CONTRACTOR shall comply with the **mandatory** standards and policies relating to energy efficiency standards and policies within the Washington State energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 USC §§ 6321 et seq., and any amendments thereto.

B. Environmental Protection. The CONTRACTOR agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended (NEPA), 42 USC §§ 4321 through 4335; Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 USC § 4321 note; FTA statutory requirements at 49 USC § 5324(b); U.S. Council on Environmental Quality regulations imposing requirements for compliance with the National Environmental Policy Act of 1969, as amended, 40 CFR Part 1500 through 1508; joint Federal Highway Administration (FHWA)/FTA regulations, "Environmental Impact and Related Procedures," 23 CFR Part 771 and 49 CFR Part 622, and subsequent Federal environmental protection regulations that may be promulgated. The CONTRACTOR agrees to comply with 23 USC §§ 139 and 326 as applicable, and implement those requirements in accordance with the provisions of joint FHWA/FTA final guidance, "SAFETEA-LU Environmental Review Process (Public Law 109-59)," 71 Fed. Reg. 66576 et seq., November 15, 2006, and any applicable Federal directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing.

C. Clean Water. The recipient agrees to comply with all applicable Federal laws and regulations and follow Federal directives implementing the Clean Water Act, as amended, 33 USC §§ 1251 through 1377, 42 USC §§ 300f through 300j-6, and 42 USC § 7606, including any revisions thereto. In the event that the Federal Funds identified in the caption space header of this AGREEMENT entitled "Project Cost", exceed \$100,000, the CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to Section 508 of the Clean Water Act, as amended, 33 USC § 1368, and other applicable requirements of the Clean Water Act.

D. Clean Air. The recipient agrees to comply with all applicable Federal laws and regulations and follow Federal directives implementing the Clean Air Act, as amended, 42 USC §§ 7401 through 7671q and 40 CFR parts 85, 86, 93 and 600, and any revisions thereto. In the event that the federal share, identified in "Project



Cost" of this AGREEMENT exceeds \$100,000, the CONTRACTOR shall comply with all applicable standards, orders or regulations issued pursuant to Section 306 of the Clean Air Act, as amended, 42 USC § 7606, and other applicable provisions of the Clean Air Act .

E. Violating Facilities. The CONTRACTOR agrees to:

- a. Refrain from using any violating facilities,
- b. Report each violation to CITY OF YAKIMA and understands & agrees that CITY OF YAKIMA will, in turn, report each violation to the FTA and to the appropriate EPA Regional Office.
- c. Include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

### 30. Accounting Records

A. Project Accounts. The CONTRACTOR agrees to establish and maintain for the Project either a separate set of accounts or separate accounts within the framework of an established accounting system that can be identified with the Project, in accordance with applicable federal regulations and other requirements that FTA may impose. The CONTRACTOR agrees that all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Project shall be clearly identified, readily accessible, and available to CITY OF YAKIMA and FTA upon request, and, to the extent feasible, kept separate from documents not pertaining to the Project.

B. Funds Received or Made Available for the Project. The CONTRACTOR agrees to deposit in a financial institution, all Project payments it receives from the Federal Government and record in the Project Account all amounts provided by the Federal Government in support of this Grant AGREEMENT or Cooperative AGREEMENT and all other funds provided for, accruing to, or otherwise received on account of the Project (Project funds) in accordance with applicable Federal regulations and other requirements FTA may impose. Use of financial institutions owned at least 50 percent by minority group members is encouraged.

C. Documentation of Project Costs. The CONTRACTOR agrees to support all allowable costs charged to the Project, including any approved services contributed by the CONTRACTOR or others, with properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges.

D. Checks, Orders, and Vouchers. The CONTRACTOR agrees to refrain from drawing checks, drafts, or orders for goods or services to be charged against the Project Account until it has received and filed a properly signed voucher describing in proper detail the purpose for the expenditure.

### 31. Audits, Inspection, and Retention of Records

A. Submission of Proceedings, Contracts, Agreements, and Other Documents. During the course of the Project and for six (6) years thereafter, the CONTRACTOR agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials, both paper and electronic, relating to the Project as CITY OF YAKIMA may require. Reporting and record-keeping requirements are set forth in 49 CFR Part 18 or 19, whichever is applicable. 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.



B. 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. As provided by 49 CFR § 18.26 or 19.26, whichever is applicable, these audits must comply with OMB Circular A-133, Revised, "Audits of States, Local Governments, and Non-Profit Organizations," and the latest applicable OMB A-133 Compliance Supplement provisions for the U.S. DOT, and any further revision or supplement thereto. The CONTRACTOR agrees that audits will be carried out in accordance with U.S. General Accounting Office "Government Auditing Standards." The CONTRACTOR agrees to obtain any other audits required by the Federal Government or CITY OF YAKIMA. Project closeout will not alter the CONTRACTOR's audit responsibilities.

C. Inspection. The CONTRACTOR agrees to permit CITY OF YAKIMA, the State Auditor, the United States Department of Transportation, and the Comptroller General of the United States, or their authorized representatives, to inspect all Project work materials, payrolls, and other data and records, and to audit the books, records, and accounts of the CONTRACTOR and its subcontractors pertaining to the Project. 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 CITY OF YAKIMA, 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 Project as required by 49 USC § 5325(g).

## 32. Labor Provisions

A. Contract Work Hours and Safety Standards Act. The CONTRACTOR shall comply with, and shall require the compliance by each subcontractor at any tier, any applicable employee protection requirements for non-construction employees as defined by the Contract Work Hours and Safety Standards Act, as amended, 40 USC § 3701 et seq., and specifically, the wage and hour requirements of section 102 of that Act at 40 USC § 3702 and USDOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)" at 29 CFR Part 5; and the safety requirements of section 107 of that Act at 40 USC § 3704, and implementing U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 CFR Part 1926.

B. Fair Labor Standards Act. The CONTRACTOR agrees that the minimum wage and overtime provisions of the Fair Labor Standards Act, as amended, 29 USC §§ 201 et seq., apply to employees performing work involving commerce, and apply to any local government employees that are public transit authority employees. The CONTRACTOR shall comply with the Fair Labor Standards Act's minimum wage and overtime requirements for employees performing work in connection with the Project.

C. 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 forty (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 work week.

D. Payrolls and Basic Records. Payrolls and basic records relating thereto shall be maintained by the CONTRACTOR during the course of the work and preserved for a period of six (6) years thereafter for all



laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the Project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act, Public Law 88-349 as amended by 40 USC §§ 3141 et seq., and pursuant to 49 USC §5333(a) et seq., daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, Public Law 88-349, as amended by 40 USC § 3141 et seq. and pursuant to 49 USC § 5333(a), the CONTRACTOR shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. CONTRACTOR's employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

E. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (A) of this section the CONTRACTOR and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such CONTRACTOR and subcontractor shall be liable to the United States 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 (A) of this section, in the sum of ten dollars (\$10) for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (C) of this section.

F. Withholding for unpaid wages and liquidated damages. The CONTRACTOR shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the 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 and 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 (E) of this section.

G. Public Transportation Employee Protective Agreement. To the extent required by Federal Law, the CONTRACTOR agrees to implement the Project in accordance with the terms and conditions that the U.S. Secretary of Labor has determined to be fair and equitable to protect the interests of any employees affected by the Project and that comply with the requirements of 49 USC § 5333 (b), in accordance with the USDOL guidelines, "Section 5333(b), Federal Transit Law," 29 CFR Part 215 and any amendments thereto. These terms and conditions are identified in USDOL's certification of public transportation employee protective arrangements to FTA. The CONTRACTOR agrees to implement the Project in accordance with the conditions stated in that USDOL certification, which certification and any documents cited therein are incorporated by reference and made part of this AGREEMENT. The CONTRACTOR also agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program that is most current as of the date of execution of this AGREEMENT and any alternative comparable arrangements



specified by USDOL for application to the Project, in accordance with USDOL guidelines, "Section 5333(b), Federal Transit Law," 29 CFR Part 215, and any revision thereto.

### **33. Planning and Private Enterprise**

**FTA Requirements.** The CONTRACTOR agrees to implement the Project in a manner consistent with the plans developed in compliance with the applicable planning and private enterprise provisions of 49 USC §§ 5303, 5304, 5306, and 5323(a)(l); joint Federal Highway Administration (FHWA)/ FTA regulations, "Statewide Transportation Planning: Metropolitan Transportation Planning," 23 CFR Part 450 and 49 CFR Part 613; and any amendments thereto, and with FTA regulations, "Major Capital Investment Projects," 49 CFR Part 611, to the extent that these regulations are consistent with the SAFETEA-LU amendments to the public transportation planning and private enterprise laws, and when promulgated, any subsequent amendments to those regulations or the MAP-21 amendments, whichever is applicable according to the funding in this agreement. To the extent feasible, the CONTRACTOR agrees to comply with the provisions of 49 USC § 5323(k), which afford governmental agencies and non-profit organizations that receive Federal assistance for non-emergency transportation from Federal Government sources (other than U.S. DOT) an opportunity to be included in the design, coordination, and planning of transportation services. During the implementation of the Project, the CONTRACTOR agrees to take into consideration the recommendations of Executive Order No. 12803, "Infrastructure Privatization," 31 USC § 501 note, and Executive Order No 12893, "Principles for Federal Infrastructure Investments," 31 USC § 501 note.

### **34. Substance Abuse**

- A. **Drug and Alcohol Testing.** If receiving FTA 5309 and/or FTA 5311 funding, CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the U.S. DOT or its operating administrations and CITY OF YAKIMA to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The CONTRACTOR agrees further to submit annually the Management Information System (MIS) reports to CITY OF YAKIMA each year during the term identified in the caption space header above titled "the Term of Project."
- B. **Drug-free Workplace.** To the extent applicable, the CONTRACTOR agrees to comply with the Federal regulations and guidance related to the Drug Free Workplace Act of 1988, 41 USC § 8103 et seq., and any amendments thereto, 2 CFR Part 182, and 49 CFR Part 32, and to FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655 and 49 USC § 5331, as amended by MAP-21.
- C. **Privacy Act.** The CONTRACTOR agrees to comply with the confidentiality and other civil rights provisions pertaining to substance abuse contained in the Civil Rights clause of this AGREEMENT.
- D. **Non Compliance.** The CONTRACTOR agrees that if FTA determines non-compliance with these laws and regulations, the FTA Administrator may bar CONTRACTOR from receiving all or a portion of the Federal transit assistance it would otherwise receive.

### **35. Federal "\$1 Coin" Requirements**

To the extent required by the Federal Government, the CONTRACTOR agrees to comply with the provisions of section 104 of the Presidential \$1 Coin Act of 2005, 31 USC § 5112(p), so that the CONTRACTOR's equipment and facilities requiring the use of coins or currency will be fully capable of accepting and dispensing \$1 coins in the connection with that use. The CONTRACTOR also agrees to display signs and notices denoting the capability of its



equipment and facilities on its premises where coins or currency are accepted or dispensed, including on each vending machine. Yakima Transit provides the fare box.

**36. Safe Operation of Motor Vehicles**

As applicable, CONTRACTOR is encouraged to comply with the following provisions:

A. Executive Order No. 13043, "Increasing Seat Belt Use in the United States," 23 USC § 402 note. CONTRACTOR is encouraged to adopt and promote on-the-job seat belt use policies and programs for personnel that operate company-owned vehicles.

B. Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 USC § 402 note, and DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009. CONTRACTOR is encouraged to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving. CONTRACTOR is also encouraged to conduct workplace safety initiatives in a manner commensurate with its size.

**37. Termination**

A. Termination for Convenience. CITY OF YAKIMA and/or the CONTRACTOR may suspend or terminate this AGREEMENT, in whole or in part, and all or any part of the federal and/or state financial assistance provided herein, with 90 days written notice to the other PARTY in accordance with 49 CFR Part 18 § 18.44 or 49 CFR Part 19 § 19.61, whichever is as applicable. CITY OF YAKIMA and the CONTRACTOR shall agree upon the AGREEMENT 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, CITY OF YAKIMA determines that the remaining portion of the award will not accomplish the purposes for which the award was made CITY OF YAKIMA may terminate the award in its entirety. CITY OF YAKIMA and/or the CONTRACTOR may terminate this AGREEMENT 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. CITY OF YAKIMA determines, in its sole discretion, that the continuation of the Project would not produce beneficial results commensurate with the further expenditure of federal and/or state funds;
- c. The CONTRACTOR is prevented from proceeding with the Project 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 Project 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 and/or State Government determines that the purposes of the statute authorizing the Project would not be adequately served by the continuation of federal and/or state financial assistance for the Project; or



- f. The Federal Government terminates this AGREEMENT due to a determination that the CONTRACTOR has: (a) willfully misused Federal assistance Funds by failing to make adequate progress on the Project, (b) failed to make reasonable and appropriate use of the Project real property, facilities, or equipment, or (c) failed to comply with the terms of this AGREEMENT. In the event of a termination under this subsection, and the Federal Government exercises its right to require CITY OF YAKIMA to refund any or all of the Federal Funds provided for the Project, the CONTRACTOR shall return all monies reimbursed to it by CITY OF YAKIMA, in the amount required by the Federal Government, within sixty (60) days of its receipt of a certified letter from CITY OF YAKIMA; or,
- g. In the case of termination for convenience under subsections A.1 through A.5 above, CITY OF YAKIMA shall reimburse the CONTRACTOR for all costs payable under this AGREEMENT which the CONTRACTOR properly incurred prior to termination. The CONTRACTOR shall promptly submit its claim for reimbursement to CITY OF YAKIMA. If the CONTRACTOR has any property in its possession belonging to CITY OF YAKIMA, the CONTRACTOR will account for the same, and dispose of it in the manner CITY OF YAKIMA directs.

B. Termination for Default. CITY OF YAKIMA may suspend or terminate this AGREEMENT 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 AGREEMENT, including:

- a. Takes any action pertaining to this AGREEMENT without the approval of CITY OF YAKIMA, which under the procedures of this AGREEMENT would have required the approval of CITY OF YAKIMA;
- b. Jeopardizes its ability to perform pursuant to the AGREEMENT, United States of America laws, Washington state laws, or local governmental laws under which the CONTRACTOR operates.
- c. Fails to make reasonable progress on the Project or other violation of this AGREEMENT that endangers substantial performance of the Project; or
- d. Fails to perform in the manner called for in this AGREEMENT or fails to comply with, or is in violation of, any provision of this AGREEMENT. CITY OF YAKIMA 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 CITY OF YAKIMA 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, CITY OF YAKIMA 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.

C. CITY OF YAKIMA, 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 CITY OF YAKIMA, 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 CITY OF YAKIMA's satisfaction the breach or default within the timeframe and under the conditions set forth in the notice of termination, CITY OF YAKIMA shall have the right to terminate this AGREEMENT without any further obligation to CONTRACTOR. Any such termination for default shall not in any way operate to preclude CITY OF YAKIMA from also pursuing all available remedies against CONTRACTOR and its sureties for said breach or default.



D. In the event that CITY OF YAKIMA elects to waive its remedies for any breach by CONTRACTOR of any covenant, term or condition of this AGREEMENT, such waiver by CITY OF YAKIMA shall not limit CITY OF YAKIMA's remedies for any succeeding breach of that or of any other term, covenant, or condition of this AGREEMENT.

38. **Notices.** Unless stated otherwise herein, all notices and demands shall be in writing and sent to the parties to their addresses as follows:

TO CITY:

*Cliff Moore*, City Manager  
Alvie Maxey, Transit Manager  
City of Yakima  
129 North 2<sup>nd</sup> Street.  
Yakima, WA 98901

TO CONTRACTOR:

Gladys Gillis – TDM, Inc.  
Randy Ammerman – A&A Motorcoach  
PO Box 9364  
Yakima, WA 98909

Or to such other addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid or hand delivered. Such notices shall be deemed effective when mailed or hand delivered at the addresses specified above.

39. **Survival.** Any provision of this Agreement that imposes an obligation after termination or expiration of this Agreement shall survive the term or expiration of this agreement and shall be binding on the parties to this Agreement.

40. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

41. **Venue.** The venue for any action to enforce or interpret this Agreement shall be laid in the Superior Court of Washington for Yakima County, Washington

42. **Authority.** The person executing this Agreement on behalf of Contractor represents and warrants that he/she has been fully authorized by Contractor to execute this Agreement on its behalf and to legally bind Contractor to all the terms, performances and provisions of this Agreement.

CITY OF YAKIMA

CONTRACTOR

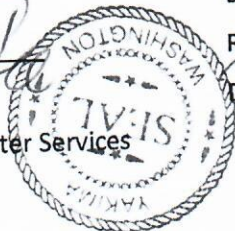
By: *Cliff Moore*  
*Cliff Moore*, City Manager

By: *Gladys Gillis*  
Gladys Gillis – TDM, Inc.  
Date: 7/6/16

Date: 7/19/16

ATTEST:

By: *Sonya Claar Tee*  
Sonya Claar Tee, City Clerk  
11615-P Yakima-Ellensburg Commuter Services



By: *Randy Ammerman*  
Randy Ammerman – A&A Motorcoach  
Date: 7/7/16

Page 22 of 22

CITY CONTRACT NO: 2016-136  
RESOLUTION NO: R-2016-092