

**PROFESSIONAL SERVICES CONTRACT  
BETWEEN LANE TRANSIT DISTRICT AND  
TAC TRANSPORTATION, INC. dba PACIFIC CREST BUS LINES  
LTD SOLICITATION NO. 2018-12**

*This Agreement is made and entered into as of the date of the last party to sign below (“Effective Date”) between LANE TRANSIT DISTRICT (“LTD”), a special district created pursuant to Oregon Revised Statute 267.010, and TAC TRANSPORTATION, INC. dba PACIFIC CREST BUS LINES (“Pacific Crest Bus Lines” or “Contractor”). LTD and Contractor may hereinafter from time to time be referred to as “Party” or “Parties.”*

**RECITALS**

**WHEREAS**, LTD desires to enter into a Contract with Contractor to provide passenger transportation services as described in LTD Solicitation No. 2018-12 (“the solicitation”), fully conformed, and incorporated herein by reference (“Services” or the “Work”); and

**WHEREAS**, LTD has selected Contractor to provide the Services in accordance with its Procurement Policy and Rules Manual; and

**WHEREAS**, the Contractor has represented to LTD that it is sufficiently qualified and experienced to provide those Services detailed in the solicitation, and LTD has relied on such representations; and

**WHEREAS**, sufficient authority exists in LTD’s rules and regulations and state statute, sufficient funds have been budgeted for these purposes and are available, and other necessary approvals have been obtained.

**NOW, THEREFORE**, in consideration of the mutual understandings and agreements set forth, LTD and the Contractor agree as follows:

**ARTICLE 1 – SCOPE OF WORK**

The required Services are as enumerated and described in Exhibit A – Scope of Work, which document is attached hereto and incorporated herein.

**ARTICLE 2 – COMPENSATION AND PAYMENT**

The terms for Compensation and Payment are set forth in Exhibit B – Compensation and Method of Payment for Services, attached hereto and incorporated herein. The total value of the Contract, as specified in Exhibit B – Compensation and Method of Payment, may only be modified by written agreement of both Parties to the Contract in the form of a Contract Amendment as specified in Article 13 below.

Any services not required by the terms of this Contract that are performed without prior written authority from LTD, will be considered as unauthorized and at the sole expense of Contractor. Services so performed will not be compensated, and no extension in the period of performance will be granted on account thereof.

The Parties agree that LTD is a governmental entity and that all obligations beyond the current fiscal year are subject to funds being budgeted and appropriated by its Board of Directors. Notwithstanding anything to the contrary contained in this Contract, no charges shall be made to LTD nor shall any payment be made to the Contractor in excess of the amount for any services provided without prior written approval, and in accordance with a budget adopted by the LTD Board of Directors.

LTD's financial obligation under the Contract shall be contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of LTD for any payment may arise until funds are made available for the Contract by LTD's Board of Directors.

### **ARTICLE 3 – CONTRACT TYPE AND TERM**

This is a Fixed Price, Labor Hour Contract with cost reimbursement for Maintenance and Fuel Expense Contract with indefinite delivery, indefinite quantity. The total possible maximum contract period shall not exceed five (5) years and 120 days.

The base term of the contract shall be for one (1) year. LTD may opt to extend the contract for not more than four (4) additional years, exercisable in two (2) separate options of twenty four (24)-months each. Any extension of the Term of Contract will be in writing and signed by both Parties to the Contract in the form of a Contract Amendment as set forth in Article 13 below. Subject to any options to extend the base term of the Contract, the selected Contractor will be required to perform until the end of the contract period. The exercise of an option to extend the term of the Contract will not obligate, or be deemed to obligate, LTD to exercise a subsequent option to extend the term of the Contract.

### **ARTICLE 4 – PERIOD OF PERFORMANCE**

- (1) The period of performance under the Contract is for one (1) year, commencing on July 1, 2018, and concluding on June 30, 2019. LTD has the option of extending the contract.
- (2) Contractor will not be considered in default in the performance of its obligations with respect to schedule for completion of tasks affected to the extent that the performance of any such obligation is prevented or delayed by an excusable delay. Should Contractor's Services be delayed by an excusable cause, Contractor's schedule for completion of tasks affected by such delay may be extended. Excusable delays may include, but are not limited to, Acts of God or acts or failures to act of government agencies, including LTD in either their sovereign or contractual capacities; fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, civil disturbances; provided, however, that in every case the failure to perform must be reasonably beyond the control, and without the fault or negligence of, the Contractor. No action or failure to act that is expressly contemplated by this Contract will be deemed an excuse for Contractor's nonperformance.

Within thirty (30) days after the last day of delay, Contractor will furnish LTD with detailed information concerning the circumstances of the delay, the number of days actually delayed, the appropriate Contract references, and the measures taken to prevent or

minimize the delay. Failure to submit such information in a timely manner will be sufficient cause for denying the delay claim.

- (3) The selected Contractor will be required to perform until the end of the contract period.
- (4) At the termination or expiration of the contract, whichever applies, the Contractor agrees to continue providing the same level of service to LTD during a transitional period of 120 days. Contractor will hold to rates in effect at the time of termination or expiration of the contract, while the new contract, also in force, is being mobilized.

## **ARTICLE 5 – CONTRACT AND CONTRACT DOCUMENTS**

The Contract consists of the following documents:

- (1) Contract between LTD and Contractor
- (2) Exhibit A – Scope of Work
- (3) Exhibit B – Compensation and Method of Payment for Services
- (4) Exhibit C – LTD Request for Proposals No. 2018-12, fully conformed and inclusive of all addenda to the RFP (by reference)
- (5) Exhibit D – Contractor’s Proposal in response to RFP No. 2018-12
- (6) Exhibit E – Vehicle Lease Agreement

In addition, all modifications to the Contract after contract execution shall be made in the form of Contract Amendments in accordance with Article 13 below and shall be incorporated into and made part of the Contract.

The documents specified in the paragraph above form the Contract between LTD and Contractor. This Contract represents the entire and integrated agreement between the Parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Contract Amendment as defined in Article 13 below.

## **ARTICLE 6 – ORDER OF PRECEDENCE OF THE CONTRACT DOCUMENTS**

In the event of inconsistency between provisions of the Contract Documents, the inconsistency will be resolved by giving precedence in the following order:

- (1) Contract Amendments
- (2) Contract between Lane Transit District and Contractor
- (3) Exhibit A – Scope of Work
- (4) Exhibit B – LTD Solicitation No. 2018-12, fully conformed and inclusive of all addenda to the RFP

## **ARTICLE 7 – PROJECT AUTHORIZATION AND PERFORMANCE**

- (1) Following contract execution, LTD will issue a purchase order, which shall act as a Notice to Proceed to the Contractor, and which shall authorize and direct Contractor to begin work on the Contract. The Contractor shall begin work no later than fourteen (14)

calendar days after the Effective Date of the Contract, or three (3) calendar days after receipt of the Notice to Proceed, whichever is later.

- (2) Standard of Performance. Contractor will perform and require its subcontractors to perform the Services in accordance with the requirements of this Contract and in accordance with professional standards of skill, care, and diligence adhered to by firms recognized for their expertise, experience and knowledge in performing services of a similar nature. Contractor will be responsible for the professional quality, technical accuracy, completeness, and coordination of the Services, it being understood that LTD will be relying upon such professional quality, accuracy, completeness, and coordination in utilizing the Services. The foregoing obligations and standards will constitute the "Standard of Performance" for purposes of this Contract.
- (3) All workers will have sufficient skill and experience to perform the work assigned to them. LTD will have the right, in its sole and absolute discretion, to require the removal of Contractor's personnel at any level assigned to the performance of the Services at no additional cost to LTD, if LTD considers such removal necessary in its best interests and requests such removal in writing. Further, an employee who is so removed will not be re-employed on this Contract.

#### **ARTICLE 8 – CONTRACT MANAGER AND KEY PERSONNEL**

- (1) The LTD Contract Manager for this Contract is LTD's Director of Customer and Specialized Services, Cosette Rees, unless otherwise designated in writing by the LTD General Manager ("GM").
- (2) The LTD Project Manager for this Contract is LTD's Accessible Services Coordinator, John Ahlen, unless otherwise designated in writing by the LTD Contract Manager for this Contract.
- (3) Contractor's Key Personnel. The following are the key personnel assigned to perform the Services and their roles under this Contract: Jason Higham, President, TAC Transportation, Inc.
  - a. Contractor will not reassign such key personnel to other projects without LTD's prior written approval and until a satisfactory replacement has been approved by LTD. Contractor will secure the prior written approval of LTD for any change or reassignment of key personnel, submitting written documentation of the new individuals' qualifications.
  - b. Contractor's General Manager will supervise and direct the Services, and have overall responsibility for the Services in accordance with this Contract. Contractor will be solely responsible for implementation of all services, means, methods, techniques, sequences and procedures and for coordination of all portions of the Service under this Contract.

## **ARTICLE 9 – INDEPENDENT CONTRACTOR**

The Contractor is not an officer, employee, or agent of LTD or the State of Oregon as those terms are used in the State Tort Claims Act (ORS 30.265).

Contractor shall perform the Services required under this Contract as an Independent Contractor, not as an agent or employee of LTD. Contractor has no authority to make any statement, representation, or commitment of any kind or to take any action binding upon LTD, without LTD's written authorization. LTD is only interested in the results achieved by the Services performed by the Contractor; the manner of legally achieving those results is the responsibility of the Contractor.

All of the Services required by this Contract shall be performed by Contractor or under its supervision, and all personnel engaged in the Services shall be fully qualified.

Furthermore, it is understood that LTD will not provide insurance or benefits of any nature to the Contractor, its employees, or subcontractors.

The Contractor agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its Services hereunder. The Contractor further agrees that in the performance of the Contract, no person having any such interests shall be employed.

## **ARTICLE 10 – INVOICING AND PAYMENT**

LTD will pay Contractor, as full and complete compensation, for completion of the Services pursuant to the Contract, and costs assuming all duties, responsibilities, and obligations under the Contract.

- (1) Contractor shall submit to LTD's Contract Manager complete, properly supported and audit-worthy invoices for the Services performed in the preceding month by not later than the 20<sup>th</sup> day of each month. Contractor may submit no more than one (1) invoice to LTD for every thirty (30) calendar days of the Term of Contract.
- (2) Invoices shall be sent electronically to [ap@ltd.org](mailto:ap@ltd.org) in PDF format.
- (3) Payment terms are net 30 calendar days following receipt of a correct and audit-worthy invoice by LTD. A correct and audit-worthy invoice shall include the following:
  - a. the applicable purchase order number and LTD contract number;
  - b. total invoice amount (including itemized amounts charged for labor and materials);
  - c. total number of labor hours expended and labor billing rates;
  - d. invoice billing period;
  - e. description of the Services performed during the invoice billing period (including completed Deliverables);
  - f. data required for reporting to the National Transit Database (NTD). Data shall include accident, incident, and operations data for the previous month for both operations;

- g. data required for completion of the CMS 1500
  - h. the ODOT Preventive Maintenance – Capital Expense Invoice Attachment
  - i. and, any other information that LTD may reasonably require
- (4) The presentation of invoices by Contractor to LTD constitutes an express warranty and representation by Contractor to LTD that the Services have progressed to the point indicated and that the quality of the Services is in accordance with this Contract.
- (5) No approval of any invoice, nor any payment, final or otherwise, nor any use or approval of deliverables by LTD shall itself constitute Acceptance of the Services.
- (6) LTD may withhold all or part of any amounts due Contractor to protect LTD from a loss , including but not limited to, losses caused by the following:
- a. Failure to submit data required for reporting to state, federal or other oversight agency in a timely manner;
  - b. Failure of Contractor to make proper payments to its subcontractors for Services;
  - c. Failure of Contractor to carry out and/or remedy the Services in accordance with the Contract;
  - d. Contractor’s breach of warranties.

Contractor shall maintain books and records supporting all amounts invoiced to LTD. Contractor shall preserve such books and records for the duration of this Contract and for seven (7) years thereafter, during which time LTD and its representatives shall have access to such books and records and shall have the right to make any copies thereof for the purpose of auditing or verifying invoices or for any other reasonable business purpose.

Contractor warrants and represents that all books and records specified above shall be complete and accurate and that LTD may rely on such records and books for any purposes. If Contractor becomes aware that such records are inaccurate or incomplete, Contractor will promptly notify LTD in writing.

**ARTICLE 11 – EMPLOYMENT OF DISTRICT'S PERSONNEL**

The Contractor shall not employ any person or persons in the employ of LTD for any work required by the terms of this Contract without the written permission of LTD, except as may otherwise be provided for herein.

**ARTICLE 12 – REVIEW OF WORK**

Authorized representatives of LTD may, at all reasonable times review and inspect the Services, financial reports, and data collected under the terms of this Contract and any amendments thereto. All reports, drawings, studies, specifications, estimates, maps, and computations prepared by or for the Contractor pursuant to this Contract, shall be available to authorized representatives of LTD for inspection and review at all reasonable times. Acceptance shall not relieve the Contractor of its professional obligation to correct, at its expense, any of its negligent errors in the work.

## **ARTICLE 13 – CHANGES**

- (1) LTD shall have the right, without additional consent from Contractor and without invalidating the Contract, to add, delete, or change the required Services.
- (2) Contract Amendments. LTD shall issue Contract Amendments to make additions, deletions, or changes to the required Services. To initiate a Contract Amendment, LTD shall send Contractor a Request for Contract Amendment. Upon receipt, Contractor shall prepare an estimate of the effects of the change on the Contract Budget and/or Term of Contract. Upon agreement between Contractor and LTD on the effects of the change, LTD will issue a Contract Amendment specifying any change to the Contract Budget or the Term of Contract.
- (3) The Contract Budget and/or Term of Contract shall be subject to adjustment only by Contract Amendment(s).

## **ARTICLE 14 – SUBSTANTIAL CHANGES**

If, prior to the satisfactory completion of the Services required under this Contract, LTD materially alters the scope, character, complexity, or duration of the Services from those required under the Contract, a Contract Amendment may be executed between the Parties.

Minor changes in the Services which do not involve increased compensation, extensions of time or changes in the goals and objectives of the Services may be made by written notification of such change by either LTD or the Contractor with written approval by the other Party.

## **ARTICLE 15 – ERRORS AND OMISSIONS**

No advantage shall be taken by the Contractor in the omission of any part or detail which goes to make the execution of the service complete even though such part or detail is not named in the Scope of Service. Contractor will carefully study this Contract; will verify all figures in these contract documents before performing the Services; will promptly notify LTD of all errors, inconsistencies, and/or omissions that it discovers; and, in instances where such nonconformities are discovered, will obtain specific instructions in writing from LTD before proceeding with the Services. Any Services affected which are performed prior to LTD decision will be at Contractor's risk.

LTD will be entitled to make such corrections therein and interpretations thereof as it may deem necessary for the fulfillment of the intent of this Contract. Omissions or erroneous descriptions of any Services that are manifestly necessary to carry out the intent of this Contract, or that are customarily performed, will not relieve Contractor from performing such Services at no additional expense and/or delay, and such Services will be performed as if fully and correctly set forth in this Contract.

## **ARTICLE 16 – INDEMNIFICATION**

- (1) Professional Liability. The Contractor shall exercise in its performance of the Services the standard of care normally exercised by nationally recognized organizations engaged

in performing comparable services. The Contractor shall be liable to LTD for any loss, damages or costs incurred by LTD for the repair, replacement or correction of any part of the project or services to be rendered which is deficient or defective as a result of any failure of the Contractor to comply with this standard.

- (2) Indemnification. To the fullest extent permitted by law and except for all professional liability claims, damages, losses and expenses, the Contractor shall indemnify, defend, and hold harmless LTD and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Services, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the project itself) including the loss of use resulting there from, but only to the extent caused by the negligent act or omission of, or breach of contract by, the Contractor, any subcontractor of the Contractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

Such obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Contract. LTD may, if it so desires, withhold the payments due the Contractor so long as shall be reasonably necessary to indemnify LTD on account of such injuries.

In any and all claims against LTD or any of its agents or employees by any employee of the Contractor, any subcontractor of the Contractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations under this Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor.

The Parties agree that nothing contained herein waives or is intended to waive any other rights, protections, immunities, defenses or limitations on liability provided by law, and subject to any applicable provisions of the Oregon Constitution and applicable laws.

## **ARTICLE 17 – INSURANCE**

Contractor shall procure and maintain, until all of its obligations under this Contract have been discharged, including until any warranty periods under this Contract are satisfied, the following types of insurance coverage and limits of liability. The obligations of the indemnification agreement that is part of this Contract shall apply to the actions of anyone hired by Contractor to work under this Contract. Contractor shall procure and maintain in effect the following types of insurance at least as broad and with limits of liability not less than those stated below.

The insurance requirements herein are minimum requirements for this Contract. LTD in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the Services under this Contract by the Contractor, representatives, employees, or subcontractors and Contractor is free to purchase such additional insurance as may be determined necessary.



- Commercial General Liability Insurance
  - Per Occurrence      \$2,000,000
  - Aggregate            \$4,000,000
  
- Commercial Auto Liability
  - Per Occurrence      \$2,000,000
  - Aggregate            \$4,000,000
  
- Workers' Compensation Insurance
  - Bodily Injury by Accident: \$500,000 each accident with a \$1,000,000 Aggregate
  - Bodily Injury by disease: \$500,000 each employee
  - Bodily Injury by Disease: \$500,000 policy limit

Contractor's insurance shall apply as primary and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed below.

The Contractor shall add LTD and its directors, officers, representatives, agents, and employees as additional insureds with respect to work or operations connected with the Contract (excluding Worker's Compensation policies). Within ten (10) days of awarding this Contract, and thereafter on at least an annual basis, the Contractor shall furnish LTD's Procurement Manager with Certificates of Insurance indicating the correct insurance coverage has been obtained and is in full force and effect through the next date of notification.

The Contractor shall secure excess insurance in the form of a \$3,000,000 Umbrella Liability Policy. In addition, the Contractor shall carry both Collision and Comprehensive coverage on all vehicles.

The Contractor shall furnish to LTD a certificate(s) of insurance (using ACORD form or equivalent) provided by the Contractor's insurance carrier or agent to show that the insurance specified in this Contract is in force stating policy numbers, dates of expiration, limits of liability and coverages thereunder, the name of the project, or "Any and All Operations" if working on more than one project and further providing that the insurance shall not be cancelled until the expiration of thirty (30) days after written notice of such cancellation has been mailed to LTD. Such notice shall be mailed certified mail, return receipt requested.

Contractor and LTD waive all rights against (1) each other and any of their Contractors, agents and employees, each of the other, and (2) LTD, separate Contractors, and any of their Contractors, subcontractors, agents and employees for damages caused by fire or other perils to the extent covered by property insurance provided under the Contract or other property insurance applicable to the work, except such rights as they may have to proceeds of such insurance held by the LTD as fiduciary.

Contractor shall require of their agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of other parties enumerated herein. The policies, except for workers' compensation, shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification,

contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

Special Provisions:

- (1) Insurance coverage carried by the Contractor shall not be subject to limitations, conditions or restrictions reasonably deemed by LTD to be inconsistent with the intent of the Insurance Requirements to be fulfilled by Contractor under this Article 17.
- (2) All policies are to be written through companies duly entered and authorized to transact that class of insurance in the state in which the project is located. The insurance companies must have an A.M. Best rating of A:XI or better in the most recent Best's Key Rating Guide.
- (3) Approval, disapproval or failure to act by LTD regarding insurance supplied by the Contractor shall not relieve the Contractor of full responsibility or liability pursuant to Article 16 for damages. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate the Contractor from liability.
- (4) If the liability policies do not contain the standard ISO separation of insured provision, or a substantially similar clause, they shall be endorsed to provide a Separation of Insureds provisions.
- (5) Contractor shall make no request for special payments for any insurance that the Contractor may be required to carry as identified under this Article; all are included in the Contract price.
- (6) Deductibles and Self-Insured Retention. All deductibles and/or self-insured retention amounts must be declared to LTD.
- (7) Certificates of Insurance. Before commencing performance on the Contract, Contractor must furnish certificate(s) of insurance (using ACORD form or equivalent) to LTD evidencing:
  - Insurance coverage in accordance with this Article 17 – Insurance
  - Signature by person authorized by insurer to bind coverage on its behalf.
  - Effective expiration dates of policies.
  - LTD must be given thirty (30) days written notice, in accordance with policy terms, or all cancellation, non-renewal, or material changes in policy by either Insurer or Contractor.
  - LTD is added as Additional Insured party on the Commercial General Liability.
  - A waiver of subrogation endorsement applies on the General Liability.
  - Any deductible and/or self-insured retention.
  - Certificate of Insurance title block format is as follows: Lane Transit District Authority, P.O. Box 7070, Springfield, Oregon 97475.

- (8) This Contract can be terminated for default for failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal. LTD shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the project site, or from performing Work, until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by LTD.

## **ARTICLE 18 – PERFORMANCE BOND**

[Intentionally Omitted]

## **ARTICLE 19 – SUBLETTING, ASSIGNMENT, OR TRANSFER**

The Contractor remains fully responsible for the performance of any and all subcontractors and shall not be relieved of any responsibility for the performance of its duties under the contract, regardless of any subcontract entered into by the Contractor. Subcontractors must comply with the same terms and conditions, provide the same assurances, and meet the same standards of service required of the Contractor.

The Contractor, acting as LTD's agent, must maintain service agreements relative to the provision of the operation of the Diamond Express and Oakridge Dial-a-Ride through other providers or arrange for the coordination of services.

## **ARTICLE 20 – TERMINATION**

- (1) Termination for Convenience. LTD may terminate this Contract for its convenience at any time by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least 120 calendar days before the effective date of such termination. If this contract is terminated, LTD shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination. Partially completed tasks will be compensated for based on a signed statement of completion to be submitted by the Contractor which shall itemize each task element and briefly state what work has been completed and what work remains to be done. The Contractor shall promptly submit its termination claim to LTD to be paid the Contractor. If the Contractor has any property in its possession belonging to LTD, the Contractor will account for the same, and dispose of it in the manner LTD directs.
- (2) Termination for Default. If the Contractor fails to perform in the manner called for in this Contract or if the Contractor fails to comply with any other provisions of this Contract, LTD may terminate this Contract for cause. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor has breached or is in default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this Contract.

If this contract is terminated while the Contractor has possession of LTD goods, the Contractor shall, upon direction of LTD, protect and preserve the goods until surrendered to LTD or its agent. The Contractor and LTD shall agree on payment for the preservation

and protection of goods. Failure to agree on an amount will be resolved under the Article 22 – Breaches and Dispute Resolution.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the Parties shall be the same as if the termination had been issued for the convenience of LTD.

- (3) Opportunity to Cure. LTD in its sole discretion may, in the case of a termination for cause, allow the Contractor an appropriate period of time to cure the breach or default. 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 LTD's satisfaction the breach or default, LTD shall have the right to terminate this Contract without any further obligation to the Contractor. Any such termination for breach or default shall not in any way operate to preclude LTD from also pursuing all available remedies against the Contractor and its sureties for said breach or default.
- (4) Waiver of Remedies for any Breach. In the event that LTD elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by LTD shall not limit LTD's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

#### **ARTICLE 21 – APPLICABLE LAWS AND VENUE**

This Contract shall be governed by the laws of the State of Oregon. This Contract shall be deemed entered into in Lane County, Oregon. At LTD's option, the location for settlement of any and all claims, controversies and disputes arising out of or related to this Contract or any breach thereof, whether by alternative dispute resolution or litigation, shall be proper only in this county.

#### **ARTICLE 22 – CLAIMS AND DISPUTES**

- (1) Definition. A claim is a demand or assertion by one of the Parties seeking, as a matter of right, adjustment of contract terms, payment of money, extension of time, or other relief with respect to the terms of the Contract. The term "claim" also includes other disputes between LTD and the Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate claims shall rest with the Party making the claim.
- (2) Time Limits on Claims. Claims by Contractor must be made within 21 days after occurrence of the event giving rise to such claim or within 21 days after the claimant first recognizes, or reasonably should have recognized, the condition giving rise to the claim, whichever is the later. An additional claim made after the initial claim has been resolved will not be considered unless submitted in a timely manner.
- (3) Rights and Remedies. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by LTD or Contractor shall constitute a waiver of any

right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

- (4) Continuing Contract Performance. Pending final resolution of a claim, including litigation, unless otherwise directed by LTD in writing, the Contractor shall proceed diligently with performance of the Contract and LTD shall continue to make payments in accordance with the Contract.
- (5) Waiver of Claims: Final Payment. The making and acceptance of Final Payment shall constitute a waiver of claims by LTD except those arising from:
  - a. Liens, claims, security interests, or encumbrances arising out of the Contract and unsettled;
  - b. Failure of the Work to comply with the requirements of the Contract;
  - c. Terms of special warranties required by the Contract; or
  - d. Faulty or defective work appearing after Final Completion.

### **ARTICLE 23 – RESOLUTION OF CLAIMS AND DISPUTES**

- (1) Negotiation. The Parties will attempt in good faith to resolve promptly through negotiation any claim or controversy arising out of or relating to this Contract. If a controversy or claim should arise, LTD's Contract Manager and Contractor's principal contact with LTD (herein referred to as "Contractor's Field Representative") will meet at least once and will attempt in good faith to resolve the dispute. For such purpose, either may request the other to meet within seven (7) days, at a mutually agreed upon time and place.

If LTD's Contract Manager and Contractor's Field Representative are not able to resolve the dispute within seven (7) days after their first meeting (or such longer period of time as may be mutually agreed upon), either Party may request that LTD's Assistant General Manager – Service Delivery (herein referred to as "AGM") and the Contractor's Management Representative meet at least once to attempt in good faith to resolve the dispute.

If LTD's AGM and Contractor's Management Representative are not able to resolve the dispute within fourteen (14) days after the first meeting of LTD's Contract Manager and Contractor's Field Representative (or such longer period of time as may be mutually agreed upon), LTD's AGM will notify the Contractor's Management Representative in writing that the LTD's General Manager (herein referred to as the "GM") shall render a decision within seven (7) days, which decision shall be considered advisory only and not binding in the event of litigation in respect of the claim.

Upon expiration of such time period, the GM will render to the Parties LTD's written decision relative to the claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, LTD may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy. Contractor shall, within seven (7) days after the effective date of this Contract, designate to LTD its Field Representative and Management

Representative, the latter of whom shall be an executive level individual with authority to settle disputes. LTD and Contractor may each change the designation of its Field Representative and Management Representative, but shall maintain at all times during the term of this Contract both a designated Field Representative and a designated Management Representative.

- (2) Mediation. If the dispute has not been resolved within twenty-one (21) days after the first meeting of LTD's Contract Manager and Contractor's Field Representative (or such longer period of time as may be mutually agreed upon), either Party may refer the claim or controversy to non-binding mediation by sending a written mediation request to the other Party. In the event that such a request is made, the Parties agree to participate in the mediation process. Non-binding mediation of claims or controversies under this Contract shall be conducted by a professional mediator that is mutually acceptable to and agreed upon by both Parties (herein referred to as the "Mediator"). The Parties and the Mediator may join in the mediation any other Party necessary for a mutually acceptable resolution of the dispute. Should the Mediator be unable or unwilling to continue to serve, the Parties shall select a successor Mediator. The mediation procedure shall be determined by the Mediator in consultation with the Parties. The fees and expenses of the Mediator shall be borne equally by the Parties.
- (3) Litigation. If the dispute is not resolved within fifteen (15) days after the commencement of mediation, or if no mediation has been commenced within thirty (30) days after the first meeting between LTD's Contract Manager and Contractor's Field Representative (or such longer period of time as may be mutually agreed upon), either Party may commence litigation to resolve the dispute in any Oregon state court of competent jurisdiction in Lane County or in the United States District Court for the State of Oregon to the extent said Court shall have jurisdiction over the matter.
- (4) In addition to the requirements of Article 25 in this Contract entitled "Notices", a copy of any written notices, appeals, and documents pertaining to a contract dispute under this Article shall also be delivered to LTD's Procurement Manager and General Counsel.
- (5) Contractor agrees that the economic loss rule shall not serve as a limitation on LTD's right to pursue tort remedies in addition to other remedies it may have against Contractor. Such rights and remedies shall survive the project or any termination of this Contract.
  - a. Oregon Torts Limits (Effective as of July 1, 2018). Below are the most recently published tort limits based on required statutory methodology identified in Oregon Revised Statute 30.271(4), 30.272(4), and 30.273(3) to calculate the annual adjustment to the limitations on liability of state and local public bodies for personal injury, death, and property damage or destruction. Based on these calculations, the limitations are adjusted as shown in the following table:

Public Body	Claimant(s)	Claim	Adjusted Limit
State	Single	Injury or death	\$ 2,181,600
State	Multiple	Injury or death	\$ 4,363,100
Local	Single	Injury or death	\$ 727,200
Local	Multiple	Injury or death	\$ 1,454,300
State or Local	Single	Property damage or destruction	\$ 119,300
State or Local	Multiple	Property damage or destruction	\$ 596,400

### ARTICLE 24 – FORCE MAJEURE

- (1) Neither Party hereto shall be deemed to be in default of any provision of this Contract, or for any failure in performance, resulting from acts or events beyond the reasonable control of such Party. For purposes of this Contract, such acts shall include, but not be limited to, acts of God, civil or military authority, civil disturbance, war, strikes, fires, other catastrophes, or other "force majeure" events beyond the Parties' reasonable control; provided, however, that the provisions of this Section shall not preclude LTD from canceling or terminating this Contract (or any order for any product included herein), as otherwise permitted hereunder, regardless of any force majeure event occurring to Contractor.
- (2) Notification by Contractor. Contractor shall notify LTD in writing as soon as Contractor knows, or should reasonably know, that a force majeure event (as defined in the Contract Documents) has occurred that will delay completion of the Scope of Work. Said notification shall include reasonable proofs required by LTD to evaluate any Contractor request for relief under the Contract Documents. LTD shall examine Contractor's notification and determine if the Contractor is entitled to relief. LTD shall notify the Contractor of its decision in writing. LTD's decision regarding whether or not the Contractor is entitled to force majeure relief shall be final and binding on the Parties.
- (3) Losses. Contractor is not entitled to damages, compensation, or reimbursement from LTD for losses resulting from any "force majeure" event.

### ARTICLE 25 – SEVERABILITY

If any provision of this Contract is held to be invalid, illegal, or unenforceable for any reason, the validity, legality, and enforceability of the remaining provisions of this Contract will not be adversely affected.

## ARTICLE 26 – ASSIGNABILITY

The covenants herein contained shall, except as otherwise provided, accrue to the benefit of and be binding upon the successors and assigns of the Parties hereto.

## ARTICLE 27 – NOTICES

- (1) All official notices and communications under this Contract shall be in writing and shall be deemed to have been duly given (i) on the date of delivery if delivered personally to the Party to whom notice is given, or (ii) at the date of actual receipt if mailed by U.S. Postal Service, postage prepaid, return receipt requested.
- (2) Notices and other communications shall be directed to the Parties at the addresses listed below:

### **Notice to Contractor:**

TAC Transportation, Inc.  
dba Pacific Crest Bus Lines  
P.O. Box 7881  
Bend, OR 97708  
Attn: [higham.jason@gmail.com](mailto:higham.jason@gmail.com)

### **Notice to LTD:**

Lane Transit District  
P.O. Box 7070  
Springfield, OR 97475  
Attn: General Manager  
Copy: Procurement

Telephonic and electronic mail communications and facsimile transmittals may be used to expedite communications, but neither shall be considered official communications under this Contract unless and until confirmed in writing in accordance with this Article 22, paragraph (1) above.

## ARTICLE 28 – OWNERSHIP OF DOCUMENTS

The Contractor agrees that all reports, drawings, computer disks, specifications, survey notes, estimates, maps, computations, and other data prepared by or for it under the terms of this Contract shall be delivered to, become, and remain the property of LTD upon termination or completion of the work. LTD shall have the right, at its sole risk, to use the same without restriction or limitation and without compensation to the Contractor other than that provided for in this Contract. In the event of reuse by LTD, LTD shall indemnify, defend and hold harmless Contractor from any and all claims or demands arising from such reuse by LTD. The Contractor shall not have the right to use same for sale or other benefit without express written permission from LTD, which permission shall not be unreasonably withheld. Contractor shall be allowed to retain a copy of the same for its records and as may be required by law.

## ARTICLE 29 – RIGHTS IN TECHNICAL DATA

[Intentionally Omitted]

## ARTICLE 30 - COPYRIGHTING

[Intentionally Omitted]



## **ARTICLE 31 – PUBLICATION AND PUBLICITY**

Articles, papers, bulletins, data, studies, statistics, interim or final reports, oral transmittals, or any other materials reporting the plans, progress, analyses, results, or findings of work conducted under this Contract shall not be presented publicly or published without prior written approval by LTD.

All releases of information, findings, and recommendations shall include a disclaimer provision and all published reports shall include that disclaimer on the cover and title page in the following form:

*"The contents of this publication reflect the views of the author(s), who is (are) responsible for the facts and accuracy of the data presented herein. The opinions, findings, and conclusions in this publication are those of the author(s) and do not necessarily reflect the official views or policies of those of the Lane Transit District or the Federal Transit Administration. This publication does not constitute a standard, specification, or regulation."*

If any information concerning the Services, their conduct, results, or data gathered or processed should be released by the Contractor without prior approval from LTD, the release of same shall constitute grounds for termination of this Contract without indemnity to the Contractor. In addition, the Contractor shall indemnify and hold harmless LTD, its officers, employees, and agents from any liability arising from such unauthorized release of data.

Any request for information directed to the Contractor, pursuant to the Oregon Open Records Act, by the public shall be immediately redirected to LTD for handling. LTD shall be responsible for providing the response to requests under the Oregon Open Records Act. The Contractor acknowledges and agrees that all records of the Services and the work, including records of the Contractor and its subcontractors are subject to the Oregon Open Records Act.

## **ARTICLE 32 – COVENANT AGAINST CONTINGENT FEES**

The Contractor shall comply with all relevant requirements of all federal, state, and local laws. The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, LTD shall have the right to annul this Contract without liability, or in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

## **ARTICLE 33 – CONFLICTS OF INTEREST**

LTD employees and directors are bound by the LTD Code of Ethics and Standards of Conduct. The LTD Code of Ethics and Standards of Conduct prohibits LTD employees and directors engaged in the award and administration of contracts, or any person acting on their behalf, from accepting, directly or indirectly, any gift with a value of more than a nominal amount, including

meals or tickets to sporting events, from any person with whom the employee interacts on official LTD business. Therefore, Contractor, or its subcontractors or suppliers, may not make gifts or favors to any LTD employee or director. It is a violation of the LTD Code of Ethics and Standards of Conduct for any LTD employee to accept any such gift or favor.

#### **ARTICLE 34 – WARRANTIES**

The Contractor shall exercise in its performance of the Services the standard of care normally exercised by nationally recognized organizations engaged in performing comparable services. Contractor further warrants and agrees that it, and any persons assigned by Contractor, shall perform this Contract in compliance with all relevant requirements of federal, state, and local laws, statutes, acts, ordinances, rules, regulations, codes, or standards.

#### **ARTICLE 35 – NONWAIVER**

No failure or waiver or successive failures or waivers on the part of either Party, its successors or permitted assigns, in the enforcement of any condition, covenants, or article of this Contract shall operate as a discharge of any such condition, covenant, or article nor render the same invalid, nor impair the right of either Party hereto, their successors or permitted assigns, to enforce the same in the event of any subsequent breaches by the other Party hereto, its successors or permitted assigns.

#### **ARTICLE 36 – MERGER**

This Contract constitutes the entire agreement of the Parties, all prior discussions, representations, and agreements being merged herein. The Contract may not be changed, modified, extended, or amended, nor any provision thereof waived, except by a written amendment executed by duly authorized representatives of the respective parties. The captions in this Contract are for convenience only and shall not affect the substantive meaning of any provision herein.

#### **ARTICLE 37 – NO THIRD-PARTY RIGHTS**

Except as expressly set forth herein, the representations, warranties, terms, and provisions of this Contract are for the exclusive benefit of the Parties hereto and no other person or entity shall have any right or claim against either Party by reason of any of these terms and provisions or be entitled to enforce any of these terms and provisions against either Party.

#### **ARTICLE 38 – ATTACHMENTS**

Any attachment or exhibit to this Contract will be incorporated into and made a part of this Contract. In the event of a conflict between the provisions contained in the body of this Contract and any attachment or exhibit, the terms in the body of this Contract will control.

## **ARTICLE 39 – SEPARATE COUNTERPARTS**

This Contract may be executed in one or more counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall together constitute and be one and the same instrument.

## **ARTICLE 40 – FOREIGN CONTRACTOR REPORT TO DEPARTMENT OF REVENUE (ORS 279A.120)**

The following provision is applicable to all contracts with a contract price exceeding \$10,000 if the Contractor is not domiciled in or registered to do business in the state of Oregon:

Where a public contract is awarded to a foreign Contractor and the contract price exceeds \$10,000, the Contractor shall promptly report to the Department of Revenue, on forms provided by the Department of Revenue, the total contract price, terms of payment, length of contract, and such other information as the Department of Revenue may require. The Contractor shall provide LTD with copies of all forms provided to the Department of Revenue before final payment will be made on the contract.

## **ARTICLE 41 – REGULATORY COMPLIANCE**

The work to be performed as the Services under this Contract may be financed, in part, by grants provided under programs of the Federal Transit Act, as amended, and as such is subject to the Terms and Conditions set forth in the grant agreements. Contractor understands that federal laws, regulations, policies, and related administrative practices applicable to the Contract may be modified from time to time. Contractor acknowledges that the most recent of such federal requirements will govern the Contract at any particular time, unless the Federal Government determines otherwise. Likewise, new federal laws, regulations, policies, and administrative practices may be established after the Contract is executed and may apply to the Contract. The laws and regulations detailed in this Contract include, but are not limited to, those that will be applicable to the Contract. To the extent applicable, Contractor shall comply with the federal, state, and LTD imposed requirements contained in this Contract.

## **ARTICLE 42 – CONFIDENTIAL INFORMATION**

Access to government records is governed by the Oregon Open Records Act, ORS 192.440. Except as otherwise required by the Oregon Open Records Act, LTD will exempt from disclosure proprietary information, trade secrets and confidential commercial and financial information submitted or disclosed during the term of the Contract. Any such proprietary information, trade secrets or confidential commercial and financial information that the Contractor believes should be exempted from disclosure shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections as containing proprietary information, trade secrets or confidential commercial and financial information will not ensure confidentiality. The specific proprietary information, trade secrets or confidential commercial and financial information must be clearly identified as such. Notwithstanding the Contractor's claim of or designation of information as proprietary, confidential or a trade secret, the determination whether it is or not will be determined by LTD under Oregon state law.

Any request for information directed to the Contractor, pursuant to the Oregon Open Records Act, by the public shall be immediately redirected to LTD for handling. LTD shall be responsible for providing the response to requests under the Oregon Open Records Act. The Contractor acknowledges and agrees that all records of the Services and the work, including records of the Contractor and its subcontractors are subject to the Oregon Open Records Act, ORS 192.440, et seq.

This Confidentiality section shall survive the termination or expiration of the Contract.

#### **ARTICLE 43 – OREGON RECIPROCAL PREFERENCE (ORS 279A.120)**

In determining the lowest responsible bidder, a public contracting agency shall, for the purpose of awarding the contract, add a percent increase on the bid of a nonresident bidder equal to the percent, if any, of the preference given to that bidder in the state in which the bidder resides.

The Oregon Department of Administrative Services, on or before January 1 of each year, shall publish a list of states that give preference to in-state bidders with the percent increase applied in each such state. The public contracting agency may rely on the names of states and percentages so published in determining the lowest responsible bidder without incurring any liability to any bidder.

#### **ARTICLE 44 – CONDITIONS CONCERNING PAYMENT, CONTRIBUTIONS, LIENS, WITHHOLDING (ORS 279B.220)**

Every public contract shall contain a condition that the contractor shall:

- (1) Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract.
- (2) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract.
- (3) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.
- (4) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

#### **ARTICLE 45 – HOURS OF LABOR (ORS 279C.520)**

No person shall be employed for more than eight (8) hours in any one day or forty (40) hours in any one week except in cases of necessity, emergency, or when the public policy absolutely requires it, and in such cases the laborer shall be paid at least time and a half pay for all overtime in excess of eight (8) hours a day and for work performed on Saturday or any legal holiday specified in ORS 279C.540.

**ARTICLE 46 – PAYMENT FOR MEDICAL CARE AND ATTENTION TO EMPLOYEES  
(ORS 279C.530)**

The Contractor shall promptly, as due, make payment to any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employee of such Contractor, of all sums, which the Contractor agrees to pay, for such services and all monies and sums, which the Contractor collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service.

**ARTICLE 47 – CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The Contractor agrees to comply with the following, in accordance with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701–3708) and U.S. Department of Labor regulations (29 C.F.R. Part 5):

- (1) Overtime Requirements. No Contractor or subcontractor contracting for any part of the contract work that may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of eight (8) hours in any calendar day or in excess of forty (40) hours in such work week, 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 eight (8) hours in any calendar day or in excess of forty (40) hours in such work week.
- (2) Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in subparagraph (b) (1) of 29 CFR, Section 5.5, the Contractor or any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such district or to such territory) 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 subparagraph (b) (1) of 29 CFR, Section 5.5, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of eight (8) hours or in excess of the standard work week of forty (40) hours without payment of the overtime wages required by the clause set forth in subparagraph (b) (1) of 29 CFR, Section 5.5.
- (3) Withholding for Unpaid Wages and Liquidated Damages. The Department of Transportation (DOT) or LTD 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 monies 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 House 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 subparagraph (b) (2) of 29 CFR, Section 5.5.

- (4) Non-construction Grants. The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, LTD shall require the Procurement Manager to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of DOT and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.
- (5) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph 1 through 5 of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower-tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the clauses set forth in subparagraphs 1 through 5 of this paragraph.

#### **ARTICLE 48 – CONTRACTOR’S COMPLIANCE WITH TAX LAWS**

- (1) Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this Section, “tax laws” includes all the provisions described in the required **Contractor’s Representations and Warranties Certification**, included as part of this Contract.
- (2) Any violation of subsection 1 of this section shall constitute a material breach of this Contract. Further, any violation of the conditions specified in the **Contractor’s Representations and Warranties Certification**, concerning the Contractor’s compliance with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle LTD to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:
  - a. Termination of this Contract, in whole or in part;
  - b. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to State’s setoff right, without penalty; and
  - c. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. LTD shall be entitled to recover any and all damages suffered as the result of Contractor’s breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs

incurred in securing [replacement Services/replacement Goods/a replacement contractor].

These remedies are cumulative to the extent the remedies are not inconsistent, and LTD may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

#### **ARTICLE 49 – PREFERENCE FOR LABOR AND MATERIAL LIENS (ORS 279C.615)**

All labor and material liens have preference and are superior to all other liens and claims of any kind or nature created by ORS 279C.500 to 279C.530 and 279C.600 to 279C.625.

#### **ARTICLE 50 – NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

- (1) LTD and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to LTD, Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.
- (2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### **ARTICLE 51 – PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

- (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801–3812 and U.S. DOT regulations “Program Fraud Civil Remedies,” 49 C.F.R. Part 31, apply to its actions pertaining to this contract. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- (2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by FTA under authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49

U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

- (3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## **ARTICLE 52 – ACCESS TO RECORDS AND REPORTS**

The following access to records requirements apply to this Contract:

- (1) Where the Purchaser (LTD) is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 CFR 18.36(i), the Contractor agrees to provide the Purchaser (LTD), the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions.
- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The Contractor agrees to maintain all books, records, accounts, and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until the Purchaser (LTD), the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
- (4) FTA does not require the inclusion of these requirements in subcontracts.

## **ARTICLE 53 – FEDERAL CHANGES**

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

## **ARTICLE 54 – CIVIL RIGHTS REQUIREMENTS**

The following requirements apply to the underlying Contract:

- (1) Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not



discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.

- (2) Equal Employment Opportunity. The following equal employment opportunity requirements apply to the underlying Contract:
- (a) Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246 “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the Project. 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, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
  - (b) Age. In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 621-634, 29 C.F.R. Part 1625, and federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
  - (c) Disabilities. In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 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 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## **ARTICLE 55 – DISADVANTAGED BUSINESS ENTERPRISES (DBE)**

This Contract is subject to the requirements of 49 C.F.R. Part 26 Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. LTD has an overall agency goal of **4.63%** for the utilization of DBEs using race neutral means.

- (1) Policy. LTD has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), Section 1101(b) of the FAST Act, 49 C.F.R. Part 26. LTD has received federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, LTD has signed an assurance that it will comply with 49 C.F.R. Part 26. It is the policy of LTD to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts.
- (2) Contractor and Subcontractor Obligation. Contractor and/or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

The Contractor agrees to include a substantially similar provision in its contracts with subcontractors.

## **ARTICLE 56 – DRUG AND ALCOHOL TESTING AND USE CONTROL**

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Oregon, or Lane Transit District, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 and to submit the Management Information System (MIS) reports in a timely manner. To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

## **ARTICLE 57 – ENERGY CONSERVATION**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §§ 6321–6327; 49 CFR Part 622 Subpart C). The Contractor also agrees to include a substantially similar provision in its contracts with subcontractors.

## **ARTICLE 58 – GOVERNMENT-WIDE DEBARMENT AND SUSPENSION**

Contractor agrees to comply with the following requirements of 2 C.F.R. Part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 CFR Part 1200:

- (1) It will not enter into any arrangement with a subcontractor that is debarred or suspended except as authorized by law;
- (2) It will review the U.S. GSA “System for Award Management (SAM),” <https://www.sam.gov>, if required by U.S. DOT regulations, 2 CFR Part 1200, in order to verify that none of the contractor, its principals, as defined at 2 CFR § 180.995, or affiliates, as defined at 2 CFR § 180.905, are excluded or disqualified as defined at 2 CFR §§ 180.940, 180.935
- (3) It will include similar provisions in its contracts with Subcontractors and include Subcontractors to include similar provisions in their contracts with lower-tier Subcontractors; and
- (4) By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by LTD. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available LTD, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## **ARTICLE 59 – BUY AMERICA REQUIREMENTS**

[Intentionally Omitted]

## **ARTICLE 60 – FLY AMERICA REQUIREMENTS**

[Intentionally Omitted]

## **ARTICLE 61 – TITLE VI**

During the performance of this Contract, the Contractor, for itself, its assignees and successors in interest agrees as follows:

- (1) Compliance with Regulations. The Contractor shall comply with the regulations relative to non-discrimination in federally assisted programs of the United States Department of Transportation (“DOT”) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (the “Regulations”), which are herein incorporated by reference and made a part of this Contract.
- (2) Non-discrimination. The Contractor, with regard to the Work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases

of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

- (3) Solicitations for Subcontracts, including procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Contractor for Work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Contract and the Regulations relative to non-discrimination on the grounds of race, color, or national origin.
- (4) Information and Reports. The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by LTD or the Federal Transit Administration ("FTA") to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information the Contractor shall so certify to LTD, or the FTA as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance. In the event of the Contractor's non-compliance with non-discrimination provision of this Contract, LTD shall impose contract sanctions as it or the FTA may determine to be appropriate, including but not limited to:
  - (a) Withholding of payments to the Contractor under the Contract until the Contractor complies; and/or
  - (b) Cancellation, termination, or suspension of the Contract, in whole or in part.
- (6) Incorporation of Provisions. The Contractor shall include the provisions of paragraphs (1) through (6) of this Article in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as LTD or the FTA may direct as a means of enforcing such provisions including sanctions for non-compliance provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request LTD enter into such litigation to protect the interests of LTD, and, in addition, the Contractor may request the United States federal government to enter into such litigation to protect the interest of the United States.

## **ARTICLE 62 – CHARTER BUS REQUIREMENTS**

The contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

- (1) Federal transit laws, specifically 49 U.S.C. § 5323(d);

- (2) FTA regulations, "Charter Service," 49 C.F.R. Part 604;
- (3) Any other federal Charter Service regulations; or
- (4) Federal guidance, except as FTA determines otherwise in writing.

The contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include the following:

- (1) Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
- (2) Withholding an amount of federal assistance as provided by Appendix D to Part 604 of FTA's Charter Service regulations; or
- (3) Any other appropriate remedy that may apply.

The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

### **ARTICLE 63 – SCHOOL BUS REQUIREMENTS**

The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 CFR Part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

- (1) Federal transit laws, specifically 49 U.S.C. § 5323(f);
- (2) FTA regulations, "School Bus Operations," 49 CFR Part 605;
- (3) Any other Federal School Bus regulations; or
- (4) Federal guidance, except as FTA determines otherwise in writing.

If Contractor violates this School Bus Agreement, FTA may:

- (1) Bar the Contractor from receiving federal assistance for public transportation; or
- (2) Require the contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities.

The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

### **ARTICLE 64 - PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS**

- (1) The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

- a. U.S. DOL Certification. Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
  - b. Special Warranty. When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.
  - c. Special Arrangements. The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.
- (2) Safe Operation of Motor Vehicles. In compliance with Federal Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third-party contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project. Additionally, recipients are required by FTA to include a Distracted Driving clause that addresses distracted driving, including text messaging in each of its third party agreements supported with federal assistance.
- (3) Seat Belt Use. The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or AGENCY.
- (4) Distracted Driving. The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

## **ARTICLE 65 – ENVIRONMENTAL REQUIREMENTS**

- (1) General. The Contractor agrees to comply with all applicable environmental and resource use laws, regulations, requirements, and guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, requirements and guidance. The Contractor also agrees to include substantially similar provisions in its contracts with subcontractors.

- (2) National Environmental Policy Act. An Award of federal assistance requires the full compliance with applicable environmental laws, regulations, requirements, and guidance. Accordingly, the Contractor will:
- a. Comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to:
    - (a) Federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139,
    - (b) The National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321 *et seq.*, as limited by 42 U.S.C. § 5159, and CEQ's implementing regulations 40 C.F.R. Part 1500-1508,
    - (c) Joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622,
    - (d) Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," March 5, 1970, 42 U.S.C. § 4321 note, and
    - (e) Other federal environmental protection laws, regulations, and requirements applicable to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto.
  - b. Follow the federal guidance identified herein to the extent that the guidance is consistent with applicable authorizing legislation:
    - (a) Joint FHWA and FTA final guidance, "Interim Guidance on MAP-21 Section 1319 Accelerated Decision making in Environmental Reviews," January 14, 2013,
    - (b) Joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Pub. L. 109-59)," 71 *Fed. Reg.* 66576, November 15, 2006, and
    - (c) Other federal environmental guidance applicable to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto.
- (3) Environmental Justice. The Contractor agrees to promote environmental justice by following:
- a. Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order,
  - b. U.S. DOT Order 5610.2, "Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 62 *Fed. Reg.* 18377, April 15, 1997, and
  - c. The most recent edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable federal laws, regulations, requirements, and guidance.
- (4) Other Environmental Federal Laws. The Contractor agrees to comply with all applicable federal laws, regulations, executive orders, and guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone

Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, and Executive Order Nos. 11988 and 13690 relating to "Floodplain Management."

- (5) Use of Certain Public Lands. The Contractor with U.S. DOT laws, specifically 49 U.S.C. § 303 (often referred to as "section 4(f)"), and joint FHWA and FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. Part 774, and referenced in 49 C.F.R. Part 622.
- (6) Historic Preservation. The Contractor agrees to:
  - a. Comply with U.S. DOT laws, including 49 U.S.C. § 303 (often referred to as "section 4(f)"), which requires certain findings be made before an Award involving the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places may be undertaken.
  - b. Encourage compliance with the federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108.
  - c. Comply with the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501 *et seq.*
  - d. Comply with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic Properties," 36 C.F.R. Part 800.
  - e. Comply with federal requirements and follow federal guidance to avoid or mitigate adverse effects on historic properties.
- (7) Indian Sacred Sites. The Contractor agrees to facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, "Indian Sacred Sites," May 24, 1996, 42 U.S.C. § 3161 note.
- (8) Mitigation of Adverse Environmental Effects.
  - a. The Contractor agrees that it will comply with all environmental mitigation measures that may be identified as conditions that the Federal Government might impose in finding of no significant impact or record of decision or commitments in the environmental documents that apply to the Award, such as environmental assessments, environmental impact statements, categorical exclusions, memoranda of agreement, documents required under 49 U.S.C. § 303, and other environmental documents.
  - b. The Contractor agrees that:
    - (a) Any mitigation measures agreed on will be incorporated by reference and made part of the Underlying Agreement and any Amendments thereto,



- (b) Any deferred mitigation measures will be incorporated by reference and made part of the Underlying Agreement and any Amendments thereto as soon as agreement with the Federal Government is reached, and
- (c) Any mitigation measures agreed on will not be modified or withdrawn without the written approval of the Federal Government.

The Contractor agrees to include substantially similar provisions in its contracts with subcontractors.

### **ARTICLE 66 – LOBBYING**

The Contractor agrees that it will not use federal assistance to influence any officer or employee of a federal agency, member of Congress or an employee of a member of Congress, or officer or employee of Congress on matters that involve the Underlying Agreement, including any extension or modification, according to the following:

- (1) Laws, Regulations, Requirements, and Guidance.
  - a. The Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended,
  - b. U.S. DOT regulations, “New Restrictions on Lobbying,” 49 C.F.R., Part 20, to the extent consistent with 31 U.S.C. § 1352, as amended, and
  - c. Other applicable federal laws, regulations, requirements, and guidance prohibiting the use of federal assistance for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a state legislature, and
- (2) Exception. If permitted by applicable federal law, regulations, or guidance, such lobbying activities described above may be undertaken through proper official channels.
- (3) The Contractor agrees to include a substantially similar provision in its contracts with subcontractors.

### **ARTICLE 67 – RECYCLED PRODUCTS**

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. § 6962), including but not limited to the regulatory provisions of 40 C.F.R. Part 247, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247. The Contractor agrees to include a substantially similar provision in its contracts with subcontractors.

### **ARTICLE 68 – FREEDOM OF INFORMATION ACT**

- (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for

violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

- (2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with federal assistance provided by FTA.
- (3) The Contractor also agrees to comply with other federal laws, regulations, requirements, and guidance concerning access to records pertaining to the contract.

### **ARTICLE 69 – AMERICANS WITH DISABILITIES ACT (ADA)**

The Contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; 49 C.F.R. Part 27; and any implementing requirements FTA may issue. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this Agreement.

In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112 and Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Contractor agrees that it will comply with the requirements of U.S. Department of Transportation regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37; and U.S. Department of Transportation regulations, "Americans with Disabilities Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38, pertaining to facilities and equipment to be used in public transportation. In addition, the Contractor agrees to comply with the requirements of 49 U.S.C. § 5301 (b)(6), which expresses the federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly persons and persons with disabilities. Contractor also agrees to comply with any implementing requirements FTA may issue.

In addition to the above, the Contractor agrees to comply with the following federal prohibitions against discrimination on the basis of disability:

- (1) Federal laws, including:
  - a. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities,
  - b. Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and
  - c. Other applicable federal laws, regulations and requirements pertaining to access for seniors or individuals with disabilities.
- (2) Federal regulations, including:

- a. U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. Part 39,
- b. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35,
- c. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36,
- d. U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630,
- e. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. Part 64, Subpart F,
- f. U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194, and
- g. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609, and
- h. Other applicable federal civil rights and nondiscrimination guidance.

Contractor understands that it is required to include this article in all subcontracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the Authority deems appropriate.

#### **ARTICLE 70 – COMPLIANCE WITH ALL FEDERAL, STATE, AND LOCAL REGULATIONS**

The Contractor must comply with all federal, state, and local regulations relative to wages, taxes, social security, workers' compensation, nondiscrimination, licenses, registration requirements, etc. Failure or neglect on the part of the Contractor to comply with any or all such regulations shall not relieve the Contractor of these obligations nor of the requirements of this contract.

Upon request of LTD or FTA, Contractor shall provide evidence of the steps it has taken to ensure its compliance with the FTA requirements, as well as evidence of the steps it has taken to ensure subcontractor performance, and/or submit evidence of subcontractor's compliance, at all tiers.

The Contractor also agrees to include a substantially similar provision in its contracts with subcontractors.

#### **ARTICLE 71 – INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated March 18, 2013, 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 Utilities requests which would cause City Utilities to be in

violation of the FTA terms and conditions. The Contractor agrees to include a substantially similar provision in its contracts with subcontractors.

**IN WITNESS WHEREOF**, said Parties have hereunto set their hand and affixed their seals the day and year above first written.

**TAC TRANSPORTATION, INC. dba  
PACIFIC CREST BUS LINES**

**LANE TRANSIT DISTRICT**

By: *Jason Higham*  
Jason Higham (Jul 12, 2018)  
\_\_\_\_\_  
Jason Higham  
President

By: *Aurora Jackson*  
\_\_\_\_\_  
Aurora "A.J." Jackson  
General Manager  
Jul 17, 2018

**Address:**  
P.O. Box 7881  
Bend, OR 97708

**Address:**  
P.O. Box 7070  
Springfield, Oregon 97475

**E-mail:** [higham.jason@gmail.com](mailto:higham.jason@gmail.com)

**ATTEST:**

By: *Collina Beard*  
\_\_\_\_\_  
Collina Beard  
Director of Business Services  
Jul 12, 2018

## **EXHIBIT A SCOPE OF WORK**

The Contractor is responsible for, but not limited to, all of the following:

- Labor
- All applicable licensing and insurance requirements
- Consistently operating Diamond Express and Oakridge Dial-a-Ride Services
- Performing assigned work with a high-level of customer service and passenger awareness
- Collecting fares from customers upon boarding
- Producing monthly reports detailing passenger counts, farebox revenue, vehicle maintenance costs, etc. Contractor will also be responsible for providing reports as required by Oregon Department of Transportation (ODOT) and the National Transportation Database (NTD).
- Pre-trip and post-trip vehicle assessments
- Arranging preventative maintenance on the provided vehicle to ensure that the service remains consistent and dependable
- Reporting any service disruptions, passenger injuries, or liability issues to the Contract Manager

### **Diamond Express**

#### **Service**

The Diamond Express uses accessible vehicles seating 30-35 passengers and includes a bicycle rack. The Contractor will consistently operate the Diamond Express according to the schedule put forth by the LTD planning department. The Contractor will be responsible for keeping the vehicle on schedule, servicing designated stops, and collecting fares from customers.

#### **Fares**

Diamond Express tickets (to be used in lieu of cash fare) must be made available for purchase through the Contractor. The ticket books will be provided to the Contractor by LTD. Fares must be paid by all riders with the exception of persons serving as personal care attendants and those passengers with rides paid by an agency, as per service agreements.

### Accountability

The Contractor must maintain a secure method for collecting, handling, storing, and accounting for rider fares and donations. Fares must be accounted for in accordance with standard cash handling, fare retrieval, and accounting practices.

The Contractor shall maintain records of ridership and farebox revenues, which will remain available for review. Any person involved in fare processing must undergo a background check prior to hiring, with periodic updates, to help ensure reliability. LTD and/or the State of Oregon may, at any time and for any reason, conduct an audit of the fare collection process.

### Reservations, Scheduling, Dispatch, and Communications

The Contractor must have the telephone capability to receive requests for service to confirm scheduled trips, receive called-in trip requests, and handle the necessary administrative liaison communications with LTD and other agency partners. The Contractor must also have current technology to utilize the web-based provider connection for trip assignment, scheduling, and billing from the RideSource Call Center.

### Vehicles

All vehicles to be used in the performance of Oakridge transportation services shall be leased from LTD. Vehicles will be maintained as specified in the vehicle lease agreement with LTD. Vehicle operation requires at a minimum a Class B commercial driver license with air brake certification and passenger endorsement.

## **Oakridge Dial-a-Ride**

### Service

The service operates between 10:00 a.m. and 2:00 p.m. Tuesdays and Thursdays, with meals currently being served at noon at the Church of the Nazarene located at 48187 Highway 58. The selected contractor will be responsible for tracking reservations and providing transportation, upon request from the customer, to the meal site and returning them to their point of origin. The service is provided at no cost to the passenger.

### Reservations, Scheduling, Dispatch, and Communications

The Contractor will maintain the staff and the telephone capability to receive called-in trip requests, confirm scheduled trips, and conduct the necessary administrative liaison communications with LTD and other agency partners. The Contractor will utilize the web-based provider connection for trip assignment, scheduling, and billing from the RideSource Call Center. The Contractor will be responsible for providing the necessary office space and equipment to maintain the aforementioned duties.

**EXHIBIT B  
COMPENSATION AND METHOD OF PAYMENT**

**I. Total Compensation.** This is a Fixed Price, Labor Hour Contract with cost reimbursement for Maintenance and Fuel Expense Contract with indefinite delivery, indefinite quantity. It is understood by both Parties that the maximum compensation under this Contract shall not exceed **One Million, One Hundred Twenty One Thousand, Seven Hundred Sixty Eight, and No/100 U.S. Dollars (\$1,121,768.00).**

Any services not required by the terms of this Contract that are performed without prior written authority from LTD, will be considered as unauthorized and at the sole expense of Contractor. Services so performed will not be compensated, and no extension in the period of performance will be granted on account thereof.

**II. Payment Provisions:** Contractor shall be paid in accordance with the Rate Schedule identified in Exhibit D of this Contract. Invoices for hours worked shall contain the following information:

A. Payment for Hours Worked Presented in this format

Labor Category	Hours Worked	Burdened Labor Rate	Amount Billed
		\$	\$
EXAMPLE			

B. Fuel usage shall be supported by actual receipts for each vehicle.

C. Maintenance and Repair costs of LTD-owned vehicles shall be identified and reimbursed at cost; expenses shall be accompanied by required documentation and receipts.

See Article 10 for complete and detailed information related to invoicing requirements.

**III. Partial Payment.** Payment for Services performed under the Contract shall be made based on actual services completed and substantiated by detailed invoices and other such documentation that LTD may reasonably require. Such invoices and other documentation will be verified by LTD, and payment will be made by LTD to the Contractor in the full amount of the actual services completed, less the total of all previous payments, up to the amounts identified in Section II, above.

**IV. Pricing and Rates.** LTD will pay Contractor the Firm, Fixed Prices and Rates/Fee identified below for the performance of the Services provided herein. LTD will pay all properly documented and executed invoices submitted by Contractor Net 30 days upon receipt. In no event will Contractor exceed the authorized “not-to-exceed” amount of the Contract without the express written consent of LTD.

**BASE YEAR**                    \$216,000.00

**YEAR 2-3 (Option)**    \$223,000.00 per year

**YEAR 4-5 (Option)**    \$229,884.00 per year

**V. Partial Payment.** Payment for Services performed under the Contract shall be made based on actual services completed and substantiated by detailed invoices and other such documentation that LTD may reasonably require. Such invoices and other documentation will be verified by LTD, and payment will be made by LTD to the Contractor in the full amount of the actual services completed, less the total of all previous payments, up to the amounts identified in Section I, above.

**VI. Final Payment.** Upon completion, delivery, and acceptance of all work contemplated under the Contract, the Contractor shall submit one (1) final invoice statement for the balance of the work performed.

The Contractor agrees that acceptance of this final payment for the Contract shall be full and final settlement of all claims arising against LTD for work done, materials furnished, costs incurred, or otherwise arising out of this Contract and shall release LTD from any and all further claims of whatever nature, whether known or unknown, for and on account of said Contract, and for any and all work done and labor and materials furnished, in connection with same.



**EXHIBIT C**  
**LTD REQUEST FOR PROPOSALS NO. 2018-12, FULLY CONFORMED AND INCLUSIVE**  
**OF ALL ADDENDA TO THE RFP (BY REFERENCE)**

**EXHIBIT D  
CONTRACTOR'S PROPOSAL (BY REFERENCE)**

**EXHIBIT E  
VEHICLE LEASE AGREEMENT**

*This Agreement is made and entered into as of the date of the last party to sign above (“Effective Date”) between LANE TRANSIT DISTRICT (“LTD”), a special district created pursuant to Oregon Revised Statute 267.010, and TAC TRANSPORTATION, INC. dba Pacific Crest Bus Lines (“Pacific Crest Bus Lines” or “Contractor”). LTD and Contractor may hereinafter from time to time be referred to as “Party” or “Parties.”*

**RECITALS**

- A. LTD issued a Request for Proposals seeking proposals from qualified firms to operate its Diamond Express and Oakridge Dial-a-Ride services; and
- B. In performing the work under the Contract, Lessee will operate out of the Diamond Express office, located at 65813 Hwy 58, Oakridge, OR (the “Premises”); and
- C. LTD desires to lease to Lessee and Lessee desires to lease from LTD the LTD-owned vehicle on the terms and conditions set forth in this Vehicle Lease Agreement (the “Vehicle Lease”).

**AGREEMENT**

The Recitals above being expressly incorporated herein, the Parties agree as follows:

**Section 1. Lease of Vehicle and Occupancy.**

- 1.1 **Lease.** LTD hereby leases to Lessee, and Lessee hereby leases from LTD, the following vehicle:

VIN #	License Plate #	Year	Make/Model
1FDXE45S26DB371 64	E273634	2006	EIDorado Aerotech 240
15GGD1812W10702 59	E242726	1998	Gillig Bus
TBD	TBD	Pending Purchase	Pending Purchase

- 1.2 **Original Term.** The term of this Vehicle Lease shall be for the duration of the contract 2018-12 Diamond Express and Oakridge Dial-a-Ride.
- 1.3 **Possession.** Lessee’s right to possession and obligations under this Vehicle Lease shall commence as of the close of business on the Effective Date.
- 1.4 **Renewal Option.** [Intentionally Omitted]

## **Section 2. Lease Payment.**

- 2.1 Base Payment.** During the original term, Lessee shall pay to LTD the sum of \$50.00 per vehicle. Rent shall be payable on the Effective Date.
- 2.2 Additional Payment.** All taxes, insurance costs, depreciation and any charges the Lessee is required to pay by this Lease, and any other sum that Lessee is required to pay LTD or third parties shall be additional rent.
- 2.3 Renewal Terms.** [Intentionally Omitted]
- 2.4 Where Paid.** Any sums due LTD from Lessee hereunder shall be mailed to Accounts Receivable, Lane Transit District, P.O. Box 7070, Springfield, OR 97475-0470.
- 2.5 Late Fee.** If the lease payment, including any additional amounts due (e.g., taxes), is not paid on or before the tenth (10<sup>th</sup>) day of the month in which due, Lessee agrees to pay LTD, as a late fee, additional rent equal to 1 percent of the term rent for each day between the date of payment and the tenth (10<sup>th</sup>) day of the month for which the rent is due. For example, if Lessee does not pay the rent until the twenty-first (21<sup>st</sup>) day of the month, a late fee equal to 11 percent of the rent amount shall be due and payable concurrently with the rent. LTD's acceptance of such late charge shall not constitute a waiver of Lessee's default or of Lessee's obligation to pay future rent when due.

## **Section 3. Authorized Operators.**

All persons authorized by the Lessee to operate the vehicle(s) shall be appropriately trained and licensed to do so. A record check must be conducted, through the Department of Motor Vehicles ("DMV"), on each driver and indicate a clear driving record prior to operating a vehicle.

## **Section 4. Records and Reporting.**

The Lessee shall accurately maintain information on each vehicle in the Fleet, throughout the duration of the Vehicle Lease as follows:

- (1) A full description of the vehicle;
- (2) An identification number, such as the manufacturer's serial number;
- (3) Maintenance, repair, and service records including all servicing required to maintain vehicle warranties; and
- (4) Location, use, odometer reading, and condition of the equipment and the date the information was reported.

The Lessee shall provide quarterly vehicle condition reports using the Oregon Department of Transportation (“ODOT”) guidelines for accurately reporting vehicle conditions of the Fleet. Reporting shall also be in compliance with applicable State and federal laws, and any grant requirements for State, federal, and grant funding to LTD or Lessee, which shall include but not be limited to the Special Transportation Fund (ORS 391.800-391.830).

## **Section 5. Repairs and Maintenance.**

**5.1 Lessee’s Obligations.** Lessee shall be responsible for and shall provide all registration, licensing, fuel, maintenance, and servicing for the Fleet and any wheelchair lift(s) during the period of this Vehicle Lease and any renewal term utilizing, at a minimum, a manufactured-approved maintenance and service schedule. Lessee shall also be responsible for any and all repairs needed to the Fleet during the period of this Vehicle Lease and any renewal term.

**5.2 Reimbursement for Repairs Assumed.** If Lessee fails or refuses to perform and provide the registration, licensing, fuel, maintenance, servicing, or repairs that are required by this Section, LTD may do so and charge the actual costs to Lessee. Such expenditures by LTD shall be reimbursed by Lessee on demand together with interest at the rate of 9% per annum from the date of expenditure by LTD. Except in an emergency creating an immediate risk of personal injury or property damage, LTD shall not perform repairs which are the obligation of Lessee and charge Lessee for the resulting expense unless at least 10 calendar days before work is commenced, and Lessee is given notice in writing outlining with reasonable particularity the repairs required, and Lessee fails within that time to initiate such repairs in good faith.

**5.3 Alterations Prohibited.** Other than as set forth in Paragraphs 5.1 and 5.2, Lessee shall make no improvements or alterations to the Fleet of any kind without first obtaining LTD's written consent. All alterations shall be made in a good and workmanlike manner, and in compliance with applicable laws, rules, and codes.

**Section 6. Insurance.** See Article 17

**Section 7. Liability and Indemnity.** See Article 16 for more detailed information.

### **7.1 Liens**

(1) Except with respect to activities for which LTD is responsible, Lessee shall pay as due all claims for work done on and for services rendered or material furnished to the Fleet, and shall keep the Fleet free from any liens. If Lessee fails to pay any such claims or to discharge any lien, LTD may do so and collect the cost as additional rent. Any amount so added shall bear interest at the rate of 9% per annum from the date expended by LTD and shall be payable on demand. Such action by LTD shall not constitute a waiver of any right or remedy which LTD may have on account of Lessee's default.

- (2) Lessee may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as LTD's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Lessee shall, within 10 calendar days after knowledge of the filing, secure the discharge of the lien or deposit with LTD cash or sufficient corporate surety bond or other surety satisfactory to LTD in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

**7.2 Indemnification.** See Article 16

**Section 8. Assignment and Subletting.** See Article 19

**Section 9. Default [Revised].** The following shall be events of default:

- 9.1 Default in Rent.** Failure of Lessee to pay any rent or other charge within 10 calendar days after it is due.
- 9.2 Default in Other Covenants.** Failure of Lessee to comply with any term or condition or fulfill any obligation of the Vehicle Lease (other than the payment of rent or other charges) within 20 calendar days after written notice by LTD specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 20 calendar day period, this provision shall be complied with if Lessee begins correction of the default within the 20 calendar day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. Lessee shall be entitled to only one (1) such notice in each Vehicle Lease year and subsequent defaults of any condition or obligation of the Vehicle Lease shall permit LTD to proceed with all available remedies without further notice to Lessee being required.
- 9.3 Default in Other Contracts.** Failure of Lessee to comply with any term or condition, or to fulfill any obligation of, the Contract, Lease, BAA, or any other agreement between the parties, or to cure such breach within the time set forth in the applicable contract, shall be considered an event of default under this Vehicle Lease.
- 9.4 Insolvency.** Insolvency of Lessee; an assignment by Lessee for the benefit of creditors; the filing by Lessee of a voluntary petition in bankruptcy; an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee; the filing of any involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within 30 calendar days after filing; attachment of or the levying of execution on the leasehold interest and failure of Lessee to secure discharge of the attachment or release of the levy of execution within 10 calendar days shall constitute a default. If Lessee consists of two (2) or more individuals, trusts, and/or business entities, the events of default specified in this Section shall apply to each individual, trust and/or business entity unless

within 10 calendar days after an event of default occurs, the remaining individuals produce evidence satisfactory to LTD that they have unconditionally acquired the interest of the one causing the default. If the Lease has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Lessee under the Lease.

## **Section 10. Remedies on Default.**

- 10.1 Termination.** In the event of a default the Vehicle Lease may be terminated at the option of LTD upon ten (10) days' written notice to Lessee. Whether or not the Vehicle Lease is terminated by the election of LTD or otherwise, LTD shall be entitled to recover damages from Lessee for the default, and LTD may reenter, take possession of the Fleet, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.
- 10.2 LTD's Right to Cure Defaults.** If Lessee fails to perform any obligation under this Lease, LTD shall have the option to do so after 30 calendar days' written notice to Lessee. All of LTD's expenditures to correct the default shall be reimbursed by Lessee on demand with interest at the rate of 9% per annum from the date of expenditure by LTD. Such action by LTD shall not waive any other remedies available to LTD because of the default.
- 10.3 Remedies Cumulative.** The foregoing remedies shall be in addition to and shall not exclude any other remedy available to LTD under applicable law.

**Section 11. Surrender at Expiration.** Upon expiration of the Vehicle Lease term or earlier termination, Lessee shall return the Vehicle to LTD in good and operating condition given reasonable wear and tear for the age of the vehicle.

**Section 12. Termination.** See Article 20 of the Contract for details regarding termination.

**Section 13. Notice.** Any notice permitted or required under this Vehicle Lease may be delivered personally or by United States mail, postage prepaid, address to Lessee at the Premises or to LTD at the address provided in Article 27 of the Contract. Such notice shall be deemed delivered on the day of personal delivery or on the day following the date of deposit in the United States mail, as the case may be.

## **Section 14. Miscellaneous.**

- 14.1 Succession.** Subject to the above-stated limitations on transfer of Lessee's interest, this Vehicle Lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.
- 14.2 Entry for Inspection.** LTD shall have the right to enter upon the Premises at any time to determine Lessee's compliance with this Vehicle Lease, or to show the Fleet to any prospective Lessee or purchaser.



**Lane Transit District**  
P.O. Box 7070  
Springfield, OR 97475-0470

3500 E. 17<sup>th</sup> Avenue  
Eugene, Oregon 97403  
Phone 541-682-6100  
Fax 541-682-6111

## **CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR) DELEGATION**

<b>DATE:</b>	07/10/2018
<b>TO:</b>	Cosette Rees, Director of Customer and Specialized Services
<b>FROM:</b>	Collina Beard, Director of Business Services
<b>CONTRACT#:</b>	2018-12
<b>CONTRACT TITLE:</b>	Diamond Express and Oakridge Dial-a-Ride
<b>CONTRACTOR NAME:</b>	TAC Transportation Inc., dba Pacific Crest Bus Lines
<b>CONTRACT END DATE:</b>	June 30, 2019 (Base Term)
<b>CONTRACT MAXIMUM:</b>	\$1,124,820.00

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### **CONTRACTING OFFICER (PROCUREMENT OR GENERAL MANAGER):**

Has authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The Contracting Officer is the only one who can make any commitments or obligations on behalf of Lane Transit District, which must be in writing, and mutually agreed upon by both parties.

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### **CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR):**

Is a business communications' liaison between Lane Transit District and the Contractor. The COTR is responsible for recommending actions and expenditures for the contract set forth. The COTR is responsible for monitoring the Contractor's progress in fulfilling the technical requirements specified in the contract. The COTR maintains administrative records, approves invoices, and performs quarterly monitoring reports to confirm the Contractor is meeting the terms and conditions under the contract.

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### **TECHNICAL REPRESENTATIVE INCLUDES:**

**Contract Manager:** The Contract Manager is responsible for monitoring compliance of the overall contract. This includes terms and conditions, transaction compliance monitoring (milestones, progress payments, deliverables, invoices), record keeping, and providing recommendations on contractual matters.

**Project Manager:** The Project Manager is responsible for overseeing the scope of work and ensuring that the Contractor is performing the work in accordance with the scope.



The Contract Manager, Cosette Rees, and Project Manager, John Ahlen, is hereby delegated authority to act as the Contracting Officer's Technical Representative (COTR) for Contract #2018-12 Diamond Express and Oakridge Dial-a-Ride. As such your duties are to assist the Contracting Officer, Collina Beard, in the administration of the contract through performance and closeout. This delegation may not be changed unless written authorization is given by the Contracting Officer. As the COTR, you must represent the Contracting Officer within the scope of the following authority, responsibilities, and limitations.

## **AUTHORITY**

As COTR, you have the authority to:

### **Contract Manager:**

1. Perform surveillance of the contract work and conduct inspections that are necessary to assure compliance with the contract terms and conditions. Resolve day-to-day matters within the scope of your authority.
2. Make written recommendations to the Contracting Officer when it appears that there is a need for a change in scope or terms of contract.
3. Certify invoices for payment. Evaluates progress payment requests based on costs incurred and actual work accomplished.

### **Project Manager:**

1. Perform, or cause to be performed, inspection(s) necessary for the acceptance of deliverables as stated in the contract and to require the Contractor to correct any deficiencies. Periodically, on-site surveillance visits may be required.
2. Assist the Contractor in interpreting the contract specifications or technical requirements provided that any interpretation or clarification that the COTR provides is within the limitations prescribed later in this delegation.

## **RESPONSIBILITIES**

As COTR, you have the responsibility to:

1. Be familiar with and understand all terms and conditions of the contract.
2. Be familiar with and understand contract requirements [scope of work (SOW), pricing, term, delivery, dates, renewal options, etc.] and implications of Contractor's performance in relation to the contract requirements.
3. Submit a purchase order in the Eden system with back up attached. No work can be performed unless the vendor has received a fully executed purchase order from Lane Transit District.
4. Monitor contract and purchase order expenditures for budgetary impacts.
5. Maintain a file of all correspondence (or data) initiated or received by you in connection with subject contract.
6. Maintain liaison and direct communications with the Contractor and the Contracting Officer. Meet with the Contractor or its designated representative at the beginning of the contract to discuss working methods and scheduling and as otherwise needed. Serve as the contact through which the Contractor can relay questions and problems of a technical nature to the Contracting Officer.

7. Review the Contractor's performance of the technical requirements of the contract in accordance with the contract terms, funding, conditions, and specifications. Notify the Contracting Officer, in writing, of any indication that the terms of the contract are not being met.
8. Alert the Contracting Officer to any potential or existing problems.
9. Monitor the Contractor's compliance with safety and security requirements.
10. Monitor any warranties on the contract.
11. Advise the Contracting Officer on contractual matters of a technical nature.
12. Report in writing any observed fraud, waste, or inefficiencies to the Contracting Officer.
13. Ensure appropriate confidentiality of Contractor submissions bearing proprietary markings.
14. Assist the Contracting Officer in negotiations.
15. Recommend needed contract amendments to the Contracting Officer when in the best interest to Lane Transit District.
16. Inspect contract deliverables for conformance to the contract specifications and accept or reject them.
17. Review and approve invoices, pay requests, and/or progress payments. Ensure billed rates are in accordance with the contract, and contract maximums have not been exceeded. Follow up with Contractor on discrepancies or errors.
18. Coordinate product returns with vendor and notify Procurement.
19. Monitor prevailing wage (Davis-Bacon or BOLI) compliance for public improvement and maintenance projects.
20. Maintain an arms-length relationship with the Contractor.
21. Submit completed Contract Closeout Form to Procurement when contract is complete and all deliverables have been met.
22. Seek guidance from the Contracting Officer for specific situations not covered in this delegation.

## **LIMITATIONS**

As COTR, you may not:

1. Make or give the appearance of being able to make contractual commitments outside the scope of the contract or execute or agree to modifications or take actions that would commit Lane Transit District to a change in contract price, quality, quantity, or delivery schedule.
2. Sign any changes or modifications to contracts and/or delivery order(s).
3. Make determinations regarding issues of Contractor liability that may arise during contract performance. Such issues should be referred to the Contracting Officer.
4. Take part in a labor controversy or dispute involving the Contractor or its employees.
5. Issue stop-work orders.
6. Make a decision outside official channels.

## **ACKNOWLEDGMENT STATEMENT**

Please acknowledge receipt and acceptance of this appointment by signing and returning the attached sheet to the Contracting Officer. Your appointment as the COTR under the above-numbered contract is terminated upon receipt of a written notice of termination from the appointing Contracting Officer, the Contracting Officer's successor, or a higher level of authority, or upon completion of the contract.

The duties and responsibilities set forth herein are not intended to be all-inclusive. As COTR, you are required to consult with the Contracting Officer when there are questions regarding your authority. You are not authorized to redelegate your authority.

\* \* \* \* \*

I understand and accept my appointment as the Contracting Officer's Technical Representative (COTR) under Contract #2018-12 Diamond Express and Oakridge Dial-a-Ride.

**Contract Manager:**

Cosette Rees  
Cosette Rees (Aug 1, 2018)

\_\_\_\_\_  
Signature of COTR

\_\_\_\_\_  
Cosette Rees, Director of Customer and Specialized Services

\_\_\_\_\_  
Aug 1, 2018  
Date

**Project Manager:**

John Ahlen  
John Ahlen (Jul 25, 2018)

\_\_\_\_\_  
Signature of COTR

\_\_\_\_\_  
John Ahlen, Accessible Services Coordinator

\_\_\_\_\_  
Jul 25, 2018  
Date

**Vendor Acknowledgement:**

Pacific Crest Bus Lines acknowledges the receipt of the Contracting Officer's Technical Representatives  
(vendor name)

form and agrees to comply with the authority, responsibilities, and limitations assigned herein.

Jason Higham  
Jason Higham (Jul 12, 2018)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Jason Higham, President

\_\_\_\_\_  
Jul 12, 2018  
Date

# 2018-12 Pacific Crest Bus Lines - Diamond Express and Oakridge Dial-a-Ride

Adobe Sign Document History

08/01/2018




Created:	07/11/2018
By:	Zach Fish (zach.fish@ltd.org)
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 Signed document emailed to Tami Black (tamiblack7@gmail.com), John Ahlen (john.ahlen@ltd.org), Chris Thrasher (chris.thrasher@ltd.org), Jason Higham (higham.jason@gmail.com), and 4 more  
08/01/2018 - 10:26:15 AM PDT

