

**CITY OF UNION GAP, WASHINGTON**

**ORDINANCE NO. 2586**

**AN ORDINANCE** of the City of Union Gap authorizing the Mayor to sign a Contract with T.C.Transportation Services LLC for transit services.

**WHEREAS**, the City of Union Gap engaged in the process of soliciting bids and proposals from interested transit services providers for the provision of transit services within the City of Union Gap;

**WHEREAS**, through that process, the City has identified TC Transportation Services LLC's proposal as most beneficial to the City's needs;

**WHEREAS**, it is now the desire of the City Council to enter into a contract with TC Transportation LLC for the provision of transit service within the City of Union Gap;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UNION GAP, WASHINGTON, DO ORDAIN AS FOLLOWS:**

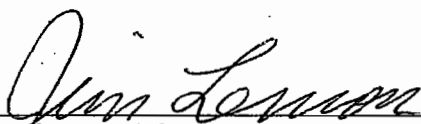
**Section 1. Contract authorized.**

The Mayor is authorized to enter into a Contract with TC Transportation Services LLC for the provision of transit services with the City of Union Gap as attached hereto as Attachment A.

**Section 2. Effective Date.**

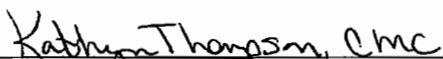
This ordinance shall take effect five days after its publication.

**PASSED BY THE CITY COUNCIL** this 22<sup>nd</sup> day of September 2008.

  
\_\_\_\_\_  
Jim Lemon, Mayor

ATTEST:

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Kathryn Thompson, CMC, City Clerk

  
\_\_\_\_\_  
Robert F. Noe, City Attorney

# CONTRACT

THIS CONTRACT is made between the City of Union Gap, Washington, a municipal corporation of the State of Washington, as "City" and T.C.Transportation Services LLC. as "Contractor". In consideration of these mutual terms and conditions, the parties covenant and agree as follows:

1. PERFORMANCE

The Contractor agrees, with the execution of this Contract, to perform all work, furnish all labor, necessary supplies, equipment, facilities, supervision, organization, and other items of work and cost necessary for the safe, reliable, efficient, and effective operation of both a fixed route bus system and door-to-door ADA paratransit service for persons with disabilities within the parameters to carry out the Scope of Work attached hereto as Attachment A.

2. DEFINITIONS/INTERPRETATION

For the purposes of this Contract and any additional instruments that may become a part of this Contract, the terms "contractor", "supplier", "seller", and "vendor" shall be interchangeable. The terms "buyer", "purchaser", "procuring agency", "Union Gap Transit", "City of Union Gap", and "City" shall be interchangeable.

3. CONTRACT DOCUMENTS

The City of Union Gap Request for Proposals ("RFP") and the Contractor's proposal (to the extent consistent with the City's documents) are hereby incorporated herein by this reference. Inconsistent provisions shall be resolved in the following order: (1) specific federal and state laws, (2) the terms of this Contract, (3) the RFP and (4) the Contractor's proposal.

4. FEDERAL/INSURANCE REQUIREMENTS AND CHANGES

Contractor shall at all times comply with all applicable Federal Transit Administration (FTA) reporting requirements, regulations, policies, procedures and directives. Further, contractor shall comply with any and all "Best Practices" requirements by the City's insurance provider. Contractor's failure to comply shall constitute a material breach of this Contract.

5. COMPENSATION

The City will pay Contractor in accordance with the Contractor's Proposal Cost Form as full compensation for all work performed under this Contract, subject to allowable additions and deductions.

Contractor shall send its itemized invoice/billing to:

City of Union Gap  
102 W. Ahtanum Road  
Union Gap, WA. 98903

Payment will be made no later than thirty (30) calendar days after approval of the Contractor's invoice. Interest on payments made after thirty (30) calendar days shall be at a rate of one half percent per month. It is further agreed that contractor will give the city a 2% prompt pay discount if invoice is paid within 10 days of receipt. All payments are expressly conditioned upon Contractor providing services hereunder that are satisfactory to the City. Any charges disputed by the City shall be separated from the invoice and the undisputed portion shall be paid.

A. Covenant Against Contingent Fees

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the

Contractor for the purpose of securing business. For breach or violation of this warranty, City shall have the right to annul this Contract without liability or at its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

**B. Payment Does Not Imply Acceptance of Work**

The granting of any progress payment or payments by City, or the receipt thereof by the Contractor, shall not constitute in any sense acceptance of the work or of any portion thereof, and shall in no way lessen the liability of the Contractor to comply with this Contract.

**6. DURATION/TIME OF PERFORMANCE**

This Contract shall be effective upon execution by the parties hereto. The Contractor shall commence work under this Contract at 12:01 a.m., December 1, 2008 and shall continue in good faith and effort until this Contract expires at midnight November 31, 2011. The City reserves the right to extend this Contract for two (2) additional one (1) year periods, upon thirty (30) days written notice to the Contractor prior to its expiration.

**7. RESOLUTION OF DISPUTES OR BREACHES**

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the Mayor of the City of Union Gap. This decision shall be final and conclusive unless within ten (10) calendar days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Mayor requesting that the City Council review the Mayor's decision. In connection with said appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of this Contract while matters in dispute are being resolved. The decision of the City Council shall be binding upon the Contractor and the Contractor shall abide by the decision unless Contractor requests in writing that the matter be submitted to an arbitrator. The parties agree that any dispute arising out of the conduct of this Contract shall be submitted to binding arbitration before a panel of arbitrators. Each party shall select an arbitrator. Those two arbitrators will select a third. The dispute will be settled by a majority of arbitrators prevailing. The prevailing party shall not be responsible for any of the costs associated with arbitration. The non-prevailing shall bear all costs. The duties and obligations imposed by the Contract Documents and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

**8. INDEPENDENT CONTRACTOR STATUS**

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

**9. INDEMNIFICATION AND HOLD HARMLESS**

A. Contractor shall at its sole expense protect, defend, indemnify and hold harmless the City, its elected officials, agents, officers and employees from any and all accidents, damages, losses, liens, liabilities, fines, penalties, claims, lawsuits, demands, actions, judgments, awards, costs and expenses arising directly or indirectly from or out of or relating to the Contractor's performance or non-performance of this Contract, whether singularly or jointly with others, its representatives, permittees, employees, contractors or subcontractors. Nothing herein shall be deemed to prohibit an indemnified party from participating in the defense of any litigation by its own counsel at its own expense. Such participation

shall not under any circumstances relieve Contractor from its duty of defense against liability or of paying any judgment entered against such party.

- B. Contractor hereby affirms that the City and Contractor have specifically negotiated these provisions, as required by RCW 4.24.115, to the extent that it may apply.
- C. No action, error or omission, or failure to act by the City, its agents, officers, officials or employees, in connection with administering its rights, duties or regulatory functions related to this Contract shall be asserted by Contractor, directly, indirectly or by way of seeking indemnification or as an assertion that the City has waived or is estopped to assert any municipal right hereunder, against the City, its boards, departments, divisions, officers, officials or employees.
- D. To the maximum extent permitted by law, Contractor shall indemnify, hold harmless and defend the City from claims and litigation brought against the City by employees or former employees of Contractor and, by mutual negotiation, Contractor hereby waives, as respects the City only, any immunity that would otherwise be available to Contractor against such claims or litigation under the worker's compensation provisions of Title 51 RCW.

## 10. INSURANCE

The City will apply for membership in the Washington State Transit Insurance Pool (Pool). If City becomes a member, insurance coverage will be available with respect to the transit services to be provided by the contractor. If City become a member it will apply to the Pool for auto liability coverage for TC Transit as an additional insured under coverage provided by the Pool. In order for the contractor to become an additional insured, the Pool has underwriting standards and other requirements that the contractor must meet.

This Section applies to all vehicles used by the Contractor to provide services pursuant to this Contract, whether such vehicles are owned by the Contractor or not. All vehicles insured through the City's insurance provider must be used exclusively to provide services pursuant to this Contract and may not be used for any other purpose whatsoever.

Service Vehicle Drivers. Contractor shall obtain and furnish copies to the City of a driving abstract for each service vehicle driver prior to beginning services pursuant to this Agreement and on a minimum annual basis thereafter during the term of this Agreement. All new service vehicle drivers will be subject to review by the City's insurance provider and/or the City prior to being permitted to operate any vehicle insured. The Contractor shall ensure compliance with the City's insurance provider's minimum requirements and/or "Best Practices."

### 10.1 INSURANCE

- A. If the City requires the contractor to provide coverage, the Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the State of Washington possessing a Best's policyholder's rating of A- or better and a financial rating of no less than VII, and reasonably acceptable to the City, the following insurance policies in no less than the amounts specified below. This insurance will name the City of Union Gap, its elected officials, officers, agents, and employees; the Contractor, its consultants and employees; and any required governmental agencies as additional insured's for work performed under this Contract; the Contractor's policy shall be designated primary coverage for both defense and indemnity, and any City policies or self insurance funds shall be excess.
  - (1) Comprehensive General Liability, Bodily Injury and Property Damage Liability, including Premise and Operations, Independent Contractors, Protective Liability, Completed Operations and Products, Contractual, Combined Single Limit of at least **\$5,000,000.00** per occurrence.
  - (2) Comprehensive Automobile Liability, Bodily Injury and Property Damage Combined Single Limit of at least **\$5,000,000.00** for any and all vehicles used to provide services pursuant to this Contract.

- The insurance required above shall be written for not less than limits of liability specified herein or required by law, whichever coverage is greater. Coverage's, written on an occurrence basis, shall be maintained without interruption from date of commencement of the work until date of final payment and termination of any coverage required to be maintained after final payment.
- Before commencing work or exposure to loss can occur, and, in any event, as a condition of City executing this Contract, the Contractor shall furnish City with a copy of the applicable insurance certificates. If the Contract is executed, no payments will be due until all such certificates are furnished. All policies and certificates must be signed copies and shall contain a provision that coverage's afforded under the policies cannot be materially altered (i.e., the coverage's reduced, the limits decreased, or the additional insured's removed), allowed to expire, or canceled without first giving at least thirty (30) days' prior written notice by certified mail to City (any language in the clause to the effect of "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" shall be crossed out and initialed by the insurance agent). The Contractor shall furnish to City copies of any subsequently issued endorsements amending, modifying, altering, or restricting coverage of limits. Furthermore, such policies or certificates shall contain a clause verifying that the policy contains coverage for blanket contractual liability including both oral and written contracts.
- City's specification or approval of the insurance in this Contract or of its amount shall not relieve or decrease the liability of the Contractor. Coverage's are the minimum to be provided and are not limitations of liability under this Contract, indemnification, or applicable law provisions. The Contractor may, at its expense, purchase larger coverage amounts.
- The Contractor shall ensure and require that subcontractors of any tier have insurance coverage to cover bodily injury and property damage on all operations and all vehicles owned or operated by subcontractors of any tier in conformance with the requirements of this Contract.
- If City is damaged by the failure of the Contractor to maintain any of the above insurance or to so notify City, then the Contractor shall bear all costs attributable thereto.

11. TAXES

If applicable, sales tax on this Contract as determined by the Washington State Department of Revenue will be added to the amounts due and the Contractor will be responsible for making payment of the tax to the State of Washington. All other taxes are the sole responsibility of the Contractor.

12. CIVIL RIGHTS REQUIREMENTS

A. 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.

B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(1) 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.

(2) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 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.

(3) 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.

C. 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.

13. CONTRACT WORK HOURS AND SAFETY STANDARDS

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

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

C. Withholding for unpaid wages and liquidated damages. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph B of this section.

D. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section 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 paragraphs A through D of this section.

14. 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 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

15. 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. The Energy Conservation requirements apply to all of the Contractor's subcontractors.

16. CLEAN AIR AND WATER REQUIREMENTS

A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the City of Union Gap ("City") and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

B. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

17. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

A. This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, and Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 10 %. A separate contract goal has not been established for this procurement.

B. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. 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 City deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

C. The successful bidder will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

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

18. DELEGATION AND ASSIGNMENT

Neither party to this Contract may delegate the performance of any obligation to a third party unless mutually agreed in writing. This Contract cannot be assigned without the written consent of the other party.

19. REGULATIONS PURSUANT TO THE COPELAND "ANTI-KICKBACK ACT"

The Contractor shall comply with the applicable regulations of the Secretary of Labor, U.S. Department of Labor, made pursuant to the so-called "Anti-Kickback Act" of June 13, 1934; Title 18 U.S.C. Section 874; and Title 40 U.S.C. Section 276c), and any amendments or modifications thereof, shall cause appropriate provisions to be inserted in subcontracts to ensure compliance therewith by all subcontractors subject thereto, and shall be responsible for the submission of affidavits required by subcontractors thereunder, except as said Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances, and exemptions from the requirements thereof.

20. ACCESS TO RECORDS

- A. The Contractor agrees to provide the City, the FTA Administrator, the Comptroller General of the United States and/or any of their authorized representatives access to any books, bank statements, documents, papers, records, and computer databases of the Contractor which are related to this contract for the purposes of making audits, examinations, excerpts and transcriptions, including risk management and safety audits associated with the WSTIP insurance provided pursuant to Section 10 of this Agreement. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- B. 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.
- C. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than ten 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 City, 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. Contractor agrees that books, records, accounts and reports required under this contract shall be the property of the City and that the Contractor holds the same on behalf of and for the benefit of the City. As such Contractor acknowledges that some of the records may be subject to public disclosure under provision of the Public Disclosure Act, RCW 42.56.

21. COMMUNICATIONS

In cases where communication is required between the Contractor and City, such as further information, furnishing of specifications, providing notice of termination or renewal, or obtaining approval of proposed work, such communications from the Contractor shall be forwarded directly to:

Mayor Jim Lemon  
102 W. Ahtanum Road  
Union Gap, WA. 98903

Communications from City to the Contractor shall be forwarded directly to:

Ron Davis  
T.C. Transportation Services  
PO Box 2123  
Pasco, WA 99302  
(509) 539-3877  
rond@charterinternet.com

22. MERGER

This Contract sets forth all of the terms, conditions, and agreements of the parties relative to the subject matter hereof and supersedes any and all prior negotiations, discussions, agreements, and understandings between the parties as to the subject matter therein. There are no terms, conditions, or agreements with respect thereto, except as provided herein and no amendment or modification of this Contract shall be effective unless reduced to writing and executed by the parties.

23. GOVERNING LAW AND VENUE

This Contract shall be governed by the laws of the State of Washington and any action to enforce the Contract shall be brought in Yakima County, Washington.

24. RIGHTS IN DATA AND COPYRIGHTS/PATENTS

The Contractor, without exception, shall indemnify and save harmless City and its employees from liability of any kind, including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process, or article manufactured or used in the performance of this Contract, including its use by City.

If the Contractor uses any design, device, or materials covered by letters, patents, or copyright, it is mutually agreed and understood without exception that the proposal prices shall include all royalties or cost arising from the use of such design, device, or materials in any way involved in the work.

25. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

The City 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 the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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.

26. PROGRAM FRAUD AND FALSE OR FRAUDULENT CITY STATEMENTS AND RELATED ACTS

- A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of this 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 this 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.
- B. 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 the 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.
- C. 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.

27. SUSPENSION AND DEBARMENT

This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the City of Union Gap. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

28. FEDERAL PRIVACY ACT REQUIREMENTS

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.

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.

29. SEVERABILITY

If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

If any provision of this Contract is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed modified to conform to such statutory provision.

30. BUY AMERICA REQUIREMENTS

If applicable, the Offer or and (if selected) Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Offer or/Contractor certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

31. COUNTERPARTS

This Contract may be executed in one or more counterparts, each of which shall constitute an original Contract but all of which together shall constitute one and the same instrument.

32. INTERPRETATION

As a further condition of this Contract, City and the Contractor acknowledge that this Contract shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party.

33. INCORPORATION OF FTA 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 4220.1E 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 requests, which would cause the City to be in violation of the FTA terms and conditions.

34. TERMINATION

A. Termination for Default. If the Contractor fails to comply with any provision of this Contract, the City may terminate this Contract for default without notice. Termination for default shall be effected by delivering a notice of termination to the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be compensated for services performed in accordance with the manner of performance set forth in this Contract subject to set off for damages caused to the City.

B. Opportunity to Cure. The City in its sole discretion may, in the case of termination for default, allow the Contractor an appropriate period of time, as determined by City, in which to cure the defect of service. In such case, the notice of termination will state the nature of the default, the time period in which cure is permitted, and other appropriate conditions. If the Contractor fails to remedy to the City's satisfaction the default of any of the terms, covenants, or conditions of this Contract within the stated period of time for remedy, the City may terminate this Contract without any further obligation to the Contractor.

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

D. Remedies. A termination for default shall not in any way operate to preclude the City from pursuing all other available legal remedies against the Contractor and its sureties for default or breach of this Contract.

35. SURVIVAL

Any provision of this Contract that imposes an obligation after termination or expiration of this Contract shall survive the term or expiration of this Contract and shall be binding on the parties to this Contract.

36. CONTRACT EXECUTION

SIGNED by the Mayor Jim Lemon 9/23, 2008.  
Jim Lemon, Mayor (Date)

SIGNED by the Contractor Al Coyner 9-30, 2008.  
Al Coyner, Manager (Date)

COMPANY NAME: T.C. Transportation Services, LLC

## Attachment A

### Scope of Services

T.C. Transportation Services, LLC will provide at a minimum under the terms of the Contract with the City for Transit Services:

- a. All equipment, manpower, and administration necessary to operate a transit system within the City of Union Gap efficiently;
- b. Buses that can accommodate up to 14 passengers at a time;
- c. Fixed routes and fixed schedules consistent with the routes and schedules that are currently provided to the City by Yakima Transit, with the addition of the Ahtanum Youth Park;
- d. Dial-A-Ride Paratransit bus services available to Union Gap residents as and when requested;
- e. Mass transit service within the City of Union Gap at no cost to riders (no fares);
- f. Recordkeeping and reports required by Federal, State, and local regulations applicable to public mass transit providers.

T.C. Transportation Services, LLC is further required to meet all other requirements set for in the Contract for Transit Services.

**CITY OF UNION GAP, WASHINGTON  
RESOLUTION NO. 771**

A **RESOLUTION** authorizing the Mayor to sign an Addendum to the Transit Contract with T.C. Transportation Services, LLC.

**WHEREAS**, the City has contracted with T.C. Transportation Services, LLC for the provision of bus service and Dial-A-Ride service;

**WHEREAS**, there has been some concern and discussion regarding the cost of Dial-A-Ride services;

**WHEREAS**, in an effort to clarify charges and costs for Dial-A-Ride services, the City's Contract Review Committee met with representatives of T.C. Transportation Services, LLC, and agreed to an Addendum to the Contract with respect to Dial-A-Ride services and costs;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UNION GAP, WASHINGTON, HEREBY RESOLVES as follows:**

The Mayor is authorized to sign an Addendum to the Contract with T.C. Transportation Services, LLC relating to Dial-A-Ride services.

**PASSED** this 23<sup>rd</sup> day of February 2009.

\_\_\_\_\_  
Jim Lemon, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Kathryn Thompson, CMC, City Clerk

\_\_\_\_\_  
Robert F. Noe, City Attorney

**ADDENDUM**  
TO CITY OF UNION GAP CONTRACT #2008-21  
BETWEEN THE CITY OF UNION GAP  
AND  
T.C. TRANSPORTATION SERVICES, LLC  
REGARDING DIAL-A-RIDE SERVICES

The parties, City of Union Gap, Washington and T.C. Transportation Services, LLC, hereby execute this document as an Addendum to the contract above-referenced entered into by the parties in September, 2008. This Addendum is intended to clarify provisions of the contract relating to the provision of Dial-A-Ride services.

The parties agree as follows with respect to Dial-A-Ride services:

1. Dial-A-Ride services are provided at the base rate of \$28.92 per boarding.

2. It was difficult and continues to be difficult to project how many Dial-A-Ride boardings may be required in the near future and distant future. In order to keep Dial-A-Ride services within budgetary constraints and in keeping with the projected costs presented in T.C. Transportation Services, LLC's proposal to the City during the bid process, it is agreed that the total amount charged for Dial-A-Ride services will be \$28.92 per boarding and will be capped at a total of \$7,166.67 per month for up to 300 boardings. If Dial-A-Ride demand exceeds 300 boardings in a month, T.C. Transportation Services will charge, in addition to the \$7,166.67, an additional \$15.00 per boarding for a maximum of up to 600 trips. In the event the total boardings in a month exceed 600, then T.C. Transportation Services will charge \$12.00 per boarding for any boardings over 600.

Agreed this \_\_\_\_\_ day of February, 2009

Agreed this \_\_\_\_\_ day of February, 2009

CITY OF UNION GAP

T.C. TRANSPORTATION SERVICES, LLC

\_\_\_\_\_  
Jim Lemon, Mayor

\_\_\_\_\_  
Al Coyner, Manager