

Form approved by Tribal Council ___/___/___
Initial if Tribal Council review of content requirement met ___
Initial if competitive bid requirement met ___
Initial if cost-review requirement met ___
Initial if Finance Department/CFO review requirement met ___
Initial if Legal Dept. review requirement met ___
Other review: _____

**CONTRACT
FOR GOODS AND/OR SERVICES**

This Contract is entered into on the Squaxin Island Reservation this 1st day of October, 2015, between Mason Transit Authority, with a principal place of business at, 790 E Johns Prairie Road, Shelton, WA 98584, hereafter referred to as the “Contractor”, and the Squaxin Island Tribe, a federally-recognized Tribe (hereafter the “Tribe”), located on the Squaxin Island Reservation at Shelton, Washington. This Contract consists of this written agreement and all attached “Contract Documents” described in Section 7 of this Contract.

1. Description of Goods and/or Services

Contractor shall provide the goods and/or services described in the attached “Exhibit A”, in accordance with this Contract and Contract Documents.

2. Contract Price

2.1 The Tribe agrees to pay Contractor for the goods and/or services the price described in “Exhibit A”. Payment of this amount is subject to additions or deductions in accordance with the provisions of this Contract.

2.2 Payment shall be as set out in Section 3 of this Contract.

3. Method of Payment

3.1 The Tribe shall make payments to Contractor on the following basis (select one option):

___ Option 1: 100% upon delivery of conforming goods and/or services.

✓ Option 2: In accordance with the payment schedule attached as “Exhibit B”.

3.2 Any payment to be made under either Option 1 or Option 2 above may be withheld if:

3.2.1 The goods and/or services are found to be defective and the defect is not remedied;

3.2.2 In the opinion of the Tribe, Contractor’s performance is not consistent with the terms of this Contract; or

3.2.3 Contractor fails to comply with any applicable law or regulation, or to pay any applicable tax, fee or license.

4. Claims

4.1 By making payment, the Tribe waives all claims except those arising out of:

4.1.1 Faulty goods and/or services appearing after delivery or completion;

4.1.2 Goods or services that do not comply with the Contract documents;

- 4.1.3 Outstanding claims of liens;
- 4.1.4 Failure of Contractor to comply with any special guarantees or warranties required by the Contract Documents.

4.2 Contractor, by accepting payment, waives all claims against the Tribe as to those goods and/or services except those that he or she has previously made in writing, and which remain unsettled at the time of acceptance.

5. Starting and Completion Dates

This Contract shall be effective on October 1st, 2015, and shall automatically terminate on September 30, 2017 unless renewed or extended in writing by both parties.

6. Default and Termination

6.1 This Contract may be terminated by either party without prejudice to any other remedy that the non-defaulting party may have if the other party defaults in performance of any provision of this Contract. The non-defaulting party shall give the defaulting party ten (10) days' written notice of the non-defaulting party's intention to terminate this Contract, within which time the defaulting party may cure the default condition to the satisfaction of the non-defaulting party. Should the defaulting party be Contractor, the Tribe may, pursuant to Section 3 of this Contract, withhold any portion of the Contract Price still owing at the time of the default.

6.2 Either party may also terminate this Contract for its convenience without cause. Should a party elect to terminate under this subsection 6.2, the terminating party shall give the other party written notice of the termination, which shall be effective immediately upon receipt, or three days after mailing, first-class, postage prepaid, whichever comes first, unless a later termination date is given. The Tribe shall pay for all goods and/or services properly provided up to the effective date of the termination. Contractor shall have no additional rights as against the Tribe except for the payment provided under this subsection 6.2.

7. Contract Documents

The Contract Documents on which the Contract is based are as follows: this Contract, together with such supplementary agreements and conditions as are attached to this Contract, and which are labeled as Exhibits to this Contract. The Contract Documents together form the Contract for the goods and/or services herein described. In the event of a conflict between this Contract and any document attached to it, the terms of this Contract govern.

8. Contract Officer

8.1 Pamela Hillstrom, Program Services Manager is the designated Contract Officer (CO) for the purpose of this Contract and shall provide general administration of the Contract as the Tribe's representative.

8.2 Marshall Krier, Maintenance Manager is Contractor's representative for this Contract, and shall be responsible for the performance of this Contract, and shall have signature authority for the Contractor for all matters related to this Contract.

9. Responsibilities of Contractor

Contractor's duties and rights in connection with the project herein are as follows:

9.1 **Payment of Taxes, Procurement of Licenses and Permits:** Contractor shall pay any applicable tribal, federal, state, and local taxes required by law in connection its performance under this Contract and shall secure all necessary licenses and permits, paying the fees therefore.

9.2 **Compliance with Laws and Regulations:** Contractor shall comply with all applicable laws and ordinances, and rules, regulations, or orders of all public authorities relating to the performance of this Contract. If any of the Contract Documents are at variance therewith, he or she shall notify the Contract Officer promptly upon discovery of such variance.

9.3 **Responsibility for Negligence of Employees and Subcontractors:** Contractor assumes full responsibility for acts, negligence or omissions of all its employees under this Contract, for those of its subcontractors and their employees, and for those of all other persons doing work under contract with it.

9.4 **Warranty of Fitness of Goods and/or Services:** For a period of one year following delivery, Contractor represents and warrants to the Tribe that goods and/or services provided under this Contract will be of good quality, free of defects, and in conformity with the Contract Documents. It is understood between the parties hereto that all goods and/or services that are not so in conformity are defective. Contractor's warranties do not cover, nor shall the Contractor be liable for: (i) modification to any goods or equipment; (ii) defects or damages due to the Tribe's negligence or misuse, abuse, failure to maintain, clean or operate the equipment in accordance with any Operator Manuals or good operating procedures; (iii) any modification or alteration of the goods or equipment by anyone other than the Contractor; (iv) cosmetic damages (such as scrapes or scratches); (v) damages or defects caused by any cause beyond the Contractor's reasonable control, including acts of government, strikes, fires, explosion, theft, riot, acts of God;

THE WARRANTIES EXPRESSLY PROVIDED HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE. SUCH WARRANTIES SHALL NOT BE ENLARGED, DIMINISHED OR OTHERWISE AFFECTED BY THE RENDERING OF TECHNICAL OR OTHER ADVICE OR SERVICE BY THE CONTRACTOR IN CONNECTION WITH THE GOODS OR EQUIPMENT OR BY ANY IMPLIED WARRANTY ARISING OUT OF A COURSE OF DEALING, BY STATUTE, OR BY PERFORMANCE, CUSTOM OR USAGE OF TRADE.

Any warranty claims must be submitted in writing by the Tribe within ten (10) days of the Tribe's discovery of a defect in the goods, equipment or service. If, within the Warranty Period, the Customer notifies the Contractor of any warranty claim and makes the goods or equipment, or the applicable components thereof, available for service and/or testing, and the Contractor agrees that the equipment fails to meet the warranties herein, and the Tribe cooperates with the Contractor in its efforts, the Contractor will with respect to Goods or Equipment, at the Contractor's option, repair or replace (with new or exchange replacement parts) any nonconforming Goods or Equipment or parts of the Equipment. The foregoing remedies are the Customer's exclusive remedies and the Contractor's sole liability for any warranty claim.

Notwithstanding anything herein to the contrary, the Contractor's liability for all claims, whether in contract, tort or otherwise, arising out of or resulting from any performance or nonperformance hereunder, shall in no event exceed the original invoiced cost of repair paid to the Contractor.

THE CONTRACTOR SHALL NOT BE LIABLE, UNDER ANY CIRCUMSTANCES, FOR SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO LABOR COSTS OR LOST DATA OR PROFITS, COST OF CAPITAL, CLAIMS OF

CUSTOMERS FOR SERVICE INTERRUPTIONS OR FAILURE OF SUPPLY, FROM THE USE OF OR INABILITY TO USE THE GOODS EQUIPMENT OR FROM THE EQUIPMENT BEING INCORPORATED IN OR BECOMING A COMPONENT OF ANY OTHER PRODUCT. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. NO ACTION OR CLAIM OF ANY TYPE RELATING TO THIS AGREEMENT MAY BE BROUGHT OR MADE BY CUSTOMER MORE THAN ONE (1) YEAR AFTER CUSTOMER FIRST HAS KNOWLEDGE OF THE BASIS FOR THE ACTION OR CLAIM.

9.5 Indemnity and Hold Harmless Agreement: a. To the extent permitted by law, the parties to this Agreement, including their agents and employees, assume responsibility for any damages, costs or claims resulting solely from their own negligence or the negligence of their agents and employees. To the extent permitted by law, the parties shall indemnify, defend, and hold one another harmless to the extent that any claim, cost, or damage is caused solely by their own negligent acts or omissions or the negligent acts or omissions of their agents and employees. b. In accordance with the laws of the state of Washington and to the extent permitted by law, if both parties to this Agreement are negligent and jointly liable, each party will assume responsibility for its own negligent acts or omissions and the negligent acts or omissions of their agents and employees.

10. Jurisdiction and Venue; Applicable Law; Sovereign Immunity

10.1 Contractor and the Tribe agree that the sole and exclusive jurisdiction over any disputes arising out of this Contract shall be in Mason County Superior Court.

10.2 Any dispute shall be determined under the laws of the State of Washington.

10.3 Nothing herein shall be deemed to waive the sovereign immunity of the Tribe, the Squaxin Island Tribe, or the enterprises, agents, or employees of any of them.

11. Independent Contractor

It is understood that the Contractor is operating as an independent contractor, and as such shall comply with all applicable laws and regulations and shall pay all applicable taxes and other assessments and hold the Tribe harmless from the consequences of any act or omission of whatever kind or nature of Contractor or its employees or agents of whatever kind. Contractor shall not have any right as an employee of the Tribe, and no employee-employer relationship is established by this Contract. Further, the Contractor is responsible for reporting this income to the applicable federal and/or state agencies. The Contractor is responsible for all taxes associated with this income.

12. Insurance

Contractor shall provide and continuously maintain in effect during the term of this Contract general liability insurance in the amount of \$1,000,000 per occurrence.

13. Records

Contractor will maintain adequate financial records, in accordance with generally accepted accounting practices, such that the Contractor can clearly and easily identify all claimed costs and expenses and the relatedness of the those costs and expenses to this Contract.

14. Certification of Non-Segregated Facilities

By signing this Contract, Contractor certifies that it does not maintain or provide for its employees any segregated facilities at any of Contractor's establishments, and that Contractor's employees are not permitted to perform their services at any location, under this Contract, where segregated facilities are maintained. Contractor agrees that failure to abide this certification is a breach of this Contract.

15. Non-Discrimination

Title VI of the Civil Rights Act of 1964, (Public Law 88-352; 42 USC 200d-1) provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

16. Entire Agreement; Amendments

This Contract contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, between the parties hereto with respect to the subject matter hereof.

17. Severability

If any part of this Contract is held unenforceable, the rest of the Contract will continue in effect.

18. No Partnership

This Contract does not create a partnership relationship. Contractor does not have authority to enter into contracts on the Tribe's behalf.

19. Assignment

(Check applicable provision.)

Either Contractor or the Tribe may assign or subcontract any rights or obligations under this Contract.

OR

Contractor may not assign or subcontract any rights or obligations under this Contract without the Tribe's prior written approval.

20. Tax Exemption

The Tribe is exempt from state taxes for goods and services received in Indian Country as provided in WAC 458-20-192 including, but not limited to, state and local sales tax, certain excise taxes, and others. Contractor is eligible for an exemption from state taxes for goods and services provided to the Tribe in Indian Country, as provided in WAC 458-20-192 including, but not limited to, state and local sales tax, Business & Occupation tax, and others. Contractor shall comply with WAC 458-20-192 to perfect the exemption from state taxation.

21. Execution

(Check applicable provision.)

The parties agree that this Agreement will be considered signed when the signature of a party is delivered by facsimile transmission. Signatures transmitted by facsimile shall have the same effect as original signatures.


OR

This Agreement shall be executed in duplicate originals, with each party retaining one fully executed duplicate original of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Contract at the Squaxin Island Reservation, Shelton, Washington, on the date herein indicated.

DATE: _____

SQUAXIN ISLAND TRIBE


By: Donald Whitener
Title: Administrator
Address: 10 SE Squaxin Lane
Shelton, WA 98584
Telephone: 360 426-9781
Facsimile: 360 427-2789

DATE: 10/22/15

MASON TRANSIT AUTHORITY, CONTRACTOR



By: Brad Patterson
Title: General Manager
Address: 790 East Johns Prairie Road
Shelton, WA 98584
Telephone: 360 426 5740
Facsimile: 360 426 0899
Taxpayer I.D.: 91-1554133

EXHIBIT A

**DESCRIPTION OF GOODS AND/OR SERVICES
AND PRICE**

Mason County Transportation Authority will provide routine service and maintenance on Squaxin Island Tribe's Transit buses as follows:

Description	10/1/15 to 9/30/17
Labor Rate Per Hour	\$53.00
Parts	Actual Cost
Shop Supplies	7% of Parts Not to exceed \$200.00 per service

A detailed invoice will be submitted to Squaxin Island Tribe for all maintenance work and Inspection Sheets will be included with the invoice for routine service.

Total Contract not to exceed \$15,000 unless change is agreed upon in writing.

EXHIBIT B

PAYMENT SCHEDULE

Upon completing Contractor's services under this Agreement, Contractor shall submit a detail invoice. Squaxin Island Tribe shall pay Mason County Transit Authority the invoice amount within 30 days of receipt of Contractor's invoice.



SQUAXIN ISLAND TRIBE

Letter of Transmittal

To: Mason Transit Authority Date: 11/18/15
790 E Johns Prairie Road Contract
Shelton, WA 98584
Attention: Michele Rosendale

Item Transmitted: *Contract* *Addendum* *W-9* *RFP* *Other* _____

Transmitted for: *Signature* *Your Info* *As requested* *Other* Your file copy

Sender remarks: Enclosed is the signed contract for Maintenance of our buses your file.

Recipient remarks:

Transmitted via: *Mail* *Overnight* *Fax* *Client Pickup* *Hand Delivered*

Signed

Parula Hillstrom