

# TRANSIT PROVIDER AGREEMENT

## AGREEMENT BETWEEN CITY OF GRAND ISLAND, NEBRASKA AND Holiday Express Bus FOR Urban Public Transit Service

THIS AGREEMENT, entered this 6th day of December, 2023, by and between City of Grand Island (herein called the "City") and Holiday Express Bus (herein called the "Transit Provider").

WHEREAS, the City is a direct recipient of 5307 Urbanized Area Formula Program Grant funding under 49 U.S.C. 5307 from the Federal Transit Administration (FTA); and

WHEREAS, the City wishes to engage the Transit Provider to assist in utilizing such funds;

NOW, THEREFORE, it is agreed between the parties hereto that;

### ARTICLE 1 - PROJECT

#### SECTION 1: SCOPE OF SERVICE

##### A. Activities

###### 1. General Statement

The Transit Provider will be responsible for administering a Federal Transit Administration (FTA) program in a manner satisfactory to the City and consistent with any standards required as a condition of providing these funds.

###### 2. Program Administration

The Transit Provider agrees to administer the following:

- |             |  |
|-------------|--|
| Activity #1 | <i>Assure compliance with terms of this agreement.</i>               |
| Activity #2 | <i>Assure compliance with parameters of Request for Proposals.</i>   |
| Activity #3 | <i>Assure compliance with parameters of Transit Provider Manual.</i> |

##### B. Performance Monitoring

The City will monitor the performance of the Transit Provider in accordance with the activities listed in A.2 of this agreement. Substandard performance as determined by the City will constitute noncompliance with this agreement, and a time period will be designated for compliance. If action to correct such substandard performance is not taken by the Transit Provider within the established time period, suspension or termination procedures will be initiated.

##### C. Special Performance Conditions

1. The Transit Provider will abide by the Special Performance Conditions in the City Title VI Plan, City of Grand Island's Limited English Proficiency/Language Assistance Plan, Safety Plan, Maintenance Plan, and City of Grand Island's Disadvantaged Business Enterprise Plan
2. Transit Provider will abide by State of Nebraska's Transit Asset Management Plan.
3. Transit Provider will create its own Financial Policies & Procedures, Drug & Alcohol Program, Maintenance Plan, and Passenger Handbook, all to be monitored by the City.

#### D. Capital Equipment

The Transit Provider agrees to keep all capital equipment associated with this agreement in good working order. Transit Provider shall pay insurance costs for City-owned capital equipment used in operations or administration, to be reimbursed per FTA Allowability of Costs.

### **SECTION 2: TERM OF AGREEMENT**

The term of this agreement shall be from the date of the last party signing the agreement to September 30, 2027. The City will then have the option to renew the agreement on an annual basis for a two (2) year period, at which time proposals will be solicited. The term of this agreement may be extended should additional time for monitoring be required, in accordance with law; this agreement shall be deemed automatically extended until such time as said monitoring is complete. The provisions herein shall be extended to cover any additional time period during which the Transit Provider remains in control of FTA funds or other FTA assets, including program income. Upon extension the agreement shall continue in full force and effect under the same terms and conditions.

### **SECTION 3: PROGRAM REPORTING**

The Transit Provider shall submit invoices monthly, as required by the City, to meet its local and FTA obligations. The City will direct the invoicing format and other various report formats in addition to the time and location for submission of such. Required reports include, but are not limited to, the following:

- A. Monthly reports in which vehicle usage, mileage, maintenance, or justification for lack of progress, in providing the compliance specified in Article 1, Section 1: Scope of Services, of this agreement are discussed.
- B. Monitoring and closeout reports including performance reports, inventory of all property acquired or improved by FTA funds, accident reports, complaint reports, and a final financial report, upon termination or completion of the contract.
- C. Annual reporting data to be used in the National Transit Database reporting.

## **ARTICLE 2 - FINANCIAL MANAGEMENT**

### **SECTION 1: PAYMENTS AND BUDGET**

#### A. General Statement

The City shall reimburse the Transit Provider allowable costs for the services identified in this agreement upon presentation of properly executed reimbursement/invoice forms as provided by and approved by the City.

Such reimbursement shall constitute full and complete payment by the City under this agreement. Allowable costs shall mean those necessary and proper costs identified in the Transit Provider's application/budget and approved by the City unless any or all such costs are disallowed by FTA.

Any reimbursement made under this agreement must comply with the applicable requirements of FTA Circular 9030.1E, Chapter IV, which outlines eligibility of costs. The Transit Provider may not request disbursement of funds under this agreement if the funds are not eligible costs. Any costs incurred which are not eligible, are the sole financial responsibility of the Transit Provider.

#### B. Payments

Reimbursement request must be submitted to the Transit Program Manager. Payments shall be made upon receipt of complete and correct reimbursement requests. Reimbursement requests may be submitted by email or hard copy to the contact information listed in Article 3, Section 1 of this agreement.

Reimbursement payments shall be made directly to Transit Provider only, and shall be made in accordance with the City of Grand Island's City Council meeting calendar.

Payments may be contingent upon certification of the Transit Provider's financial management system in accordance with the standards specified in the Transit Provider Manual.

Requests for payment of allowable costs shall be made against the line item budgets specified Attachment A – Budget. A budget modification is defined as the re-categorizing of budget line items, without changing the final total. Budget modifications are allowable, excluding the fixed fee line item. A budget amendment is defined as an increase to a budget line item that changes the final total. A budget amendment requires the action of City Council. (See Article 3, Section 2, Part F.)

### C. Budget

The Transit Provider will stay within the budget outlined in Attachment A. In addition, the City may require a more detailed budget breakdown than the one contained in Attachment A, and the Transit Provider shall provide such supplementary budget information in a timely fashion as directed by the City.

I. Personnel - Only the following positions will be reimbursable under the Personnel Line item.

- Transportation Director
- CRANE Supervisor
- Safety Manager
- Operations Manager
- Fleet/Driver Manager
- Finance Manager
- Driver
- Dispatcher

If a new position is added, written permission must be obtained from the City of Grand Island before any wages or benefits are expensed against Personnel.

All wages and benefits billed to the City of Grand Island must represent actual hours worked. For shared positions (those which spend time working on projects not associated with public transit) only actual hours worked can be billed against this contract, and must be done so in 15 minute increments. Written documentation of actual hours worked by all public transit employees, shared or otherwise, will be submitted monthly along with the invoice for services. Estimates and/or rounding will not be reimbursed, and will not be given the opportunity to be re-formatted.

II. Vehicle Maintenance - Vehicle Maintenance expenses are billable as parts plus labor. The approved labor rate is \$118.00 an hour. Overhead/profit charged on parts shall not be larger than 20%. Preventative Maintenance is defined as the preventative maintenance required per the manufacturer's owner manual. Preventative Maintenance charges are the only maintenance charges allowed in the Preventative Maintenance category. All other vehicle maintenance is to be considered a repair. No other maintenance expenses (such as staff time or utilities) are reimbursable, as they are considered to be included in the approved labor rate. Any changes to the labor rate must be approved by the City of Grand Island in writing.

III. Office Space -The transit provider shall provide vehicle storage and a working office space adequate for all positions outlined in Section 1 Paragraph C along with the City of Grand Island's Transit Program Manager.

A monthly allowance for use of the office space at 2510 South North Road will be charged to the General Operating line item and will not exceed \$40,000 a year. This is considered a gross expense, which includes facility maintenance, taxes, and utilities. Utilities include office internet, phone, electric, trash and maintenance. If the property at 2510 South North Road is not available for use for any reason, the transit provider shall provide another workable office space at the same rate. Only one office space is chargeable to the contract at a time.

The City of Grand Island will provide the equipment items listed in Attachment C – Equipment List to be used by the transit provider, and then must be returned at the end of the contract term.

IV – General Administration/Fixed Fee - Expenses for general administration shall be fixed, paid in equal parts monthly, and will be paid against the Fixed Fee line item specified in Attachment A - Budget and in accordance with the specified term. Early advances of the fixed fee are prohibited.

#### D. Closeout

Upon termination of this agreement, in whole or in part for any reason including completion of the project, the following provisions may apply:

1. Upon written request by the Transit Provider, the City shall make or arrange for payments to the Transit Provider of allowable reimbursable costs not covered by previous payments;
2. Disposition of program assets (including the return of all unused materials, equipment, program income balances, and accounts receivable to the City);
3. The Transit Provider shall submit within thirty (30) days after the date of expiration of this agreement, all financial, performance and other reports required by this agreement, and in addition, will cooperate in a program monitoring by the City or its designee; and
4. Closeout of funds shall not occur unless all requirements of this agreement are met and all outstanding issues with the Transit Provider have been resolved to the satisfaction of the City.

The Transit Provider's obligation to the City shall not end until all closeout requirements are completed. Notwithstanding the foregoing, the terms of this agreement shall remain in effect during any period that the Transit Provider has unobligated FTA funds, including program income.

## **SECTION 2: DOCUMENTATION OF COSTS AND OTHER FINANCIAL REPORTING**

All costs shall be supported by properly executed payrolls, time records, invoices, vouchers or other official documentation, as evidence of the nature and propriety of the charges. All accounting documents pertaining in whole or in part to this agreement shall be clearly identified and readily accessible, and upon reasonable notice, the City and FTA shall have the right to monitor the records of the Transit Provider as they relate to the agreement and the activities and services described herein. The Transit Provider acknowledges the financial oversight requirements of the Transit Provider Manual.

## **ARTICLE 3 - GENERAL CONDITIONS AND REQUIREMENTS**

### **SECTION 1: NOTICES**

Notices required by this agreement shall be in writing and delivered via mail, commercial courier, or personal delivery with acknowledgement by receiving party. Any notice delivered shall be effective on the date of delivery as signed for. All notices and other written communications under this agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

City  
Transit Program Manager  
1016 Diers Avenue, Suite 119  
Grand Island, Nebraska 68803  
308-646-6571

Transit Provider  
J. Mick Brown, CEO  
2510 S. North Road  
Grand Island, Nebraska 68803  
308-384-1800

## SECTION 2: GENERAL CONDITIONS

### A. "Independent Transit Provider"

Nothing contained in this agreement is intended, or shall be construed in any manner to create or establish the relationship of employer/employee between the City and Transit Provider. The Transit Provider shall at all times remain an "Independent Transit Provider" with respect to the services to be performed under this agreement. The City shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the Transit Provider is an Independent Transit Provider.

### B. Hold Harmless

To the extent permitted by law, the Transit Provider agrees to hold harmless, defend and indemnify the City and its appointed and elected officers and employees from and against any and all liability, loss, costs, damage and expense, including costs and attorney fees in defense thereof because of any actions, claims, lawsuits, damages, charges and judgments whatsoever that arise out of the Transit Provider's performance or nonperformance of the services or subject matter called for in this agreement.

### C. Workers' Compensation

The Transit Provider shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this agreement.

### D. Insurance

The Transit Provider shall:

1. Obtain and maintain for the applicable agreement term insurance on each vehicle against all risks of loss or damage in an amount not less than the replacement cost of the vehicles, without deductible and without co-insurance,
2. Obtain and maintain for the applicable agreement term, comprehensive liability insurance covering personal injury of at least \$1,000,000 per person and property damage of at least \$1,000,000 per occurrence, and such insurance shall otherwise be in a form and with companies reasonably satisfactory to City. Provider shall designate City, as their interests may appear, as loss payee on property insurance, and shall designate City additional insured on liability insurance. Provider shall pay all premiums for such insurance and cause delivery to City of certificates evidencing such insurance in effect through the agreement term identifying the vehicle identification number of each vehicle, as applicable, along with, if requested by City, evidence satisfactory to City, of the payment of the premiums for such insurance. All insurance shall provide for at least thirty (30) days advance written notice to City before any cancellation, expiration or material modification thereof. No act or default of Provider, its officers, agents and employees, will affect City's right to recover under such policy or policies in case of loss. Provider shall deliver prompt written notice to City of (1) loss, theft, or destruction of any vehicle, (2) any damage to any vehicle exceeding one thousand dollars (\$1,000), and (3) any claim arising out of the ownership, operation, maintenance, or use of any vehicle. In the event of damage to or loss or destruction of a vehicle (or any component thereof), Provider shall, at the option of City, (a) promptly place such vehicle in good repair, condition and working order, or (b) replace the vehicle with a vehicle in good repair, condition and working order, acceptable to City, and shall transfer clear title to such vehicle to the entity, City, holding title to the vehicle damaged, lost, or destroyed, whereupon such vehicle shall be subject to the applicable agreement term. Liability coverage shall include coverage for loading and unloading passengers.

The certificates of insurance shall be subject to review by the City and the Transit Provider shall carry evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect. Insurance limits must be on each Certificate of Insurance. No other form of certificate shall be used.

The Transit Provider will not be relieved of any liability, claims, demands, or other obligations assumed by its failure to procure or maintain insurance, or its failure to procure or maintain insurance in sufficient amounts, durations, or types.

E. Licensing

The Transit Provider agrees to comply with and obtain, if necessary, all applicable City, Municipal, State or Federal standards for licensing, certifications and operation of facilities and programs, and accreditation and licensing of individuals, and any other standards or criteria as described in this agreement to assure quality of services.

In the event of an investigation or suspension regarding any Transit Provider license related to the services for which the City is providing funding under this agreement, the City may terminate this agreement and withhold further agreement funds. In addition, monies already received under this agreement may be owed back to the City.

F. Amendments

The parties may amend this agreement at any time provided that such amendments make specific reference to this agreement and are executed in writing, signed by a duly authorized representative of each organization, and approved by City Council. Such amendments shall not invalidate this agreement, nor relieve or release the City or Transit Provider from its obligations under this agreement. The City may, in its discretion, amend this agreement to conform to Local, State, or Federal governmental guidelines, policies or available funding amounts. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this agreement, such modifications will be incorporated only by written amendment signed by both City and Transit Provider.

G. Failure to Perform

In the event of failure by the Transit Provider to comply with any terms or conditions of this agreement or to provide in any manner activities or other performance as agreed herein, the City reserves the right to temporarily withhold any portion or full payment pending correction of the deficiency, suspend all or part of the agreement, or prohibit the Transit Provider from incurring additional obligation of funds until the City is satisfied that corrective action has been taken or completed. The option to withhold funds is in addition to, and not in lieu of the City's right to suspend or terminate this agreement. The City may consider performance under this agreement when considering future awards.

H. Termination

The City may pursue remedies if the Transit Provider significantly fails to comply with any terms or conditions of this agreement, which include, but are not limited to, the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and FTA guidelines, policies or directives as may become applicable at any time;
2. Failure, for any reason, of the Transit Provider to fulfill in a timely and proper manner its obligations under this agreement;
3. Ineffective or improper use of funds provided under this agreement;
4. Submission by the Transit Provider to the City reports that are incorrect or incomplete in any significant respect; or
5. Failure to take satisfactory corrective action as directed by the City.

This agreement may also be terminated for convenience by the City, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. If, in the case of a partial termination, however, the City determines that the remaining portion

of the award will not accomplish the purpose for which the award was made, the City may terminate the award in its entirety.

In the event that funding from the Federal government is withdrawn, reduced or limited in any way after the effective date of this agreement but prior to its normal completion, the City may immediately terminate this agreement in accordance with such, notwithstanding any other termination provisions of this agreement.

Termination under this Section shall be effective upon receipt of written notice from the City to the Transit Provider.

In the case of suspension or termination, monies already received under this agreement may be owed back to the City and the City may also declare the Transit Provider ineligible for further participation in the City's transit program.

### **SECTION 3: SPECIAL CONDITIONS**

#### **A. Access to Records and Reports**

1. Record Retention. The Transit Provider will retain, and will require its subcontractors of all tiers to retain, complete and provide readily accessible records related in whole or in part to the agreement, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
2. Retention Period. The Transit Provider agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Transit Provider shall maintain all books, records, accounts and reports required under this agreement for a period of at not less than three (3) years after the date of termination or expiration of this agreement, except in the event of litigation or settlement of claims arising from the performance of this agreement, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
3. Access to Records. The Transit Provider agrees to provide sufficient access to the City of Grand Island, Hall County, the State of Nebraska, FTA, and its contractors to inspect and audit records and information related to performance of this agreement as reasonably may be required.
4. Access to the Sites of Performance. The Transit Provider agrees to permit the City of Grand Island, Hall County, the State of Nebraska, FTA, and its contractors access to the sites of performance under this agreement as reasonably may be required.

#### **B. Charter Service**

The Transit Provider agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that recipients and sub-recipients 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 Transit Provider 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:

1. Barring it or any sub-transit provider 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 of part 604 of FTA's Charter Service regulations; or
3. Any other appropriate remedy that may apply.

The Transit Provider should also include the substance of this clause in each sub-agreement that may involve operating public transit services

C. Clean Air and Clean Water

1. Clean Air. The Transit Provider shall 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 Transit Provider shall report each violation to the City and understands and agrees that the City shall, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Transit Provider shall include these requirements in each sub-agreement exceeding \$100,000 financed in whole or in part with FTA assistance.
2. Clean Water. The Transit Provider shall 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 Transit Provider shall report each violation to the City and understands and agrees that the City shall, in turn, report each violation as required to assure notification to FTA and the appropriate Environmental Protection Agency Regional Office. The Transit Provider shall include these requirements in each sub-agreement exceeding \$100,000 financed in whole or in part with FTA assistance.

D. Civil Rights and Equal Opportunity

The City is an Equal Opportunity Employer. As such, the City agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the City agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this agreement, the Transit Provider shall at all times comply with the following requirements and shall include these requirements in each sub-agreement entered into as part thereof.

1. Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, the Transit Provider agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Transit Provider agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Transit Provider 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. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Transit Provider agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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 Transit Provider agrees to comply with any implementing requirements FTA may issue.
3. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Transit Provider



agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Transit Provider agrees to comply with any implementing requirements FTA may issue.

4. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § A-27 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Transit Provider agrees that it will not discriminate against individuals on the basis of disability. In addition, the Transit Provider agrees to comply with any implementing requirements FTA may issue.

#### E. Disadvantaged Business Enterprise

The Transit Provider shall not discriminate on the basis of race, color, national origin, or sex in the performance of this agreement. The Transit Provider shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted agreements. Failure by the Transit Provider to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the City deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the Transit Provider from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

#### F. Employee Protections

The Transit Provider shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5. The Transit Provider 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 agreement for all laborers and mechanics, including guards and watchmen, working on the agreement. 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. Such records maintained under this paragraph shall be made available by the Transit Provider for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Transit Provider will permit such representatives to interview employees during working hours on the job. The Transit Provider shall require the inclusion of the language of this clause within sub-agreements of all tiers.

#### G. Energy Conservation

The Transit Provider agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the State Energy Program in Nebraska issued in compliance with the Energy Policy and Conservation Act.

#### H. Changes to Federal Requirements

The Transit Provider 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 the City and FTA, as they may be amended or promulgated from time to time during the term of this agreement. The Transit Provider's failure to so comply shall constitute a material breach of this agreement.

#### I. Lobbying Restrictions

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of

a City, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal agreement, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal agreement, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any City, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal agreement, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-agreements, sub-grants, and agreements under grants, loans, and cooperative agreements) and that the Transit Provider shall certify and disclose accordingly.

J. No Federal Government Obligation to Third Parties

The City and Transit Provider acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this agreement and shall not be subject to any obligations or liabilities to the City, Transit Provider or any other party (whether or not a party to that agreement) pertaining to any matter resulting from the underlying agreement.

The Transit Provider agrees to include the above clause in each sub-agreement financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor will be subject to its provisions.

K. False Statements of Claims and Criminal Fraud

The Transit Provider 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 the underlying agreement, the Transit Provider 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 agreement or the FTA assisted project for which this agreement work is being performed. In addition to other penalties that may be applicable, the Transit Provider 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 Transit Provider to the extent the Federal Government deems appropriate.

The Transit Provider 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 an agreement 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. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Transit Provider, to the extent the Federal Government deems appropriate.

The Transit Provider agrees to include the above two clauses in each sub-agreement 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 sub-transit provider who will be subject to the provisions.

L. Public Transportation Employee Protective Arrangements

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

1. U.S. DOL Certification. Under this agreement 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 agreement.

2. Special Warranty. When the agreement 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 agreement.
3. Special Arrangements. The conditions of 49 U.S.C. § 5333(b) do not apply to Transit Providers 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.

M. Recovered Materials

The Transit Provider agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

N. Safe Operation of Motor Vehicles

1. Seat Belt Use - The Transit Provider 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 Transit Provider or City.
2. Distracted Driving - The Transit Provider agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging when employer provides an electronic device, and driving a vehicle the driver owns or rents, a vehicle Transit Provider owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

O. School Bus Operations

The Transit Provider agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. 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 C.F.R. part 605;
3. Any other Federal School Bus regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

If Transit Provider violates this School Bus agreement, FTA may:

1. Bar the Transit Provider from receiving Federal assistance for public transportation; or
2. Require the Transit Provider to take such remedial measures as FTA considers appropriate.

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

The Transit Provider should include the substance of this clause in each sub-agreement or purchase under this agreement that may operate public transportation services

P. Substance Abuse Requirements

The Transit Provider agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. parts 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State of Nebraska, Hall County or the City of Grand Island, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49

C.F.R. part 655 and review the testing process. The Transit Provider agrees further to certify annually its compliance with parts 655 annually as part of the performance monitoring process and to submit the Management Information System (MIS) reports before March 1 annually to the Transit Program Manager. To certify compliance, the Transit Provider 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*.

Q. Disputes

Disputes - Disputes arising in the performance of this agreement that are not resolved amicably by both parties shall be decided in writing by the Assistant City Attorney for the City of Grand Island. This decision shall be final and conclusive unless within ten (10) calendar days from the date of receipt of its copy, the Transit Provider mails or otherwise furnishes a written appeal to the Assistant City Attorney. In connection with any such appeal, the Transit Provider shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Assistant City Attorney shall be binding upon the Transit Provider and the Transit Provider shall abide by the decision.

Performance during Dispute - Unless otherwise directed by the City, the Transit Provider shall continue performance under this agreement while matters in dispute are being resolved.

Claims for Damages - Should either party to the agreement suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage. The duties and obligations imposed by the agreement 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 the City shall constitute a waiver of any right or duty afforded any of them under the agreement, 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.

R. City Recognition

The Transit Provider shall ensure recognition of the role of the City in providing services through this agreement. All activities, facilities and items utilized pursuant to this agreement shall be prominently labeled as to the funding source. In addition, the Transit Provider will include a reference to the support provided herein in all publications made possible with funds available under this agreement.

S. LB 403

The Transit Provider and its subcontractors who are awarded a contract by the City for the physical performance of services within the State of Nebraska shall register with and use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

T. Fiscal Years

The City of Grand Island operates on a fiscal year beginning October 1 and ending on the following September 30. It is understood and agreed that any portion of this agreement which will be performed in a future fiscal year is contingent upon the City Council adopting budget statements and appropriations sufficient to fund such performance.

U. Title VI (See also Article 1 Section C)

The City of Grand Island, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notified all bidden that it will affirmatively insure that in any contact entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin, sex, age and disability/handicap in consideration for an award.

V. Section 504/ADA Notice to the Public

The City of Grand Island does not discriminate on the basis of disability in admission of its programs, services, or activities, in access to them, in treatment of individuals with disabilities, or in any aspect of their operations. The City of Grand Island also does not discriminate on the basis of disability in its hiring or employment practices.

This notice is provided as required by Title II of the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973. Questions, complaints, or requests for additional information or accommodation regarding the ADA and Section 504 may be forwarded to the designated ADA and Section 504 Compliance Coordinator.

Title VI Coordinator (City Administrator)  
308-385-5444, extension 140  
100 East First Street, Grand Island, NE 68801  
Monday through Friday; 8:00 a.m. to 5:00 p.m.

W. Gratuities and Kickbacks

City Code states that it is unethical for any person to offer, give or agree to give any City employee or former City employee, or for any City employee or former City employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a consultant under a contract to the prime consultant or higher tier consultant or any person associated therewith, as an inducement for the award of an agreement or order.

X. Incorporation of FTA Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by the Department of Transportation (DOT), whether or not expressly set forth in the preceding agreement provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this agreement. The Transit Provider 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.

Y. Debarment and Suspension

The Transit Provider shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each agreement at any tier of \$25,000 or more, and to each agreement at any tier for a federally required audit (irrespective of the agreement amount), and to each agreement at any tier that must be approved by an FTA official irrespective of the agreement amount. As such, the Transit Provider shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded agreement and are not presently declared by any Federal department or agency to be:

1. Debarred from participation in any federally assisted Award;
2. Suspended from participation in any federally assisted Award;
3. Proposed for debarment from participation in any federally assisted Award;
4. Declared ineligible to participate in any federally assisted Award;
5. Voluntarily excluded from participation in any federally assisted Award; or
6. Disqualified from participation in any federally assisted Award.

The certification in this clause is a material representation of fact relied upon by the City of Grand Island. If it is later determined that the Transit Provider knowingly rendered an erroneous certification, in addition to remedies available to the City of Grand Island, Hall County, the State of Nebraska or the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Transit Provider agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any agreement that may arise from this offer. The Transit Provider further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Z. Prohibition of Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

**Definitions.** As used in this clause—

*Backhaul* means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

*Covered foreign country* means The People's Republic of China.

*Covered telecommunications equipment or services* means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

*Critical technology* means—

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

*Interconnection arrangements* means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

*Reasonable inquiry* means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

*Roaming* means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

*Substantial or essential component* means any component necessary for the proper function or performance of a piece of equipment, system, or service.

### ***Prohibition***

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

***Exceptions.*** This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

### ***Reporting Requirement***

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause

(i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

### ***Subcontracts***

(1) The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products or commercial services.

## **SECTION 4: TRANSIT PROVIDER MANUAL RECEIPT CERTIFICATION**

The Transit Provider certifies that it has received the City of Grand Island's Transit Provider Manual in either print or electronic format from the City. The Transit Provider further certifies and agrees that it is the Transit Provider's obligation as a part of this agreement to read and understand the Manual. The City may update the Transit Provider Manual at will, and shall notify the Transit Provider contact listed in this agreement, as well as other staff deemed pertinent at the time, of said changes, before their effective date.



**SECTION 5: SEVERABILITY**

It is understood and agreed by the parties that if any part, term, or provision of this agreement is held by the courts to be invalid, illegal or in conflict with any law, the remainder of the agreement shall not be affected thereby and all other parts of this agreement shall nevertheless be in full force and effect.

**SECTION 6: SUCCESSORS**

This agreement shall be binding upon each of the parties, their assigns, purchasers, trustees, and successors.

**SECTION 7: ENTIRE AGREEMENT**

This agreement constitutes the entire agreement between the City and Transit Provider for the use of funds received under this agreement and it supersedes all prior communications and proposals, whether electronic, oral, or written between the City and Transit Provider with respect to this agreement.

**SECTION 8: NO THIRD-PARTY BENEFICIARIES**

Except as expressly provided otherwise, this agreement is intended to be solely for the benefit of the parties and shall not otherwise be deemed to confer upon or give to any other person or third party any remedy, claim, cause action or other right.

Remainder of page intentionally left blank.

IN WITNESS WHEREOF, the Parties have executed this agreement as of the date of the most recent signatory.

City of Grand Island, Nebraska

Date 12-11-2023

By Roger G. Steele  
Roger G. Steele, Mayor, City of Grand Island

Attest:

Jill Granere, Pro Tem  
RaNae Edwards, City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Stacy Nonhof  
Stacy Nonhof, Assistant City Attorney

Transit Provider: **Holiday Express Bus**

Date 12-6-2023

By Mick Brown  
J. Mick Brown, CEO

Date 12-6-2023

By Lori J. Brown  
Lori J. Brown, CFO