

INTERGOVERNMENTAL AGREEMENT FOR
MAINTENANCE OF THE AMTRAK DEPOT

THIS AGREEMENT is made and entered into in duplicate this 31st day of December, 2008, by and between INTERCITY TRANSIT and the CITY OF YELM, herein referred to as the "Parties."

WHEREAS, pursuant to Ch 39.34.010 RCW, governmental entities, including transit systems, are authorized to make the most efficient use of their powers by cooperating with each other on a basis of mutual advantage for the provision of services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, the Parties hereto wish to assist each other in providing maintenance for the Amtrak Depot at 6600 Yelm Highway, by the cost-sharing thereof, for the purpose of mutual advantage and benefit of necessary rail transportation serving each governmental entity;

NOW, THEREFORE, in consideration of the exchanges of the mutual benefits, covenants and agreements recited herein, the Parties hereto agree as follows:

1. GENERAL PURPOSE

The Parties agree that there are ongoing operating and maintenance costs involved in providing basic passenger services and amenities at the Amtrak Depot, and that such costs should be shared amongst the Parties.

2. OPERATING AND MAINTENANCE SERVICES

The operating and maintenance services shall consist of providing staff at all times the depot building is open to the public, and janitorial and such other maintenance services as are reasonably necessary for the cleanliness and good repair of the facility. Operating and maintenance services shall also include utility fees, right-of-way lease and required track maintenance. INTERCITY TRANSIT's responsibilities also include "all risk" property coverage on Depot facilities and liability coverage for bodily injury and property damage arising from INTERCITY TRANSIT's operations of said facility.

3. LEAD PARTY

INTERCITY TRANSIT shall have sole authority and responsibility for the provision of the above operating and maintenance services at the Amtrak Depot Facility, which may be provided by employees, agents, or independent contractors of INTERCITY TRANSIT. INTERCITY TRANSIT will further be responsible for furnishing all equipment necessary for the effective performance of such maintenance services.

4. DURATION OF AGREEMENT

The terms and performance of this Agreement shall become effective January 1, 2009, and shall end December 31, 2013, unless otherwise terminated as provided for in this Agreement.

5. PAYMENT OF MAINTENANCE COSTS

In order to provide funds for the operation and performance of the services called for in this Agreement, it is agreed as follows:

A. INTERCITY TRANSIT shall maintain a record of its actual costs and expenses in providing the services herein.

B. CITY OF YELM will contribute 2% for operating and maintenance costs actually incurred.

C. INTERCITY TRANSIT will prepare and submit a quarterly billing statement/invoice representing CITY OF YELM's pro rata share of the costs of the operating and maintenance services provided during the previous calendar quarter.

D. CITY OF YELM shall pay INTERCITY TRANSIT its pro rata share as billed, within approximately 30 days of receipt of the billing statement/invoice.

6. MAINTENANCE AND INSPECTION OF RECORDS

INTERCITY TRANSIT shall keep all records in accordance with generally accepted and required accounting principles, and shall account for the services provided and the revenues received. Any duly authorized representative of CITY OF YELM shall have the right to inspect the records of INTERCITY TRANSIT as they relate to the services performed hereunder, upon ten (10) days prior notice to INTERCITY TRANSIT.

7. RELATIONSHIP OF PARTIES

INTERCITY TRANSIT shall have the authority to direct and control the performance of the operating and maintenance services. All employees, agents, appointees or officers used by INTERCITY TRANSIT in performing this Agreement shall be considered employees, agents, appointees or officers of INTERCITY TRANSIT and shall have no claim against CITY OF YELM for wages, salaries, reimbursements, benefits or any other form of compensation arising under their performance of maintenance services.

8. HOLD HARMLESS

Maintenance services to be performed under this Agreement will be performed at INTERCITY TRANSIT's own risk and INTERCITY TRANSIT expressly agrees to hold CITY OF YELM and any of its officers, agents or employees, harmless from any liability or damages resulting from the negligence of INTERCITY TRANSIT in performing this Agreement.

9. ASSETS

Title to all property furnished by INTERCITY TRANSIT in conjunction with INTERCITY TRANSIT's performance hereunder shall remain in the name of INTERCITY TRANSIT.

10. NONDISCRIMINATION

INTERCITY TRANSIT agrees that it will comply will all applicable State and Federal laws, regulations or guidelines relating to nondiscrimination in employment or client services.

11. NONWAIVER OF RIGHTS

The Parties agree that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of any other provision of this Agreement.

12. MODIFICATION

This Agreement may be modified only by the mutual agreement of the Parties hereto, in writing, and executed in the same manner as is this Agreement.

13. DEFAULT

If any of the Parties hereto fails to perform its responsibilities, and after such failure continues to be remiss in its obligations for a period of twenty (20) days upon having received written notice of same, such party shall be in default hereunder. Upon such default, the other Party hereto may exercise any remedies provided by law. If legal action is necessary to enforce the provisions of this Agreement, the prevailing Party shall receive such sums as the court may determine, including reasonable attorney's fees and such costs as are incurred in maintaining such cause of action.

14. TERMINATION

A. A party's failure to substantially comply with any of the provisions stated herein shall constitute a material breach of this Agreement and cause for the termination thereof. Upon such breach by a party, the remaining Party may terminate this Agreement at any time after giving thirty (30) days notice thereof.

B. This Agreement may also be terminated in whole or in part by mutual agreement of the Parties hereto. Any termination by mutual agreement shall be in writing and shall set forth the conditions of termination, including the effective date, or, in the case of termination in part, that portion to be terminated.

C. This Agreement may further be terminated when a party gives written notice to the other Party at least six (6) months prior to its intended effect and withdrawal from this Agreement.

15. NOTICES

Notices to the Parties hereto shall be sufficient if mailed first-class postage prepaid, to the signatories hereto or to a duly appointed designee.

16. JURISDICTION

This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this Agreement shall be governed by the laws of the State of Washington as to interpretation and performance. Any action in law or in equity initiated for the enforcement of the provisions of this Agreement, or any provision thereof, shall be instituted and maintained only in a court of competent jurisdiction in Thurston County, Washington.

17. SEVERABILITY

It is understood and agreed by the Parties hereto that if any part, term, or provision of this Agreement is held by a Thurston County court to be illegal or invalid, the validity of the remaining provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced without

such illegal or invalid provision. If it should appear that any part, term, or provision hereof is in conflict with any statutory provision of the laws of the State of Washington, such part, term, or provision in conflict shall be deemed modified to conform with such statutory provision.

18. COMPLETE AGREEMENT

The Parties hereto agree that this Agreement is the complete expression of the terms, conditions, and provisions hereto and any oral representations or understandings that are not incorporated herein are excluded.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first above written.

INTERCITY TRANSIT

CITY OF YELM



Michael Harbour
General Manager



Shelly Badger
City Administrator