

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the "Agreement") is entered into as of the 2<sup>nd</sup> day of January, 2018, by and between the **PORT OF OLYMPIA**, a Washington municipal corporation ("**Owner**") and **INTERCITY TRANSIT (Operator)**.

### Recitals

A. The Port is the owner and Lessor of certain real property to various tenants in the Market District of the City of Olympia, and is acting on behalf of the Market District Association for purposes of this Agreement.

B. Operator provides a DASH Shuttle service to the Capitol Campus area during the legislative session to relieve traffic congestion in that area. In connection therewith, Operator desires to use approximately forty (40) parking spaces located at the southeastern portion of the Market District Parking Lot shown on the attached Exhibit "A" in their "As Is" condition, for parking by persons Monday through Friday who will ride the DASH shuttle service to the Capitol Campus during the months of **January, February and March, 2018**.

C. Operator desires to obtain a license from the Port, and the Port desires to grant such license, for operation of parking on Port property, on the terms and conditions set forth herein.

D. Port and the Market District Association tenants that it represents, and Operator desire to participate in this License Agreement in a cooperative and collaborative manner in accordance with the terms and conditions set forth in this Agreement to support the DASH Shuttle service program, which provides a benefit to the local community.

### Agreement

**NOW, THEREFORE**, the parties agree as follows:

1. **Grant of License.** Owner hereby grants to Operator, and Operator hereby accepts, a non-exclusive right and privilege, for the term set forth herein, to use up to forty (40) parking spaces in the area described on Exhibit "A" attached hereto and by this reference incorporated herein (the "Premises"), for the purpose of providing public parking for persons using the DASH Shuttle service program, Monday through Friday, on the terms and conditions set forth herein.

2. **Term.** The term of this Agreement shall commence on **January 2, 2018 and end on March 31, 2018**. Notwithstanding the foregoing, either party may terminate this Agreement as provided in Section 8 below.

3. **License Fee.** Operator shall not be charged a fee for this license. In lieu of any fee from the Operator, all collections from the parking meter/collection box to be installed at the

Premises shall belong to the Market District Association. The parking meter/collection box shall be programmed as follows: the use shall be assessed at fifty cents (\$.50) per every hour. The Market District Association Administrator will be responsible for making collections from the meter/box at least once a week.

**4. Operations; Costs and Expenses.**

4.1 Port shall make available up to forty parking stalls in the southeastern corner of the Market District Parking Lot, as shown on the attached Exhibit "A", for non-exclusive right, privilege and use by persons using the DASH Shuttle service program, Monday through Friday, during the term of this Agreement.

4.2 Operator shall be responsible for striping the stalls green and preparing appropriate signage for the Premises for the term of this Agreement, which signage shall be subject to the approval of the Port. In addition, Operator shall be responsible for obtaining all permits required for its operations. **Operator shall return the forty stalls to their original state (stalls striped white) within three (3) days from vacating the premises.**

4.3 Operator shall install a parking meter/collection box, pedestal, and initial supplies, repair or replace the meter/box as necessary to maintain it in good working condition throughout the term of this Agreement. Any costs incurred for service fees or additional supplies to or for the meter/box shall be the responsibility of the Operator. **Operator will remove all the parts and components associated with the parking meter/box three (3) days after the expiration date of this Agreement. The meter/collection box installation at the Premises shall be coordinated with the Port.**

4.4 Each entity shall bear all costs and expenses associated with its responsibilities as described in this Agreement, except as otherwise expressly stated in this Agreement.

**5. No Authority.** The parties acknowledge and agree that this Agreement does not create a partnership or joint venture between the parties, nor is this Agreement to be deemed to create any agency relationship or appoint Operator as Owner's agent or Owner as Operator's agent except as may be expressly provided herein. Operator shall not have any right to bind Owner except as Owner may specifically agree in writing. All activities of Operator hereunder shall be conducted solely in Operator's name. Owner shall not have any right to bind Operator except as Operator may specifically agree in writing.

**6. Insurance.**

6.1 Operator shall, at Operator's expense, furnish and keep in force at all times during the term of this Agreement at least the following minimum insurance coverage with deductible amounts and other terms satisfactory to Owner: Comprehensive general liability insurance covering personal injury and property damage to a combined single limit in an amount not less than One Million Dollars (\$1,000,000).

**6.2** Operator shall provide certificates evidencing such insurance to Owner issued by an insurance company or equivalent document issued by the Washington State Transit Insurance Pool authorized to do business in the State of Washington and acceptable to Owner before commencing activities under this Agreement.

**6.3** Such insurance shall be primary and not excess to or contributing with any insurance or self insurance maintained by Owner.

**6.4** All policies described in paragraph 6.1 above shall be endorsed to require at least thirty (30) days written notice to Owner of any material change or cancellation.

**6.5** All policies described in paragraph 6.1 above shall be endorsed to name Owner as an additional insured with respect to any liability which may ensue as a result of Operator's activities under this Agreement, including liability arising from the sole negligence or willful misconduct of Owner and employees and agents of Owners and waive any rights of subrogation.

**6.6** Owner shall have full authority to communicate with applicable insurance carriers. Operator and Owner shall reasonably cooperate with each other in communicating with and directing applicable insurance carriers in the defense of any claim subject to this agreement.

**7. Indemnity.** Operator shall indemnify Owner, and the Market District Association ("Indemnitees") against, and save and hold Indemnitees harmless from any and all liability, claims, demands, damages and costs of every kind and nature including injury to, or death of, any and all persons, including, without limitation, customers, employees or agents of Operator or Indemnitees or any subcontractor or any other person or persons; and for damage, destruction or loss, to or of any and all property, real or personal, including, without limitation, property of any indemnified party or of any other person or persons, resulting from or in any manner arising out of or in connection with the conduct of Operator or any of its customers while operating a Dash shuttle or the Premises or any facilities located thereon, or while boarding, riding in, or alighting from a Dash shuttle, or while using the Premises, in connection with this Agreement. Operator shall also, upon request by Indemnitees or any one of them, and at no expense to Indemnitees, and with attorneys reasonably acceptable to Indemnitees, defend Indemnitees in any and all suits concerning such liability, claims, demands, damages and costs, injury to or death of any and all persons, and concerning such damage, destruction or loss, to or of any and all property, real or personal, including, without limitation, suits by employees or representatives of Operator.

**8. Termination.**

**8.1 Termination for Cause.** Either party may terminate this Agreement upon written notice if the other party breaches any material term, condition, or covenant of this Agreement and such party fails to cure any such breach within ten (10) calendar days of notice of occurrence of such breach or if the breach cannot of its nature be cured within such ten (10) calendar day period, to commence proceeding in good faith to remedy such breach within such ten (10) calendar day period and to thereafter diligently prosecute the same in good faith until the breach is remedied (such termination to be in addition to any other remedies the party may have).

**8.2 Termination for Convenience.** Either party may terminate this Agreement at any time for its convenience upon thirty (30) calendar days prior written notice to the other.

**9. Access to Premises.** This Agreement does not convey to Operator any right, title or interest in or to the Premises, except that Operator shall have, and is hereby granted, a non-exclusive license to enter upon and occupy the Premises for the purposes of the activities permitted hereunder. Operator has examined the Premises and accepts the Premises "AS IS" and in its present condition. Owner does not make, and hereby expressly disclaims, any and all warranties expressed or implied regarding the Premises or any condition thereon, past present or future, known or unknown, and regarding the results Operator will obtain from the activities permitted pursuant to this Agreement.

**10. Compliance with Regulations/All Laws.** Operator agrees to comply with all applicable rules and regulations of the Owner now in existence or hereafter promulgated for the general health, welfare, safety and convenience of the Owner, its various tenants, invitees, licensees and the general public. Operator further agrees to comply with all applicable federal, state and municipal laws, ordinances and regulations, including, without limitation, those relating to environmental matters, and to indemnify the Owner for any liability, damages, costs or fees incurred by the Owner due to Operator's failure to comply with the requirements of this section. Costs and fees shall include all direct and indirect costs and professional fees, including engineering and attorney's fees. Any fees for any federal, state or local inspections and/or certificates required for Operator's activities shall be paid by Operator.

**11. Hazardous Substances.** Operator certifies, represents, warrants, covenants and agrees that:

(a) For itself and its employees and agents, Operator will comply with all applicable local, state and federal environmental laws, regulations, ordinances and administrative and judicial orders relating to the generation, recycling, treatment, use, sale, storage, handling, generation, recycling, treatment, use, sale, storage, handling, transport and disposal of any Hazardous Substances (as defined below) by any person on the Premises. Operator will not, without the Owner's prior written consent, keep on or around the Premises, for use, disposal, treatment, generation, storage, or sale, any Hazardous Substances.

(b) Operator agrees to immediately notify the Owner if Operator becomes aware of any Hazardous Substances or other environmental problem or liability with respect to the Premises. If Operator is in violation of any governmental law, rule or regulation concerning Hazardous Substances or is in violation of this Agreement relating thereto, it shall promptly take such action as is necessary to mitigate and correct the violation.

(c) Operator shall be fully and completely liable to the Owner for, and shall indemnify and hold the Owner harmless from and against any and all actual or alleged claims, demands, damages, losses, liens, liabilities, penalties, fines, lawsuits and other proceedings and costs and expenses (including attorneys' fees and disbursements), which accrue to or are incurred by Operator or the Owner which arise or are alleged to arise directly or indirectly from or out of, or are in any way connected with (a) the inaccuracy of the representations and warranties of

Operator contained herein, (b) the breach by Operator of any covenant contained herein, (c) any operations or activities of Operator or its employees, agents, or customers (including, without limitation, use, disposal, transportation, storage, generation or sale of Hazardous Substances) on or about the Premises which directly or indirectly result in contamination by Hazardous Substances or other violation of any applicable law, rule or regulation pertaining to Hazardous Substances, and (d) the cleanup of Hazardous Substances from the Premises resulting from (c) above. Operator acknowledges that it will be solely responsible for all costs and expenses relating to investigation (including preliminary investigation) and cleanup of Hazardous Substances for which it is responsible from the Premises or from any other property.

(d) The representations, warranties and covenants of Operator set forth in this Section 11 are separate and distinct obligations from Operator's other obligations under this Agreement and shall survive and continue in effect after any termination or expiration of this Agreement for any reason.

(e) As used in this Section 11, "Hazardous Substances" means any chemical, substance, material, waste or similar matter defined, classified, listed or designated as harmful, hazardous, extremely hazardous, dangerous, toxic or radioactive, or as a contaminant or pollutant, or other similar term, by and/or which are subject to regulation under any federal, state or local environmental statute, regulation or ordinance presently in effect or that may be promulgated in the future, and as they may be amended from time to time.

(f) Upon expiration or sooner termination of this Agreement, Operator shall have removed from the Premises any contaminated soils or other contaminated or hazardous materials or substances deposited thereon by Operator.

(g) Operator shall not be responsible or liable for any environmental problems (including Hazardous Substances) existing prior to Operator's occupancy and/or use of the Premises, except to the extent such environmental problems were caused by, contributed to, or exacerbated by, Operator or its contractors, agents, or employees.

## **12. Miscellaneous.**

**12.1 Notices.** All notices required under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally or sent by registered or certified mail, postage prepaid to:

Owner: Michele Jorgenson, Property Manager  
Port of Olympia  
606 Columbia Street NW, Suite 300  
Olympia, WA 98501  
(360) 528-8071

Operator: Ann Freeman-Manzanares, General Manager  
Intercity Transit  
P.O. Box 659  
Olympia, WA 98507-0659  
(360) 705-5836

Such notice or other communication shall for all purposes be treated as being effective or having been given when actually received or if sent by mail, upon the earlier of actual receipt or two (2) business days (Saturdays, Sundays and United States Postal Service holidays excluded) after the same has been deposited in a regularly maintained and serviced receptacle for the deposit of the United States mail, addressed and postage prepaid. Either party may change its address for receipt of notices by notice given in the manner provided herein.

**12.2 Governing Law.** This Agreement shall be interpreted in accordance with, and governed by, the substantive and procedural law of the State of Washington. The parties hereby consent to the jurisdiction of the courts of the State of Washington in Thurston County in resolving any dispute arising under or concerning this Agreement.

**12.3 Attorney's Fees.** If any litigation or arbitration is commenced between the parties concerning any provision of this Agreement or the rights or duties of any person in relation thereto, the party prevailing in such litigation or arbitration will be entitled, in addition to such other relief as may be granted, to reasonable attorney's fees and expenses incurred in connection with such litigation or arbitration.

**12.4 Subcontracts and Assignment.** This Agreement may be freely assigned by Owner at any time. Operator may not assign this Agreement or delegate, assign, or subcontract all, or any part of its duties under this Agreement without the express written consent of Owner, in its sole and absolute discretion.

**12.5 Integration.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof; supersedes all prior agreements and understandings, whether oral or written, which the parties may have in connection herewith; and may not be modified except by written agreement signed by the parties.

**12.6 Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be void or unenforceable in whole or in part, such determination shall not affect or impair the enforceability or validity of the remainder of this Agreement.

**12.7 Further Assurances.** Each party shall do all necessary acts and make, execute, and deliver such written instruments as shall from time to time be reasonably required to carry out the terms of this Agreement.

**12.8 Waiver.** Failure of either party at any time or from time to time to enforce any of the terms of this Agreement shall not be construed to be a waiver of such term or of such party's right to thereafter enforce each and every provision hereof. No waiver of any term of this

Agreement shall be effective unless made in a writing signed by the party against whom any such waiver is sought to be enforced.

**12.9 Authorization.** The execution of this Agreement and the performance hereunder of each signatory has been duly and validly authorized.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first written above.

**OWNER:**


**PORT OF OLYMPIA**

\_\_\_\_\_  
R.H. Rudolph, Jr.  
Airport Director

Date: \_\_\_\_\_

**OPERATOR:**

**INTERCITY TRANSIT**

  
\_\_\_\_\_  
Ann Freeman-Manzanares  
General Manager

Date: 1/25/18

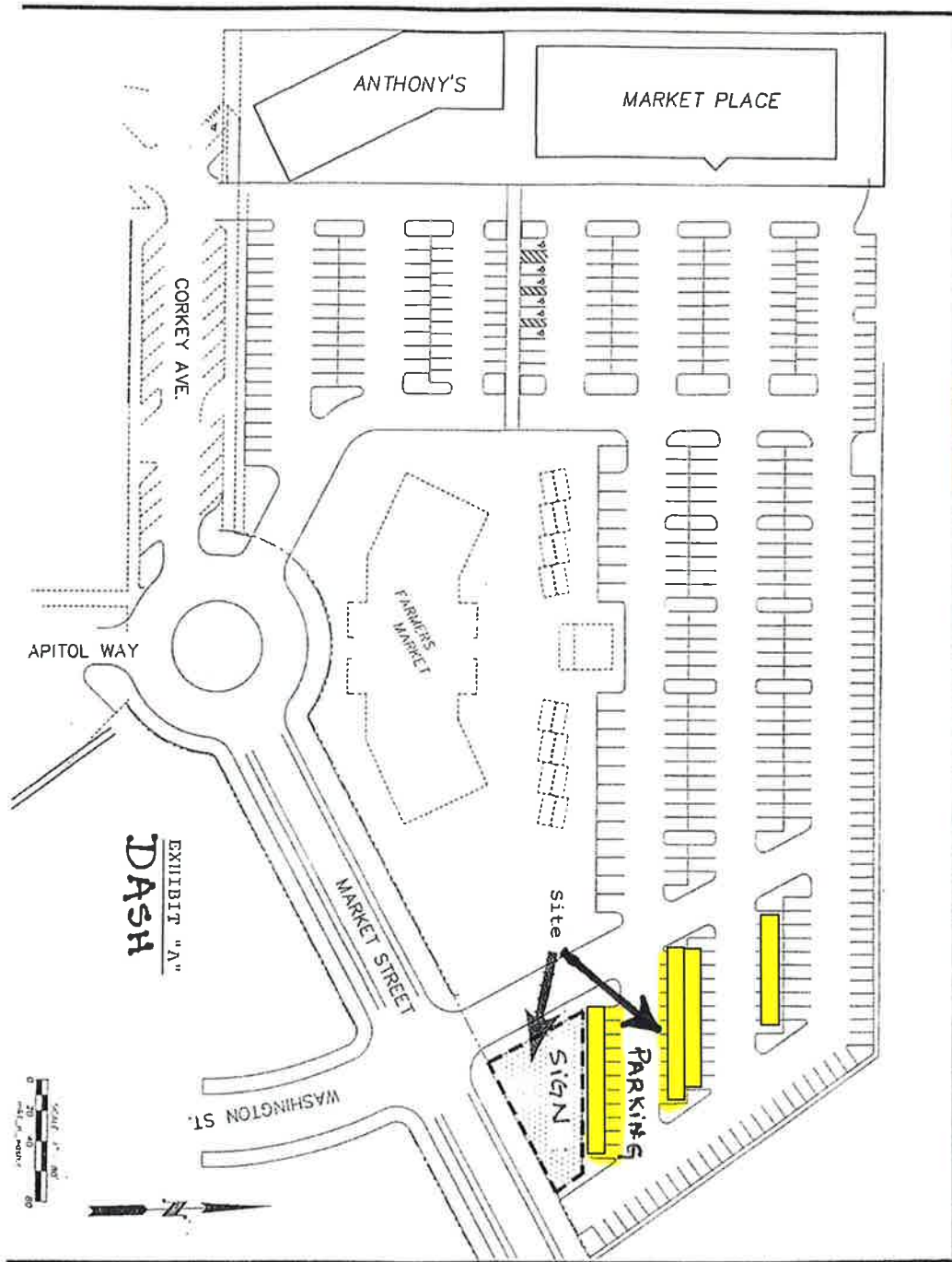


EXHIBIT A