

Memorandum of Understanding (MOU)
for
Emergency Transportation
Lewis County Division of Emergency Management
and
Twin Transit
July 20, 2021

This Memorandum of Understanding (MOU) is made and entered into by and between Lewis County, Division of Emergency Management, 351 NW North Street, Chehalis, WA 98532, hereinafter referred to as "Emergency Management," and Twin Transit, 1638 Bishop Rd, Chehalis, WA 98532, hereinafter referred to as "Twin Transit" Pursuant to this agreement, Twin Transit agrees to assist Emergency Management to provide emergency transportation services during emergency and/or disaster incidents.

1. Term.

- a. This agreement will be effective on the date of the last signature thereto and will continue until rescinded, upon 30 days written notice, by either party.
- b. **The Lewis County Deputy Director of Emergency Management** and of the **Director of Twin Transit** shall be responsible for an annual review of this agreement.
- c. Termination for Public Convenience. Either Party may terminate the MOU, in whole or in part, whenever the terminating Party determines, in its sole discretion that such termination is in the interests of the terminating Party. Whenever the MOU is terminated in accordance with this paragraph, the non-terminating Party shall be entitled to request reimbursement for actual work performed for completed items of work to the appropriate Federal, State, and local agencies providing reimbursement for a declared emergency. The terminating Party shall make a reasonable, equitable adjustment in the requested reimbursement for partially completed items of work, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work when requesting potential reimbursement. Termination of this MOU by Party at any time during the term for convenience, shall not constitute a breach of the MOU by the terminating Party.
- d. Suspension of Performance and Resumption of Performance. In the event of government closure, suspension or limitation of funding in any way after the effective date of this MOU and prior to normal completion, Parties may give notice to the other Party to suspend performance as an alternative to termination. Parties may elect to give written notice to the other Party to suspend performance when the

Party determines there is a reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow performance to be resumed prior to the end date of this MOU. Notice may include notice by facsimile or email to the MOU's Representative. The Parties shall suspend performance on the date stated in the written notice to suspend. During the period of suspension of performance, each party may inform the other of any conditions that may reasonably affect the potential for resumption of performance. Notice may be contingent upon the occurrence or non-occurrence of a future event; *e.g.* the failure of the State of Washington to pass a budget by a date specified in the notice.

When the Parties determine that the funding insufficiency is resolved, the Parties may give written notice to resume performance and a proposed date to resume performance. Upon receipt of written notice to resume performance, the Parties will give written notice to the other as to whether it can resume performance, and, if so, the date upon which it agrees to resume performance. If Parties give notice that they cannot resume performance, the Parties agree the MOU will be terminated retroactive to the original date of suspension of performance.

If the funding issue is not resolved, the Parties may terminate the MOU under the "Termination for Convenience" clause.

2. General Terms and Conditions.

- a. **Scope of Services.** Emergency Management and Twin Transit agree to provide services, reports, and any material set forth in the MOU during the MOU term. No material, labor, or facilities will be furnished by Emergency Management or Twin Transit unless otherwise provided for in this MOU.
- b. **Accounting and Payment for Services.** Payment to Emergency Management and Twin Transit for services rendered under this MOU shall be contingent to each parties separate end independent application for Federal, State, and local funding. **Unless specifically stated in this MOU or approved in writing in advance by the MOU Representative for this MOU, Emergency Management will not reimburse Twin Transit for any reasonable costs or expenses incurred in the performance of this MOU.**

Emergency Management and Twin Transit acknowledges that the entire compensation for this MOU is specified in this MOU and Emergency Management and Twin Transit are not entitled to any Lewis County benefits including, but not limited to, vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to County employees outside of their respective entitlements and obligations.

- c. **Potential Reimbursement for Services Provided.** Each Party is separately and independently liable for costs incurred as a result of performing services as part of this MOU. Each Party shall separately and independently apply for any and all

Federal, State, or local reimbursement the party is wishing to claim for approved services provided in this MOU.

- d. Recapture. In the event a Party fails to perform services specified in this MOU in accordance with state laws, federal laws, and/or the provisions of this MOU, the other Party reserves the right to recapture funds in an amount required to compensate the other Party for the noncompliance in addition to any other remedies available at law or in equity if such funds are specifically awarded to the Parties jointly. Repayment by the failing Party or refunds under this recapture provision shall occur within the timeframe specified by the other Party. In the alternative, the other Party may recapture such funds from payments due under this MOU.
- e. Assignment and Subcontracting. Unless otherwise provided for in this MOU, no portion of this MOU may be assigned or subcontracted to any other individual, firm, or entity without the express and prior written approval of Emergency Management.
- f. Administration. This MOU does not create a separate entity. This MOU shall be jointly administered by Emergency Management and Twin Transit.
- g. Regulations and Requirements. This MOU shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington, and to any other provisions set forth in Special Terms and Conditions.
- h. Public Records Law. Each Party will fulfill their independent obligations, separately, under the Washington Public Records Act (chapter 42.56 of the Revised Code of Washington). In the event one Party fails to fulfill its obligations pursuant to this section and due in whole or in part to such failure a court of competent jurisdiction imposes a penalty upon the other Party for violation of the Public Records Act, the failing Party shall indemnify the other for that penalty, as well as for all costs and attorney fees incurred by the other Party in the litigation giving rise to such a penalty. The obligations created by this section shall survive the termination of this MOU.
- i. Political Activity Prohibited. None of the funds provided under this MOU shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office or ballot measure. However, no person engaged to perform such services pursuant to this MOU shall be precluded from devoting income derived from such services to any lawful political activity, or to the support of a candidate for public office or of a ballot measure.
- j. Right to Review. This MOU is subject to review by any federal or state auditor. Emergency shall have the right to review and monitor the financial and service components of this MOU by whatever means are deemed expedient by Emergency Management. Such review may occur with or without notice and may include, but

is not limited to, on-site inspection by Emergency Management agents or employees, inspection of all records or other materials which Emergency Management deems pertinent to the MOU and its performance, and any and all communications with or evaluations by service recipients under this MOU.

- k. Modifications. Either party may request changes in the MOU. Any and all agreed modifications shall be in writing, signed by each of the parties.
- l. Defense and Indemnity Agreement. Either Party shall defend, protect, and hold harmless the other Party or any officers or employees thereof, from and against all claims, suits, or action arising from any intentional or negligent act or omission of the other Party or any employee, agent or representative of the other Party or any subcontractor, while performing under the terms of this MOU.
- m. Resolution of Conflicts. In the event of an inconsistency in this MOU, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:
 - i. Applicable federal and state statutes and regulations;
 - ii. Special terms and conditions;
 - iii. Exhibits;
 - iv. General terms and conditions; and
 - v. Any other provision of this MOU whether incorporated by reference or otherwise.
- n. Disputes, Venue and Choice of Law. Both Parties agree that any disputes that arise under or relating to this MOU that cannot be resolved to the satisfaction of both parties shall be submitted to mediation before either party starts litigation in any form. An impartial third party acceptable to both the Emergency Management and Twin Transit will be appointed to mediate. Should the parties be unable to agree upon a mediator, then the dispute shall be mediated through the Washington Arbitration and Mediation Service, at its Tacoma office, and in accordance with the WAMS mediation rules. Each Party shall pay an equal percentage of the mediator's fees and expenses. Either Party may not use any funds received under this MOU to pay mediator's fees and expenses. The mediation shall be confidential in all respects, as allowed or required by law.

In the event that mediation does not resolve the dispute, the venue for any litigation arising under or relating to this MOU shall be in the courts of the State of Washington. This MOU shall be governed by the laws of the State of Washington, excepting only the choice of law rules of the State of Washington.

- o. Records Maintenance. Each Party shall maintain all books, records, documents, data and other evidence relating to this MOU and performance of the services described herein, including but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this MOU. Both Parties shall retain such records

for a period of seven (7) years following the date of final potential reimbursement for services provided under this MOU.

If any litigation, claim or audit is started before the expiration of the seven- (7) year period, the records shall be retained for a period of seven (7) years after all litigation, claims, or audit findings involving the records have been finally resolved.

- p. Confidentiality. Both Parties or any employee, agent or representative of the Parties or any subcontractor shall maintain the confidentiality of all information provided or acquired by the Parties in performance of this MOU, except upon prior written consent of the County Prosecuting Attorney for Emergency Management, counsel for Twin Transit, or an order entered by a court after having acquired jurisdiction over the Parties. Each Party shall indemnify and hold harmless the other Party, its officials, agents or employees from all loss or expense, including, but not limited to, settlements, judgments, setoffs, attorney's fees, and costs resulting from a Party's breach of this provision.
- q. Ethics/Conflicts of Interest. In performing under this MOU, both Parties will assure compliance with the Ethics in Public Service Act (Chapter 42.52 Revised Code of Washington), and any other applicable state or federal law related to ethics or conflicts of interest.
- r. Information System Security. Both Parties shall protect and maintain all confidential information gained by reason of this MOU against unauthorized use, access, disclosure, modification or loss. Personal and/or medical information collected, used or acquired in connection with this MOU shall be used solely for the purposes of this MOU.
- s. MOU Amendments. No amendment, modification or renewal shall be made to this MOU unless set forth in a written MOU Amendment, signed by both parties. Work under a MOU Amendment shall not proceed until both Parties duly executes the MOU Amendment.
- t. Severability. If any term or condition of this MOU or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this MOU are declared severable.
- u. Conformance. If any provision of this MOU violates any statute or rule of law of the state of Washington or of the United States of America, it is considered modified to conform to that statute or rule of law.
- v. Waiver. Waiver of any breach or condition of this MOU shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this MOU shall

be held to be waived, modified or deleted except by an instrument, in writing, signed by the party granting such a waiver.

- w. Survival. The terms and conditions contained in this MOU will survive the completion, cancellation, termination or expiration of the MOU.
- x. Entire MOU. This written MOU represents the entire agreement between the parties.

IN WITNESS THEREOF, this executed on _____ day of _____, 2020.

Accepted:
LEWIS COUNTY
Division of Emergency Management



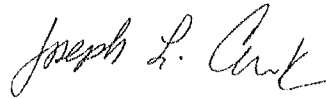
Director

Dated: 08/19/2021

APPROVED AS TO FORM:
JONATHAN MEYER
Prosecuting Attorney

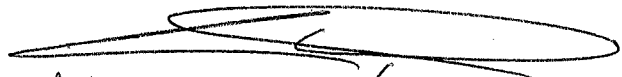
Amber Smith, WSBA# 53121

Accepted:
TWIN TRANSIT



Dated: 08/05/2021

TWIN TRANSIT COUNSEL



Allen Anzelman, WSBA# 44348