

## WHATCOM TRANSPORTATION AUTHORITY

### WTA TRANSIT CENTER and PARK & RIDE USE AGREEMENT For Lynden and Ferndale Transit Stations

THIS AGREEMENT IS MADE AND ENTERED INTO by and between the Whatcom Transportation Authority, a municipal corporation, (hereinafter called "WTA") and Wickkiser International Companies, Inc., dba Airporter Shuttle, hereinafter referred to as "private carrier".

#### Recitals:

1. The WTA owns and operates the Lynden and Ferndale Transfer Centers and Park and Ride Facilities, a multimodal public transportation facility (hereinafter called "facility"); and
2. The WTA believes that it is in the best public interest that the facility be used not only by the WTA but by private carriers such as airporter services, tour systems and commercial bus systems; and
3. The WTA agrees to allow private carriers to use the facility for the loading and unloading of passengers in accordance with the terms and conditions of this agreement and the operating rules that may be adopted, changed or modified from time to time by the WTA.

NOW, THEREFORE, in consideration of the mutual promises and conditions contained herein and the right to use the facility for parking and passenger loading and unloading purposes, the parties agree as follows:

1. Purpose. The purpose of this agreement is to allow the private carrier, a licensed common carrier, having all necessary and required governmental permits and licenses to transport passengers as a private carrier, to use the multimodal facility for parking and passenger transfer purposes.
2. Use of Facility. The use of the facility shall be subject to the terms and conditions of this agreement and the operating rules. The use of the facility by the private carrier shall at all times be subject to and secondary to the use of the facility by the WTA and the use of the facility by the private carrier shall not in any way impair or interfere with the WTA's regularly scheduled use of the facility.
3. Limitation. The private carrier represents and warrants that it is not providing or operating a local public passenger transportation service providing fixed route passenger service within the WTA boundaries, and upon termination of the service provided by the private carrier or upon termination of this agreement, there is no obligation or requirement upon the WTA to acquire or condemn assets of the private carrier pursuant to RCW 36.57A.100. A description of the passenger service provided by the private carrier is attached hereto as Exhibit B-1, and the private carrier further represents and warrants that the passenger



service and the private carrier's operation is limited to the description of service in Exhibit B-1. A copy of the private carrier's current operating authority, certificate of public convenience and necessity, as issued by the Washington Utilities and Transportation Commission, is attached hereto as Exhibit B-2.

4. Term and Termination of Agreement. The term of this agreement shall be for a period of one (1) year from the date hereof and **automatically extending** unless otherwise terminated as provided herein. This agreement may sooner be terminated at any time during the term of this agreement by either party giving a thirty (30) days written notice of termination to the other party, and upon expiration of the thirty (30) days from receipt of said notice as provided herein the private carrier shall fully cease and terminate all use of the facility.
5. Operating Rules. The WTA has adopted operating rules governing the access and use of the facility by the private carrier, and the operating rules are attached hereto as Exhibit "A" and by this reference incorporated herein and made part of the terms and conditions of this agreement. The private carrier understands that non-compliance with any of the operating rules as attached hereto or modified or amended from time to time by the WTA is a breach of this agreement and may result in the WTA terminating this agreement. It is also understood by the private carrier that the operating rules may vary between private carriers using the facility for the reason that the nature or type of use and the extent of use may vary between private carriers and the assignment of gates, passenger boarding areas, parking areas and other uses of the facility may vary between private carriers.
6. Liability and Insurance. The private carrier shall defend, indemnify and hold WTA, its agents, officers and employees harmless from any and every claim and risk and all losses, damages, demands, suits, judgements, and attorney fees, and other expenses of any kind, on account of injury to or death of any and all person(s) and/or on account of all property damages of any kind, whether tangible or intangible, including loss of use resulting therefrom in connection with the private carrier's use of the facility, or caused or occasioned in whole or in part by reason of the presence of the private carrier or its property, employees, or agents, upon or in proximity to the property of the WTA, or any other property of the WTA that the private carrier enters upon, except only for those losses resulting solely from the negligence of the WTA, its officers, employees and agents.

Should a court of competent jurisdiction determine that this agreement is subject to RCW 4.24.115, then in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the private carrier and the WTA, its members, officers, employees, and agents, the private carrier liability hereunder shall be only to the extent of the private carrier's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the private carrier's waiver of immunity under industrial insurance, Title 51 RCW, solely for the purpose of the indemnification. This waiver has been mutually negotiated by the parties.



If a lawsuit in respect to this hold harmless provision ensues, the private carrier shall appear and defend that lawsuit at its own cost and expense, and if judgement is rendered or settlement made requiring payment of damages by the WTA, its officers, agents, employees, and volunteers, the private carrier shall pay the same.

The private carrier shall obtain and keep in force during the entire term of the agreement, comprehensive or commercial general liability insurance coverage in the amount of \$1,000,000, including automobile liability against any and all claims for damages to persons or property which may arise out of operations under the agreement, whether occurring by reason of acts or omissions of the private carrier, or anyone directly or indirectly employed by the private carrier and hold WTA harmless for any claims presented to it as a result of actions solely the responsibility of the private carrier.

A certificate of insurance naming the WTA as an additional insured by endorsement will be secured for the above. Such insurance may not be cancelled, reduced in coverage or limits, or non-renewed except after thirty (30) days written notice has been given to the WTA.

Insurance coverage shall be with reliable companies authorized to do business in the State of Washington.

A certificate of insurance shall be submitted with the completed agreement documents and approved by the WTA prior to commencement of any use of the facilities under the agreement.

7. Independent Carrier. The private carrier is fully independent of the WTA and is not in any way acting as an agent, employee or otherwise of the WTA nor is the WTA by this agreement contracting for any services to be provided by the private carrier, rather this is an agreement between the WTA and the private carrier allowing the private carrier to use the facility on the terms and conditions provided herein.
8. Condition of Property. Prior to the commencement of this agreement, the private carrier shall have fully and completely inspected the facility and accepts the facility for the private carrier's intended use, and the private carrier has read the operating rules and agrees with the same, and the private carrier accepts the facility in its present condition subject to this agreement and the operating rules attached hereto as Exhibit "A", and the private carrier is not relying on any covenants, warranties or representations of the WTA as to its condition or usability, except to the extent provided herein, and the private carrier understand and acknowledges that other private carriers may be utilizing the same facility and the right and use of the facility by the private carrier are secondary and subordinate to the fixed route demands and use of the facility by the WTA.

9. Non-Assignment. The private carrier may not transfer or assign any right or interest in this agreement without the express written consent and approval of the WTA.
10. Compensation. No compensation for use of the property.
11. Notices. All notices may be delivered or mailed. If delivered by messenger, courier or facsimile transmittal, they shall be deemed delivered when received at the street address or facsimile numbers listed below. All notices mailed, whether sent by regular post or by certified or by registered mail, shall be deemed to have been given on the third business day following the date of mailing, if properly mailed to the mailing addresses below, and shall be conclusive evidence of the date of mailing.

WTA: 4111 Bakerview Spur Road  
Bellingham WA 98226  
Fax No. (360) 738-7302

PRIVATE CARRIER: Wickkiser International Companies, Inc.  
dba Airporter Shuttle  
1416 Whitehorn St  
Ferndale WA 98248

12. Laws. The private carrier must comply with all applicable local, state and federal laws.
13. Jurisdiction and Venue. This agreement shall be construed in accordance with the laws of the State of Washington. Jurisdiction and venue shall be in Whatcom County Superior Court, Bellingham, Washington.

THIS AGREEMENT is dated this 28<sup>th</sup> day of MARCH, 2003.

By   
Richard G. Walsh, General Manager  
WHATCOM TRANSPORTATION AUTHORITY

  
Richard Johnson, General Manager  
WICKKISER INTERNATIONAL COMPANIES,  
INC., dba AIRPORTER SHUTTLE

APPROVED AS TO FORM:

  
Richard J. Langabeer  
Counsel to Authority

Exhibit A

**Operating Rules**

Private carriers shall comply with the following rules when using WTA facilities in Lynden (Lynden Station), Lynden Station, and surrounding WTA properties.

1. **Speed Limit:** The maximum speed for vehicles on the transit concourse Passenger boarding areas is as posted, but in no case shall exceed 10 miles per hour.
2. **Assigned Passenger Boarding Areas:** WTA Director of Operations will assign times and locations to be used by the private company while operating at WTA facilities. Passengers may be boarded and de-boarded only at these assigned locations, except in the case of emergency repair to private carrier vehicles. Support vehicles are confined to the Park and Ride lot.

Whenever entering an assigned boarding area located directly in front of another area which is occupied by a WTA coach, the entering coach must come to a full stop prior to passing in front of the stopped WTA coach.

3. **Crossings:** All vehicles must come to a full stop at each crosswalk before entering onto streets. In the future, if marked crosswalks are placed across the transit concourse, all vehicles will yield to pedestrian traffic. Pedestrians have the right of way in all cases.
4. **Right-of-way** Vehicles at transit boarding areas will yield to any vehicle entering or departing the transit concourse.
5. **Vacate Boarding Areas.** The boarding area is to be used only for boarding or alighting passengers, and will be vacated as soon as passenger boarding and alighting is accomplished. Vehicles will not stand or park at the boarding areas when the area is scheduled to be used by another private carrier.
6. **WTA Facilities:** Unless otherwise negotiated, any WTA telecommunication equipment and facilities not listed in this agreement may not be used for informational or business purposes by the company.
7. **Customer Parking:** Customers of the private carrier may use the park and lot under the following conditions: The WTA accepts no liability for vehicles, contents, or injury to any customer of the private carrier. Parking in the park and ride area is limited to three days, unless vehicle prominently displays a pass provided by the private carrier located on the driver's side dashboard.
8. **Freight:** The handling of freight is prohibited unless otherwise negotiated with the WTA. Exceptions are small personal effects accompanying passengers.

9. **Accidents or Incidents:** Accidents or incidents which occur on WTA property involving the private carrier, their personnel, contractors or equipment shall be reported to the WTA immediately. Any suspicious activity observed at the Transit Station should be reported immediately to the WTA or call 911.
10. **Posting of Information on Shelters:** Posting of information on shelters or on WTA property is prohibited unless negotiated and agreed to by the WTA. Information must be placed in areas and containers approved by the WTA. No joint advertisements with others companies or other ads are allowed. All information must be related to the company's transportation service and meet WTA criteria for advertisements.
11. WTA Operations Supervisors have complete authority over the all operations at the three Transit Stations. Any conflicts shall be referred to the Director of Operations for the WTA.

**WTA Park and Ride Rules  
(Posted on signs at the Stations)**

"This Facility is Monitored by 24 hour Video Surveillance."

1. Three Day Parking Limit. Vehicles found parked on WTA property after this time will be impounded.
2. No Camping
3. Not Responsible for Lost or Stolen Articles
4. No Commercial Activity
5. No Skateboarding
6. Please report any suspicious activity by calling 676-RIDE and/or 911