

**STEPHEN F. AUSTIN STATE UNIVERSITY
CHARTER BUS/BROKER CONTRACT**

1. INTRODUCTION

This contract is entered into on the 1st day of September, 2008 by and between Stephen F. Austin State University, hereinafter referred to as SFA, and J & J Charters, hereinafter referred to as Contractor, for the purpose of being a vendor to provide charter bus service to Stephen F. Austin State University.

1.1 CONTRACT PERIOD

The term of this contract will be effective from the date above in Paragraph 1.1 through August 31, 2009, for a period of up to one year, with automatic termination on August 31st of the year entered into.

1.2 SPECIFIC TRIP ARRANGEMENTS

This contract is a base agreement with the University to avoid re-execution of complete contract documents each time a charter bus trip needs to be scheduled. Companies with contracts on file will have provided appropriate assurances and liability insurance certificates to be maintained by the University for the period noted in this agreement. When a need for charter services arises within the University, solicitations will be taken as necessary to determine the contractor who will receive the specific business for that trip/activity. Companies with executed base agreements on file will only be required to provide a trip addendum to consummate the final charter bus purchase. The trip addendum will include specific information about the trip, times, places, cost, etc. and shall be agreed to by the SFA purchasing official and the requesting department. Additional signature by the contracting official at the University of the trip addendum will not be required as long as this agreement is on file and the term has not expired.

1.3 VOLUME

SFA does not guarantee the Contractor any minimum or maximum amount of business during the term of this contract.

2. TRIP CANCELLATION

In such cases where cancellation of a trip is necessary, due to unforeseen circumstances, SFA personnel will strive to notify the Contractor as soon as possible. In cases where cancellation of a trip occurs at least two (2) hours before embarkation or before the driver has been dispatched, there will be no trip and/or penalty charges assessed. For less than two (2)

hour notification any penalty charges assessed will not equal the full cost of the planned trip. Such charge should be no larger than is needed to defray the Contractor's expenses.

3. TARDINESS

Should the Contractor arrive more than one (1) hour behind schedule, all charges connected with alternate arrangements, either made by SFA personnel or the Contractor, will be the responsibility of the Contractor.

4. PAYMENT BONDS

4.1 Payment bonds are required on contracts greater than \$25,000. The cost of all required bonds shall be added to any individual purchase order for which it is required. The Contractor must execute and return the required Payment Bond prior to providing the charter service.

4.2. The Payment Bond shall be executed in the full amount of the Purchase Order as a guarantee that the scope of work will be performed faithfully and that SFASU and the State of Texas will be saved harmless from all costs and damages which SFASU and the State of Texas may suffer by reason of the Contractor's default or failure to perform the work.

4.3. Each Bond shall be accompanied by a valid Power-of Attorney (issued by the Surety company and attached, signed and sealed, with the corporate embossed seal, to the bond) authorizing the agent who signs the bond to commit the company to the terms of the bond, and stating (on the face of the Power-of-Attorney) the limit, if any, in the total amount for which he is empowered to issue a single bond.

4.4. The only forms of surety acceptable as Payment Bonds are: cashier's check, certified check, irrevocable letter of credit issued by a financial institution subject to the laws of Texas, a United States Treasury Bond, or a surety or blanket bond from a company chartered or authorized to do business in the State of Texas.

5. BROKER REQUIREMENTS

5.1 Definition: A Broker is defined as a Contractor entering into an agreement with the University to provide charter bus services, who subcontracts with other companies to provide the buses, or provide the buses and drivers.

52 All subcontractors shall be consistent with and bound to terms and conditions of this Contract between Contractor and the University

5.3 Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall require each Subcontractor performing work under the Contractor, at the Subcontractor's own expense, to comply with all the

terms and conditions of the contract between the Contractor the University including, but not limited to, drug testing, appropriate driver certification, etc.

- 5.4 The Contractor shall be solely responsible for scheduling and coordinating the work of subcontractors performing or furnishing any of the equipment and drivers related to services to be provided hereunder.
- 5.5 The Contractor shall be responsible for all communications with the University Subcontractors shall communicate with the University through the Contractor.
- 5.6 Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall require each Subcontractor performing work under the Contractor, at the Subcontractor's own expense, to maintain during the term of the Contract, the same stipulated minimum insurance required herein. The Contractor shall obtain and provide to the University certificates of insurance from each Subcontractor as noted in Section 11, Paragraph 3.

6. CONTRACTOR RESPONSIBILITIES AND REPRESENTATIONS

Contractor represents the following:

- 6.1 That well maintained and clean buses will be provided.
- 6.2 That all busses and equipment necessary to fulfill this charter bus contract are clean, in good working order, and conform with proper standards of the industry.
- 6.3 That all driving staff provided are properly certified and licensed under the laws, rules and regulations of any authority having jurisdiction, if so required by such laws, rules and regulations.
- 6.4 That all driving staff provided have been drug tested in compliance with any applicable laws, rules and regulations of any authority having jurisdiction, if so required by such laws, rules and regulations.
- 6.5 That all driving staff provided conform with all applicable requirements for motor carrier drivers.
- 6.6 That all driving staff provided are prepared with routing information.
- 6.7 That all of the services to be performed by the bus charter company under or pursuant to this contract shall be of the standard and quality which prevail among similar businesses and organizations of superior knowledge and skill engaged in providing similar services under the same or similar circumstances.
- 6.8 That the Contractor has all necessary corporate power and has received all necessary corporate approvals to execute and deliver this contract, and the individual executing the contract on behalf of the Contractor has been duly authorized to act for and bind the company.

7. INDEPENDENT CONTRACTOR

Contractor recognizes that it is engaged as an independent contractor and covenants and agrees that it shall conduct itself consistent with such status, that it will neither hold itself out as nor claim to be an officer, partner, employee or agent of the University by reason hereof, and that it will not by reason hereof make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of the University.

8. TERMINATION

Either party shall have the right to terminate this agreement without cause at any time giving sixty (60) days notice in writing to the other party. Upon notice of cancellation the contractor shall be required to fulfill all outstanding obligations for scheduled trips or reimburse the University for any difference in cost for a rescheduled trip resulting in a higher expense to the University.

9. COMPLIANCE WITH LAW

Contractor warrants that all laws, rules and regulations of duly constituted authorities having jurisdiction over its activities shall be complied with by the Contractor and its drivers.

10. LIMITATION OF LIABILITIES

Except for the obligation of the University to pay the Contractor pursuant to the terms of this contract, the University shall have no liability to the Contractor or to anyone claiming through or under the Contractor by reason of the execution or performance of this contract.

11. INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall and does hereby agree to indemnify, protect, defend with counsel approved by the University, and hold harmless the University and its respective regents, officers, directors, attorneys, employees, representatives and agents (collectively "Indemnitees") from and against all damages, losses, liens, causes of action, suits, judgments, expenses (including reasonable attorney's fees), and other claims of any natures, kind, or descriptions (collectively "claims") by any person or entity, arising out of, caused by, or resulting from the Contractor's performance under this agreement and which are caused in whole or in part by any negligent act, negligent omission or willful misconduct of the Contractor, anyone directly or indirectly employed by the Contractor, or anyone for whose acts the Contractor may be liable. The provisions of this section shall not be construed to eliminate or reduce any other indemnification or right which any Indemnitee has by law. The indemnities contained herein shall survive the termination of this contract for any reason whatsoever.

12. **INSURANCE**

Contractor warrants that it has a commercial insurance coverage consisting of commercial general liability insurance (including blanket contractual liability, broad form property damage, personal and advertising injury, completed operations/products liability, medical expenses, interest of employees as additional insureds and broad form general liability endorsements) for at least ONE MILLION DOLLARS (\$1,000,000.00) per occurrence on an occurrence basis; and comprehensive automobile liability insurance covering all owned, non-owned or hired automobiles to be used by the Contractor, with coverage for at least FIVE MILLION DOLLARS (\$5,000,000.00) combined single limit bodily insurance and property damage.

The Contractor shall not commence work under this Contract until it has obtained all the insurance required hereunder and certificates of such insurance have been filed with and reviewed by the Owner. Acceptance of the insurance certificates by the Owner shall not relieve or decrease the liability of the Contractor. If Contractor maintains worker's compensation insurance, Contractor shall provide proof of such insurance.

Notwithstanding, if Contractor is a broker only (Reference section 5) and retains no ownership in the buses provided to fulfill service under this contract, the Contractor shall not commence work under this contract until it has obtained certificates of the insurance required hereunder from the bus companies providing buses, or buses and drivers, and filed such certificates with the Owner. Acceptance of the insurance certificates by the Owner shall not relieve or decrease the liability of the Contractor or the bus companies utilized by the Contractor to provide service hereunder.

13. **RECORDS**

The Contractor agrees to keep accurate records of financial or working processes and any records relative to the performance of this Agreement. The Contractor further agrees that such books and records shall be subject to inspection and audit by any person designated by the University at all reasonable times during business hours.

The Contractor shall retain all books, records, and other documents concerning performance of this Agreement for at least three (3) years after termination of this Agreement or final payment under it. The Contractor shall, upon request of SFA, allow SFA to have full access to, and the right to examine, any of such documents during such period and the period the Agreement is in effect.

14. **GENERAL PROVISIONS**

14.1 **ASSIGNMENT**

This contract is a personal service contract for the services of the Contractor, and the Contractor's interest in this contract, duties hereunder and fees due hereunder may not be subcontracted, assigned or delegated to any party without the prior written approval of the University and any attempt to do so shall be void and of no effect.

14.2 TEXAS FAMILY CODE CHILD SUPPORT CERTIFICATION

By signature hereon, Contractor certifies as follows: "Under Section 231.006, Texas Family Code, the Contractor certifies it is not ineligible to receive the payments specified in the Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate."

14.3 SALES TAX CERTIFICATION

By signing the Agreement, Contractor certifies as follows: "Under Section 2155.004, Texas Government Code, the Contractor certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

14.4 FRANCHISE TAX CERTIFICATION

By signing the Agreement, a corporate or limited liability company, Contractor certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable. Contractor acknowledges and agrees that if this certification is false or inaccurate, at University's option, the Agreement may be terminated and payment withheld.

14.5 PAYMENT OF DEBTS TO THE STATE OF TEXAS

Pursuant to Section 403.0551, Texas Government Code, the Contractor agrees that any payments owing to the Contractor under this contract may be applied towards any debt or delinquent taxes that the Contractor owes the State of Texas or any agency of the State of Texas, until such debt or delinquent taxes are paid in full.

14.6 ENTIRE AGREEMENT; MODIFICATIONS

This contract supersedes all prior agreements, written or oral, between the Contractor and the University and shall constitute the entire agreement and understanding between the parties with respect to the subject matter hereof. That this contract and each of its provisions shall

be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by the University and the Contractor.

14.7 FORCE MAJEURE

Neither party hereto shall be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including, but limited to, acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character.

14.8 GOVERNING LAW

This contract and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.

14.9 WAIVERS

No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party hereto of any of the provisions of this contract shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

14.10 BINDING EFFECT

This contract shall be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors

14.11 SEVERABILITY

In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this contract shall be construed as if such invalid or unenforceable provision had not been included herein.

14.12 ENFORCEMENT

It is acknowledged and agreed that the Contractor's services to the University are unique, which gives the Contractor a peculiar value to the University and for the loss of which the University cannot be reasonably or adequately compensated in damages; accordingly; the Contractor acknowledges and agrees that a breach by the Contractor of the

provisions hereof will cause the University irreparable injury and damage. The Contractor, therefore, expressly agrees that the University shall be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this contract, but only if the University is not in breach of this Agreement.

14.13 DISPUTE RESOLUTION

To the extent that Chapter 2260, *Texas Government Code*, is applicable to this contract and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General Pursuant to Chapter 2260, shall be used by the University and the Contractor to attempt to resolve any claim for breach of contract made by the Contractor that cannot be resolved in the ordinary course of business. The Vice President for Finance and Administration of the University shall examine Contractor's claim and any counterclaim and negotiate with the Contractor in an effort to resolve such claims. The parties hereto specifically agree that (i) neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by the Contractor, (ii) neither the issuance of this contract by the University nor any other conduct, action or inaction of any representative of the University relating to this contract constitutes or is intended to constitute a waiver of the University's or the state's sovereign immunity to suit; and (iii) the University has not waived its right to seek redress in the courts.

14.14 COUNTERPARTS

This contract may be executed in multiple identical counterparts, and each counterpart, when so executed and delivered, shall constitute an original instrument, and all such separate counterparts shall constitute one and the same instrument. Reproductions, facsimiles, and copies of the original signatures shall be binding as the executed original.

14.15 FRAUD AND ETHICS

Contractor is hereby advised that the University maintains policies regarding fraudulent or unethical conduct. These policies establish examples of acceptable and unacceptable conduct as well as procedures and responsibilities for detecting, reporting and resolving instances of known or suspected fraudulent activity and prescribe a coordinated approach toward investigation and resolution of fraudulent activity; reference University Policies C-46, Fraud and C-33, Purchasing Ethics and Confidentiality.



Stephen F. Austin State University

Company Name
Daryl G. Johnson
Signature
DARYL G. JOHNSON
Printed Name
owner
Title
8/22/08
Date

B. Baker Pattillo
Signature
Dr. Baker Pattillo
President
8-2-08
Date