

**STEPHEN F. AUSTIN STATE UNIVERSITY  
ANNUAL CHARTER BUS CONTRACT**

**1. INTRODUCTION**

This Agreement (iContracts #418543) is entered into by and between Stephen F. Austin State University, hereinafter referred to as University, and Western Motorcoach, hereinafter referred to as Contractor, for the purpose of providing charter bus service to University.

**1.1 CONTRACT PERIOD**

The term of this contract will be effective from the date of last signature below through August 31, 2020.

**1.2 SPECIFIC TRIP ARRANGEMENTS**

This contract is a base agreement with 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 University for the period noted in this Agreement. When a need for charter services arises within 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 University purchasing official and the requesting department. Additional signature by the contracting official at University of the trip addendum will not be required as long as this Agreement is on file and the term has not expired. If the trip addendum contains any additional terms, those terms must be agreed to in writing by an authorized official of University. In the event of any conflict, the terms of this Agreement shall prevail.

**1.3 VOLUME**

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

**2. TRIP CANCELLATION BY UNIVERSITY**

In such cases where it is necessary for University to cancel a scheduled trip, due to unforeseen circumstances, University personnel will strive to notify 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 Contractor's expenses.

**3. TARDINESS AND ADDITIONAL EXPENSES**

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

3.2 Contractor shall be responsible for any additional costs incurred by University due to Contractor's failure to provide the services in accordance with this Agreement, including but not limited to, breach of any warranty or representation in Section 4 below, mechanical failure, or tardiness.

#### 4. **CONTRACTOR RESPONSIBILITIES AND REPRESENTATIONS**

Contractor warrants the following:

- 4.1 That it will provide well-maintained and clean buses.
- 4.2 That all buses and equipment necessary to fulfill this charter bus contract are clean, in good working order, and conform with proper standards of the industry.
- 4.3 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.
- 4.4 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.
- 4.5 That all driving staff provided conform to all applicable requirements for motor carrier drivers.
- 4.6 That all driving staff provided are prepared with accurate routing information.
- 4.7 That all of the services to be performed by Contractor under or pursuant to this Agreement 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.

#### 5. **PAYMENT BONDS**

- 5.1 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. Contractor must execute and return the required Payment Bond prior to providing the charter service.
- 5.2. 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 University and the State of Texas will be saved harmless from all costs and damages which University and the State of Texas may suffer by reason of Contractor's default or failure to perform the work.
- 5.3. 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.
- 5.4. 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.

#### 6. **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 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 University.

7. **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. University shall have the right to terminate this Agreement for cause immediately in the event of breach my Contractor. Upon notice of cancellation, Contractor shall be required to fulfill all outstanding obligations for scheduled trips or reimburse University for any difference in cost for a rescheduled trip resulting in a higher expense to University.

8. **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.

9. **LIMITATION OF LIABILITIES**

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

10. **INDEMNIFICATION**

TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS 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 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 CONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY CONTRACTOR, OR ANYONE FOR WHOSE ACTS 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.

11. **INSURANCE**

Contractor, consistent with its status as an independent contractor will carry and will cause its subcontractors to carry, at least the following insurance from companies having an A.M. Best Rating of A:IV or better, in the form and in the amounts as University may require:

Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than \$1,000,000:

Employers Liability – Each Accident	\$1,000,000
Employers Liability – Each Employee	\$1,000,000

Policies must include (a) Other States Endorsement to include Texas if business is domiciled outside the State of Texas, and (b) a waiver of all rights of subrogation in favor of University;

Commercial General Liability Insurance with limits of not less than:

Each Occurrence Limit	\$1,000,000
Damage to Rented Premises	\$100,000
Medical Expenses (any one person)	\$10,000
Personal and Advertising Injury	\$1,000,000



General Aggregate	\$3,000,000
Products – Completed Operations Aggregate	\$3,000,000

Commercial Automobile Liability Insurance covering all owned, non-owned or hired automobiles, with coverage for at least \$5,000,000 Combined Single Limit Bodily Injury and Property Damage. Coverage shall not exclude passengers;

All risk physical damage on the buses, naming Stephen F. Austin State University, its Board of Regents, officers, directors, employees, representatives, and agents as additional insured under the policy, including a policy endorsement expressly extending coverage to University, and provide Stephen F. Austin State University, its Board of Regents, officers, directors, employees, representatives, and agents with a waiver of subrogation.

If limits are not met in primary insurance contracts, Umbrella/Excess Liability Insurance may be provided with limits of not less than \$4,000,000 per occurrence and aggregate with a deductible of no more than \$10,000, and (i) providing coverage in excess of and (ii) "following form", subject to the same provisions as, the underlying policies required for General Liability and Commercial Auto Liability Insurance.

Contractor shall not commence work under this Agreement until it has obtained all the insurance required hereunder and delivered to University evidence satisfactory, in University's sole discretion, of the existence of all insurance required under this Agreement. Insurance policies, with the exception of Workers' Compensation and Employer's Liability, will name and the evidence will reflect University as an Additional Insured and will provide that the policies will not be cancelled until after sixty (60) days' unconditional written notice to University. All policies required to be maintained by Contractor under this Agreement shall be primary and noncontributory to any other insurance, self-insurance, or risk pooling arrangement maintained by University.

**12. RECORDS**

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

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. Contractor shall, upon request of University allow University 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.

Contractor understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), *Texas Education Code*. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.

**13. GENERAL PROVISIONS**

**13.1 ASSIGNMENT**

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

**13.2 PAYMENT TERMS**

Payment terms for amounts due from University to Contractor under this Agreement (including, but not limited to due dates, late fees, and interest) are governed by Chapter 2251 of the Texas Government Code. University is not responsible for the payment of collection costs or attorney's fees unless explicitly required by law.

**13.3 ELIGIBILITY TO RECEIVE PAYMENT**

In accordance with Section 231.006 of the Texas Family Code and Sections 2155.004 and 2155.006 of the Texas Government Code, Contractor certifies that it is not ineligible to receive this Agreement or any payments under this Agreement and acknowledges that University may terminate this Agreement and/or withhold payment and/or reimbursement if this certification is inaccurate.

**13.4 TAX CERTIFICATION**

If Contractor is a taxable entity as defined by Chapter 171, Texas Tax Code ("Chapter 171"), then Contractor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Contractor is exempt from the payment of those taxes, or that Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.

**13.5 CONFLICT OF INTEREST**

Contractor and each person signing on behalf of Contractor certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of University's Board of Regents, nor any employee or person, whose salary is payable in whole or in part by University, has direct or indirect financial interest in the award of the Agreement, or in the services to which the Agreement relates, or in any of the profits, real or potential, thereof.

**13.6 PAYMENT OF DEBT OR DELINQUENCY TO THE STATE OF TEXAS**

Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, Contractor agrees that any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

**13.7 REPRESENTATIONS AND WARRANTIES BY CONTRACTOR**

If Contractor is a corporation, limited liability company, or any other entity organized and existing under state law, Contractor warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.

**13.8 TAX EXEMPTION**

University is exempt from the payment of taxes and will provide necessary documentation confirming its tax-exempt status.

### 13.9 ENTIRE AGREEMENT; MODIFICATIONS

This Agreement supersedes all prior agreements, written or oral, between Contractor and 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 University and Contractor. In the event any form of Contractor's purchase order or invoice is made a part of this Agreement, the terms and conditions of this Agreement shall prevail in the event of any inconsistency in terms.

### 13.10 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.

### 13.11 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.

### 13.12 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.

### 13.13 BINDING EFFECT

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

### 13.14 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.

### 13.15 ENFORCEMENT

It is acknowledged and agreed that Contractor's services to University are unique, which gives Contractor a peculiar value to University and for the loss of which University cannot be reasonably or adequately compensated in damages; accordingly; Contractor acknowledges and agrees that a breach by Contractor of the provisions hereof will cause University irreparable injury and damage. Contractor, therefore, expressly agrees that 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 University is not in breach of this Agreement.



### 13.16 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 University and Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The Vice President for Finance and Administration of University shall examine Contractor's claim and any counterclaim and negotiate with 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 Contractor, (ii) neither the issuance of this contract by University nor any other conduct, action or inaction of any representative of University relating to this contract constitutes or is intended to constitute a waiver of University's or the state's sovereign immunity to suit; and (iii) University has not waived its right to seek redress in the courts.

### 13.17 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.

### 13.18 FRAUD AND ETHICS

Contractor is hereby advised that 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 2.7, Fraud and 17.22, Purchasing Ethics and Confidentiality.

Contractor and each person signing on behalf of Contractor certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of University's Board of Regents, nor any employee or person, whose salary is payable in whole or in part by University, has direct or indirect financial interest in the award of the Agreement, or in the services to which the Agreements relates, or in any of the profits, real or potential, thereof.

### 13.19 LOSS OF FUNDING

Performance by University under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board of Regents of University (the "Board"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then University will issue written notice to Contractor and University may terminate the Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University.

### 13.20 ACCESS TO PUBLIC INFORMATION

Contractor is required to make any information created or exchanged with University pursuant to this Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in PDF or other format that is accessible by the public at no additional charge to University. Contractor acknowledges that University may be required to post a copy of the fully

executed Agreement on its internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*.

#### 13.21 CONFIDENTIALITY

During the course of the work and/or services to be provided under this Agreement, Contractor may come in contact with confidential information of University. Contractor agrees to treat as confidential the information or knowledge that becomes known to Contractor during performance of this Agreement and not to use, copy, or disclose such information to any third party unless authorized in writing by University. This provision does not restrict the disclosure of any information that is required to be disclosed under applicable law. Contractor shall promptly notify University of any misuse or unauthorized disclosure of its confidential information and upon expiration of this Agreement shall return to University all confidential information in Contractor's possession or control. Contractor shall further comply with all University information security policies that may apply.

#### 13.22 PUBLICITY

Contractor shall not use the University's name, logo, or other likeness in any press release, marketing materials, or other public announcement without receiving University's prior written approval.

#### 13.23 SOVEREIGN IMMUNITY

The Parties stipulate and agree that no provision of, or any part of the Agreement between University and Contractor, or any subsequent change order, amendment, or other Agreement modification shall be construed: (1) as a waiver of the doctrine of sovereign immunity or immunity from suit as provided for in the Texas Constitution and the Laws of the State of Texas; (2) to extend liability to University beyond such liability provided for in the Texas Constitution and the Laws of the State of Texas; or (3) as a waiver of any immunity provided by the 11th Amendment or any other provision of the United States Constitution or any immunity recognized by the Courts and the Laws of the United States.

#### 13.24 U.S. DEPARTMENT OF HOMELAND SECURITY'S E-VERIFY SYSTEM

By entering into this Agreement, Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of the Agreement, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of: (i) all persons employment to perform duties within Texas, during the term of the Agreement; and (ii) all persons (including subcontractors) assigned by Contractor to perform work pursuant to the Agreement, within the United States of America. Contractor shall provide, upon request of University, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by Contractor, and Contractor's subcontractors, as proof that this provision is being followed. If this certification is falsely made, the Agreement may be terminated, at the discretion of the University and at no fault to the University, with no prior notification. Contractor shall also be responsible for the costs of any re-solicitation that the University must undertake to replace the terminated Agreement.

#### 13.25 ISRAEL NON-BOYCOTT VERIFICATION

To the extent Section 2270.002, *Texas Government Code*, applies Contractor hereby represents, verifies, and warrants that it does not boycott Israel and will not boycott Israel during the term of the Agreement, as that term is defined by Section 808.001(1), *Texas Government Code*.



("Regulations"). Specifically, the Regulations apply to all students, employees, visitors, and other third parties on University-controlled property, including institutions and entities with whom University places its students. Further, such Regulations prohibit unequal treatment on the basis of sex as well as sexual harassment and sexual misconduct. As a condition of employment, enrollment, doing business, or being permitted on the campus, the above-mentioned individuals, organizations, and entities must agree to: 1) Report immediately to the Title IX coordinator any and all claims of sex discrimination or sexual misconduct; 2) Cooperate with University's Title IX investigation; and, 3) Cooperate fully with all sanctions that University may impose against such individual, organization, or entity, who is found to have violated the Regulations. If the individual, organization, or entity fails to adhere to any of the aforementioned requirements, University reserves the right to take appropriate action, including but not necessarily limited to, immediate removal from campus; discipline of employees and students (including termination of employment and/or expulsion from school); and termination of business or contractual relationships.

The parties hereby enter into this Agreement, effective the date of last signature below.

Western Motorcoach, Inc  
Company Name  
[Signature]  
Signature  
Harry Bao  
Printed Name  
Director  
Title  
8/13/2019  
Date

Stephen F. Austin State University  
Signature  
[Signature]  
Signature  
Dr. James Collett  
Printed Name  
VP Finance & Administration  
Title  
8/29/19  
Date

## Kirsty Dymond

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**From:** Teresa Rhodes  
**Sent:** Thursday, August 29, 2019 3:51 PM  
**To:** Kirsty Dymond  
**Subject:** FW: Annual Charter Bus Contract

See the below response from Western Motorcoach regarding the three crashes reported since FT-19's contact was signed.

Thank you.

*Teresa Rhodes, CTPM, CTCM*  
Contract Specialist - Procurement & Property Services  
Stephen F. Austin State University  
P.O. Box 13030  
Nacogdoches, TX 75962-3030  
936-468-4460 - Phone  
936-468-4282 - Fax



"The views and opinions expressed in this message are my own and do not necessarily reflect the views and opinions of Stephen F. Austin State University, its board of Regents, or the State of Texas."

**From:** Harry Bao <hbao@westernmotorcoach.com>  
**Sent:** Tuesday, August 27, 2019 7:38 PM  
**To:** Teresa Rhodes <Teresa.Rhodes@sfasu.edu>  
**Subject:** RE: Annual Charter Bus Contract

Hi Ms. Rhodes,

1 – Accident – 10/24/17

- The bus was heading westbound on I-10 over by Winnie, TX. A vehicle in the right lane in front of the bus, stopped completely and turned into the left lane in front of the bus. The driver reacted quickly but wasn't able to completely avoid the accident. The car admitted fault for the accident and our dash cams recorded the incident for police to review.

2 – Accident – 10/24/17

- The bus was parking at 13400 Market St, Houston, TX 77015. The driver of vehicle 1 had a seizure and hit vehicle 2 into the parked bus.

3 – Accident – 11/25/2018

- Bus was heading to Abilene, TX, no passengers on board at the time. The bus was sitting stopped on the highway due to high traffic. A vehicle rear ended the bus at high speed. Police stated driver may have been distracted by phone.

If there's anything else, please feel free to ask.