

NO. 83795-3

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

SNOHOMISH COUNTY PUBLIC TRANSPORTATION BENEFIT AREA
CORPORATION dba COMMUNITY TRANSIT,

Petitioner,

vs.

FIRSTGROUP AMERICA, INC., dba FIRST TRANSIT, a foreign corporation,

Respondent.

APPEAL FROM SNOHOMISH COUNTY SUPERIOR COURT
Honorable Kenneth L. Cowsert, Judge

SUPPLEMENTAL BRIEF OF RESPONDENT

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I. NATURE OF THE CASE

An indemnitee seeks contractual indemnification for its own negligence *plus* that of a third person. But the indemnification provision does not require indemnification in such a situation in “clear and unequivocal terms,” as required by Washington law.

II. ISSUE PRESENTED

Must an indemnitor indemnify the indemnitee for the latter’s own negligence *plus* the negligence of a third party where the indemnity agreement does not clearly and unequivocally require such indemnification?

III. STATEMENT OF THE CASE

A. STATEMENT OF RELEVANT FACTS.

The assignor of respondent FirstGroup America, Inc., dba First Transit, contracted with petitioner/appellant Snohomish County Public Transportation Benefit Area Corp., dba Community Transit, to provide rush hour commuter bus service between King and Snohomish Counties. (The contract included an indemnification clause from Community Transit’s Request for Proposal “RFP”, copy in Appendix.) The original contractor assigned its interest, rights, and duties under the contract to First Transit. (CP 13-15)

A 5-vehicle accident occurred on I-5. A First Transit bus was traveling northward in the HOV lane, followed by the Community Transit bus. Three other vehicles were in the adjacent right lane. (CP 15)

The last of these three vehicles (vehicle #3) rear-ended the vehicle in front of him (vehicle #2), which struck the vehicle ahead of him (vehicle #1). Vehicle #1 was pushed into the path of the First Transit bus in the HOV lane. First Transit's driver braked quickly, but could not avoid hitting vehicle #1. The following Community Transit bus plowed into the First Transit bus. (CP 15-16)

Vehicle #3's driver was at fault. So was the Community Transit bus driver and thus, under respondeat superior, Community Transit. The First Transit bus driver and thus First Transit were fault free. (CP 16)

Community Transit received claims from the passengers of both buses and the First Transit driver. First Transit rejected Community Transit's tender pursuant to the indemnity clause of the contract. Community Transit settled the claims. (CP 16-17)

B. STATEMENT OF PROCEDURE.

Community Transit sued First Transit. (CP 268-74) The trial court granted summary judgment to First Transit. (CP 10-11, 89-103, 104-119) A unanimous Court of Appeals affirmed.

IV. ARGUMENT

Petitioner/appellant seeks contractual indemnification for its own negligence and the negligence of a third person. It is undisputed that the indemnitor—First Transit—was fault free.

The indemnity clause was drafted by Community Transit, the purported indemnitee. Thus, First Transit is entitled to have the clause strictly construed. *Tyee Construction Co. v. Pacific Northwest Bell Telephone Co.*, 3 Wn. App. 37, 41, 472 P.2d 411, *rev. denied*, 78 Wn.2d 995 (1970). Indeed, “a contract of indemnity will not be construed to indemnify the indemnitee against losses resulting from his own negligence unless this intention is expressed in *clear and unequivocal terms*.” *Northwest Airlines v. Hughes Air Corp.*, 104 Wn.2d 152, 154-55, 702 P.2d 1192 (1985) (emphasis added). This has long been the law. *See, e.g., Griffiths v. Henry Broderick, Inc.*, 27 Wn.2d 901, 904, 182 P.2d 18 (1947); *Tucci & Sons, Inc. v. Carl T. Madsen, Inc.*, 1 Wn. App. 1035, 467 P.2d 386 (1970).

However, when *Griffiths* and *Tucci* were decided, this Court gave a broader meaning to what “clear and unequivocal terms” means than it does now. At the time, this Court looked at the “entire contract or at the all-encompassing language of the indemnification clause” to find the required clear and unequivocal intention. *Northwest Airlines*, 104 Wn.2d

at 155. Neither the term “negligence” nor “[a]n intent to indemnify for the indemnitee’s negligence” was required. *Tucci*, 1 Wn. App. at 1038.

But this approach is no longer the law. Rather, this Court has explained—

Washington currently requires, as do some other states, that ***more specific language*** be used to evidence a ***clear and unequivocal intention*** to indemnify the indemnitee’s own negligence.

Northwest Airlines, 104 Wn.2d at 155 (emphasis added).

An indemnity agreement is not unlike an insurance policy. In the indemnity grant here, First Transit agreed to indemnify Community Transit for loss (1) “in connection with the work performed under this contract”, *or* (2) “caused or occasioned in whole or in part by reason of the presence of [First Transit] . . . upon or in proximity to the property of Community Transit.” There is, however, an exclusion, clause (3), “for those losses resulting solely from the negligence of [First Transit].” (CP 152) In other words, if a loss does not fall within the indemnity grant, *i.e.*, clause (1) or (2), First Transit has no obligation to indemnify, regardless of whether the exclusion, *i.e.*, clause (3), might otherwise apply. *See Western National Insurance Co. v. Hecker*, 43 Wn. App. 816, 823 n.2, 719 P.2d 954 (1986) (“whether coverage is excluded need not be reached if there is no coverage to exclude”).

Community Transit correctly observes that—

the Court of Appeals parses the indemnity provision into three clauses. It separately analyzes (1) the “in connection with” clause; (2) the “cause[d] or occasioned . . . by First Transit’s presence” clause; and (3) the sole negligence exception.

(Petition 14-15) But then Community Transit claims, “This parsing of the language conflicts with *Hughes* and leads to an erroneous result.” (*Id.* at 15) According to Community Transit, all that is required is whether “the indemnity agreement at issue explicitly provide[s] that the indemnitor must indemnify for the indemnitee’s own negligence”. (*Id.* at 10-11)

But that is not the *precise* issue here. The issue here is whether the indemnity agreement explicitly provides for indemnification for the indemnitee’s own negligence *and* that of a third person. As will be discussed, it does not.

A. NEITHER PRONG OF THE INDEMNITY GRANT APPLIES.

1. Community Transit Concedes Clause (1) Does Not Apply.

Community Transit concedes that clause (1) of the indemnity grant, “in connection with the work performed under this contract”, “require[s] some ‘overt act or omission’ by First Transit”, so that “indemnity would require some fault by [the indemnitor, First Transit].”

(Petition 15) This is because the seminal indemnification case, *Jones v. Strom Construction Co.*, 84 Wn.2d 518, 527 P.2d 1115 (1974), held that

similar indemnification language required “an overt act or omission on the part of [the indemnitor] in its performance of the subcontract [that] in some way caused or concurred in causing the loss involved.” *Id.* at 521-22. Community Transit does not dispute there was no “overt act or omission” by First Transit. (Petition 15)

2. Clause (2) Does Not Apply.

Clause (2) requires that the loss be “caused or occasioned . . . by reason of the presence of [First Transit] . . . upon or in proximity to the property of Community Transit.” (CP 152) Community Transit in essence claims that because the First Transit bus was in the wrong place at the wrong time, the indemnity grant’s clause (2) requires indemnification.

The critical words are “caused or occasioned . . . by”. As will be discussed, the loss here was not “caused or occasioned by” First Transit’s presence, as those terms have been construed in Washington cases.

a. “Caused by”.

“Caused by” is much more limited than “but for” causation. For example, in *Yakima Cement Products Co. v. Great American Insurance Co.*, 93 Wn.2d 210, 608 P.2d 254 (1980), the insured inadvertently manufactured defective concrete panels for installation on the exterior of a building. Correction resulted in delay of the project. As a result, other

construction materials could not be used as scheduled and suffered damage from exposure to the elements.

The insured's liability policy covered "property damage" caused by an "occurrence." The "occurrence" was the panels' mismanufacture.

The damage would not have occurred "but for" the mismanufacture. Nonetheless, this Court ruled there was no coverage:

While the roof material was piled on the ground, exposure to the elements caused it to weather and rust. It is clear the property damage was not *caused by* the mismanufacture or even by the installation, removal, repair and refabrication of the concrete panels. It resulted from delay in construction of the operations building. . . . [T]he term "caused by" requires at least some direct and substantial relation between the occurrence and the ensuing property damage. . . . It is evident that the relation between the mismanufactured concrete panels and the damage to the roof material is wholly tangential.

93 Wn.2d at 220 (emphasis added).

In *Safeco Insurance Co. of America v. Hirschmann*, 112 Wn.2d 621, 773 P.2d 413 (1989), this Court said that the word "cause" refers to the "efficient proximate cause." *Id.* at 629. "Efficient proximate cause" refers to "the efficient or predominant cause which sets into motion the chain of events producing the loss which is regarded as the proximate cause, not necessarily the last act in a chain of events." *Findlay v. United Pacific Insurance Co.*, 129 Wn.2d 368, 372, 917 P.2d 116 (1996).

And *State Farm Mutual Automobile Insurance Co. v. Centennial Insurance Co.*, 14 Wn. App. 541, 543 P.2d 645 (1975), *rev. denied*, 87 Wn.2d 1003 (1976), equated “caused by” with proximate cause:

The phrase “arising out of the use” is not synonymous with “while riding” or “in the course of”. . . . Nor does the provision force the interpretation that before coverage can exist it must appear that the injury was the proximate result of the use of the automobile. Such a construction would do equal violence to the normal meaning of those words. If such were the intent of Centennial, *the words “caused by”*. . . *would have been used.*

Id. at 543 (emphasis added). See also *Rust Tractor Co. v. Southern Union Gas Co.*, 85 N.M. 323, 512 P.2d 83 (1973).

Scruggs v. Jefferson County, 18 Wn. App. 240, 567 P.2d 257 (1977), illustrates the same principles when “caused by” is used in an indemnification agreement. There a passenger was seriously injured when the car in which he was riding missed a curve and hit a utility pole. The pole was owned and maintained by a utility company under a franchise agreement with the county. The accident was caused by the negligence of the car’s driver and by the county’s failure to post a speed sign at the curve. The utility company was not negligent.

The franchise agreement obligated the utility company to hold the county harmless for all costs and expenses “by reason of accidents experienced or *caused by* the construction or operation” of transmission

lines or “*caused by* reason of the exercise by [the utility company] of any of the rights herein granted.” *Id.* at 242 (emphasis omitted; italics added). The at-fault county sued the blameless utility company to recover indemnification for the amount the county paid to settle the claim.

The accident would not have happened or would have been less severe “but for” the pole. Nevertheless, the court ruled that the utility company was not liable to indemnify the county:

At most, the pole was *merely a passive, nonculpable cause-in-fact* of the injuries . . . Consequently, the pole was only *indirectly* related to the County’s loss and was not the type of loss the parties intended to cover in the indemnity clause. . . .

Id. at 244 (emphasis added).

b. “Occasioned by”.

Clause (2) also uses the phrase “occasioned by.” Like “caused by”, “occasioned by” is also much more restrictive than “but for” or even “in connection with” causation.

Dirk v. Amerco Marketing Co., 88 Wn.2d 607, 565 P.2d 90 (1977), is illustrative. There the indemnitee, a U-Haul dealer, rented a van to a customer. The van broke down. When the dealer sought to tow it away, it was struck by another vehicle.

The van was defective and the dealer was negligent. Despite his culpability, the dealer sought indemnification under a clause in his

dealership contract that required the grantor of the dealership to hold the dealer harmless from liability of injury “arising out of accidents occasioned . . . by defects in U-Haul equipment . . .” 88 Wn.2d at 609.

This Court ruled that the indemnity clause did not apply. Noting that “*occasioned by*” is narrower than the “*arising out of*”, “*in connection with*”, and “*incident to*” language of the indemnity provision in *Jones*, 88 Wn.2d at 611, this Court explained:

[A]n indemnity contract will not be construed to indemnify the indemnitee against losses resulting to him through his own negligent acts where such intention is not expressed in *unequivocal terms*. . . . [C]lauses purporting to exculpate an indemnitee from liability for losses flowing from his own acts or omissions are not favored as a matter of public policy and are to be clearly drawn and strictly construed. . .

88 Wn.2d at 612-13 (emphasis in original). In other words, even though the defect in the van caused it to be towed, and the towing led to the accident, the accident was not “occasioned by” the defect.

The accident in *Scruggs* would not have happened or would have been less severe “but for” the pole. But the court ruled the accident had not been “caused by” the pole. Just as the injury in *Scruggs* was not “caused by” the indemnitor utility’s maintaining its pole, the loss here was not “caused by” the presence of the First Transit bus.

The accident in *Dirk* would not have happened “but for” the van’s defect. But the court ruled that the accident had not been “occasioned by”

the defect. Just as the injury in *Dirk* was not “occasioned by” the defect, the loss here was not “occasioned by” the First Transit bus’ presence.

The result might be different had, for example, the accident occurred because the First Transit bus had stalled—perhaps without fault of its own, resulting in a chain reaction collision. In that event, its presence might be deemed to have “caused or occasioned” the loss.

But that is not what happened. The First Transit bus did not cause or occasion the loss here. It was simply in the wrong place at the wrong time.

Community Transit might possibly have avoided this situation had it drafted the agreement to require indemnity for loss “arising out of” the presence of [First Transit] upon or in Proximity to the Property of Community Transit.” By electing the more restrictive language of “caused or occasioned by” in clause (2), rather than the broader “arising out of” of clause (1), Community Transit substantially limited the scope of clause (2). This Court will not rewrite a contract in the guise of interpreting it. *Clements v. Olsen*, 46 Wn.2d 445, 448, 282 P.2d 266 (1955).

The loss here does not fall within clause (2) of the indemnification agreement. The panel and the trial court correctly granted First Transit summary judgment.

Northern Pacific Railway Co. v. National Cylinder Gas Division, 2 Wn. App. 338, 467 P.2d 884 (1970), does not apply. In that case, the railroad indemnitee contracted with a welding company to weld together rails in a welding car and then move them onto flat cars with roller racks.

A railway employee suffered an injury when his leg was crushed by a moving rail. Any negligence by the indemnitee railway did not cause the accident. It was the fault-free indemnitor welding company's activities under the contract that caused the accident. *Id.* at 343, 344.

The indemnity agreement required the welding company to indemnify the railroad for damage "arising or growing out of, or in any manner connected with the work performed under this contract, or caused or occasioned in whole or in part by reason of the presence of the person or of the property of [the welding company] upon or in proximity to the property of the railroad." However, because the contract also required the indemnitor welding company to provide the "complete operation," not just the actual welding activity, *id.* at 339 n.2, 344, the court agreed with the trial court that "the indemnity agreement applied not only to the welding, but to *any activity in any manner performed under the contract.*" *Id.* at 343 (emphasis added).

Given that under the contract, the indemnitee railroad lacked control of the actual welding operation as well as of the speed with which

the welded rail moved to its storage area, *id.* at 345, the Court of Appeals agreed that the fact that the indemnitor welding company's fault free activities had caused the accident was enough to require indemnity. *Id.* at 343. The court did *not* say the indemnitor's mere presence was sufficient.

Northern Pacific was very different than the instant case. In *Northern Pacific*, the parties' contract made the indemnitor welding company responsible for "the complete operation", and the activities of that operation had caused the accident, facts the court found significant. 2 Wn. App. at 339 n.2, 343-44. Here, First Transit had no control over the acts or omissions of Community Transit or anyone else on I-5 and its activities did nothing to cause the accident.

Furthermore, any negligence of the indemnitee railway in *North Pacific* did not cause the loss.¹ 2 Wn. App. at 344. Thus, there was no issue about indemnifying the indemnitee for its own negligence. Here, the negligence of the indemnitee, Community Transit, did cause the loss.

The absence of causal negligence by the indemnitee railway in *Northern Pacific* is critical because that case was decided *before* this Court changed Washington law to require that "*more specific language* be used to evidence a *clear and unequivocal intention* to indemnify the

¹ The decision does not say whether the indemnitee had committed any negligence.

indemnitee's own negligence." *Northwest Airlines*, 104 Wn.2d at 155 (emphasis added). Thus, the *Northern Pacific* court did not have to apply the rule that "for an indemnitor to be found responsible for the indemnitee's own negligence, the agreement must be clearly spelled out." *Northwest Airlines*, 104 Wn.2d at 158.

B. EXCLUSION CLAUSE (3) APPLIES.

Since neither the indemnity grant clause (1) nor (2) applies in this case, this Court need go no further because the exclusion set forth in clause (3) is moot. But even if clause (1) or clause (2) applied, the result would be the same because the clause (3) exclusion applies.²

Clause (3) excludes from the indemnification obligation "those losses resulting solely from the negligence of Community Transit." As between First Transit and Community Transit, the losses resulted solely from Community Transit's negligence, since First Transit was fault free.

Southern Pacific Transportation Co. v. Sandyland Protective Association, 224 Cal. App. 3d 1494, 274 Cal. Rptr. 626 (1990), *rev. denied*, (1991), is illustrative. There a homeowners' association agreed to indemnify a railroad as part of an agreement allowing the association to

² The construction of clause (3) is a question of law. *Campbell v. Ticor Title Ins. Co.*, 166 Wn.2d 466, 472, 209 P.3d 859 (2009). While the parties may stipulate to the facts, a stipulation as to a question of law is not binding because it is the province of this Court to decide questions of law. *State v. Drum*, 168 Wn.2d 23, 33, 225 P.3d 237 (2010).

construct and maintain a roadway across the railway's tracks. Occupants of a car were injured when a train struck their car as it was trying to cross the tracks on the roadway.

The victims sued the railroad. The railroad sought indemnity from the association. However, a California statute precluded indemnity for the "sole negligence" of the railroad. 274 Cal. Rptr. at 628. The railroad claimed that it was not solely negligent because the victims had also been negligent. The association was not at fault.

The court ruled that the statute precluded indemnity, explaining that despite the victims' contributory fault, the indemnitee railroad was "solely negligent" as between it and the indemnitor association:

The manifest purpose of the Legislature in enacting section 2782 was to prevent one party to a construction contract from shifting the ultimate responsibility for its negligence to a nonnegligent party. That purpose would not be advanced by a construction of the statute that would allow a shifting of responsibility to a nonnegligent party upon a showing that the tort claimant and the promisee were comparatively negligent. Accordingly, *we construe the phrase "sole negligence . . . of the promisee" to mean that as between the promisee and the promisor, the promisee was solely negligent.* Therefore, absent negligence on the part of the association, a party to the agreement, the negligence, if any, of the plaintiffs, who are third parties, is immaterial.

274 Cal. Rptr. at 629 (emphasis added).

C. THE INDEMNITY PROVISION IS NOT CLEAR OR UNEQUIVOCAL.

Even if this Court decides the indemnity agreement may reasonably be interpreted to require indemnity here, that does not end the question. This is because the language in the indemnification agreement must be “clear and unequivocal” as to when the indemnitee can be indemnified for its own negligence. If the language is not clear and unequivocal, it must be construed against the drafter, Community Transit.

In short, interpretation of indemnity agreements presents the flip side of interpretation of insurance policies. Ambiguous language in an insurance policy is construed against the drafter, the insurance company, *in favor of coverage*. Ambiguous language in an indemnity agreement is construed against the drafter (here, the indemnitee) and *against indemnification* for the indemnitee’s own negligence.

Language is not clear and unequivocal, *i.e.*, not unambiguous, if it is capable of being understood in either of two or more senses. *McGary v. Westlake Investors*, 99 Wn.2d 280, 285, 661 P.2d 971 (1983). The exception to the indemnity agreement “for those losses resulting solely from the negligence of Community Transit, its officers, employees and agents” can be understood in two senses.

One, the clause could be read to refer only to those losses resulting from the negligence of only Community Transit and no other. That is the interpretation that Community Transit urges.

Or, two, the clause could be read to mean only those losses resulting from the negligence of only Community Transit as between it and First Transit, the parties to the indemnity agreement. That interpretation is also reasonable and, indeed, has been adopted by at least one court. *See Sandyland*, 224 Cal. App. 3d 1494, 274 Cal. Rptr. 626.

D. *NW AIRLINES DOES NOT SUPPORT COMMUNITY TRANSIT.*

Community Transit argues that the *Northwest Airlines* decision mandates reversal in this case. Community Transit is wrong. Not only were the indemnity language and the facts in *Northwest* different, but that decision supports First Transit.

In *Northwest*, an employee of a lessee of part of a building slipped while carrying a coffee urn through that part of the building occupied by the lessor. He sued the lessor, which settled the claim and sought contractual indemnification from the lessee.

As part of the lease, the lessee indemnitor had agreed to indemnify the lessor indemnitor for injuries “arising out of or in connection with the use and occupancy of the premises by Lessee, its agents, servants,

employees or invitees *whether or not caused by Lessor's negligence*" 104 Wn.2d at 153 (some court emphasis omitted; boldface added).

This Court recognized that Washington courts "initially" looked "at the entire contract or at the all-encompassing language of the indemnification clause" to determine whether the intention to indemnify the indemnitee for its own negligence. 104 Wn.2d at 155. However, this Court acknowledged that this approach was no longer valid and that, as in some other states, Washington courts "currently require[]" "more specific language . . . to evidence a clear and unequivocal intention to indemnify the indemnitee's own negligence." *Id.* at 155-56.

Thus, this Court looked at the language, "arising out of or in connection with the use and occupancy of the premises by Lessee." The indemnitor lessee argued that the lessor's indemnity claim did not fall within this indemnity grant because the accident had not occurred on the leased premises. This Court disagreed because the clause did not specifically require that accidents take place "on the leased premises".

Although the indemnity clause, like the clause in *Jones v. Strom* and the instant case, used "arising out of" or "in connection with", those terms in *Northwest* were linked to "use and occupancy", not to the indemnitor's contract performance, as in *Jones* and the instant case. In *Northwest*, this Court reiterated that the indemnification clause in *Jones*

“required an act or omission by the subcontractor in performance of the subcontract for it to be applicable.” 104 Wn.2d at 157.

In addition, this Court reemphasized that “for an indemnitor to be found responsible for the indemnitee’s own negligence, the agreement must be clearly spelled out.” *Id.* at 158. Since the indemnity clause there required indemnification “whether or not caused by Lessor’s negligence,” the agreement clearly spelled out that there would be indemnification “even when Northwest is negligent.” *Id.*

Hence, *Northwest* embraced rather than abandoned the requirement that “more specific language be used to evidence a clear and unequivocal intention to indemnify the indemnitee’s own negligence.” *Id.* at 155. But *Northwest* did not deal with the situation here—where not only was the indemnitee, Community Transit, negligent, but *so was a completely separate third person*. The *Northwest* court did not have to determine whether the indemnification agreement there applied when the indemnitee was concurrently negligent with a third party.

The indemnification provision here does not clearly spell out whether Community Transit would be entitled to indemnification when, as between it and First Transit, it was solely negligent, but the negligence of a third person was also involved. As discussed *supra*, the term “solely negligent” could reasonably mean either that only Community Transit was

negligent out of the whole universe of the possibly negligent, *or* that as between Community Transit and First Transit, only Community Transit was negligent.

V. CONCLUSION

Community Transit could have drafted the indemnity grant to clearly and unequivocally include the loss here. It could have drafted the exclusion to the indemnity grant clearly and unequivocally deal with the situation where the loss is caused by both its own negligence and that of an independent third person. It did neither.

The trial court and the Court of Appeals were correct that the indemnity agreement does not clearly and unequivocally provide for indemnity for the loss here. This Court should affirm.

DATED this 1st day of June, 2010.

REED McCLURE

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3.54 HOLD HARMLESS AND INDEMNIFICATION

The Contractor shall defend, indemnify and save harmless Community Transit, its officers, employees and agents from any and every claim and risk, including, but not limited to, suits or proceedings for bodily injuries (including death and emotional claims), patent, trademark, copyright or franchise infringement, and all losses, damages, demands, suits, judgments and attorney fees, and other expenses of any kind, on account of all personal bodily injuries (including death and emotional claims), property damages of any kind, whether tangible or intangible, including loss of use resulting therefrom, in connection with the work performed under this contract, or caused or occasioned in whole or in part by reason of the presence of the Contractor or its subcontractors, or their property, employees or agents, upon or in proximity to the property of Community Transit, or any other property upon which the Contractor is performing any work called for or in connection with this contract, except only for those losses resulting solely from the negligence of Community Transit, 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 Contractor and Community Transit, its members, officers, employees and agents, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes Contractor'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 Contractor shall appear and defend that lawsuit at its own cost and expense, and if judgment is rendered or settlement made requiring payment of damages by Community Transit, its officers, agents, employees and volunteers, the Contractor shall pay the same.

3.55 CANCELLATION

All Proposers under this solicitation agree that service areas may be increased, reduced, or deleted during the basic term of the contract resulting from this solicitation and that compensation, if any, for such changes in service will be computed in accordance with the General Provisions, and all Exhibits and Attachments contained herein and the successful Contractor(s) proposal.

3.56 FEDERAL/STATE AND LOCAL TAXES

Community Transit is not exempt from Washington State Sales Tax. The Contractor shall be responsible to pay all taxes associated with the project, which includes but is not limited to:

- State Utility Tax
- State Sales and Use Tax on vehicles and other equipment
- State B & O Tax