

AGREEMENT FOR SPECIAL EDUCATION STUDENT TRANSPORTATION SERVICES

Alameda Unified School District, 2060 Challenger Drive, Alameda, CA 94501 ("Alameda Unified"), and Durham School Service, L.P., 2601 Navistar Drive, Building 5, Lisle, IL 60532 ("Durham"), ("CONTRACTOR"), mutually covenant to this Agreement for Special Education Student Transportation Services, ("Agreement"), as follows:

1. Definitions

- 1.1** The term "Daily Service", as used herein, is defined as all home-to-school and school-to-home, or school-to-after school care, transportation of any students; and any therapy trips which occur during or after school, as described in the student's Individualized Education Plan.
- 1.2** The term "Other Transportation", as used herein, is defined as any transportation of students and Alameda Unified personnel other than Daily Service, including but not limited to transportation to and from extracurricular events.

2. Scope of Agreement.

- 2.1** CONTRACTOR shall, during the term of this Agreement, operate and maintain daily route vehicles (school buses, vans and other vehicles) and provide duly licensed and qualified personnel for the transportation of pupils using vehicles provided by CONTRACTOR. Such transportation may be either within or outside of Alameda Unified boundaries and on any day or days during the term of this Agreement. CONTRACTOR shall provide (a) the Daily Service for Alameda Unified, and (b) such Other Transportation as may be specified by Alameda Unified. Should Alameda Unified's need for vehicles, after initiation of service, exceed the number of vehicles in service at the start of school by more than ten percent (10%), the CONTRACTOR shall in any event make a good faith effort to provide Alameda Unified with the number of vehicles it may request at any time.

3. Term.

- 3.1** Unless terminated as described below, the term of this Agreement shall be for a period of three (3) years, beginning August 1, 2020 and ending July 31, 2023. The District may, at its sole discretion, renew this agreement for up to two additional one-year terms.

4. Permits and Licenses.

- 4.1** CONTRACTOR, its employees, and its agents shall secure and maintain valid permits and licenses and certifications as required by federal, state, and local laws and regulations, for the execution of this Agreement.

5. Insurance.

- 5.1** General Liability and Automobile. CONTRACTOR shall, at its expense, procure and keep in force during the entire term of this Agreement, General Liability and Automobile Liability Insurance to protect CONTRACTOR, its drivers and other personnel. CONTRACTOR shall provide General Liability limits of not less than \$1,000,000 each

occurrence and aggregate bodily injury and property damage and \$1,000,000 Personal Injury each occurrence and aggregate; Automobile Liability limits of not less than \$1,000,000.00 combined single limit for bodily injury and damage to property for all owned, hired and non-owned autos, and umbrella coverage of not less than \$5,000,000.00 in addition to the limits listed above. CONTRACTOR shall also maintain uninsured/underinsured motorist coverage and medical payments coverage to the extent required by law. CONTRACTOR agrees to provide to Alameda Unified a certificate of insurance evidencing such coverage and designating Alameda Unified as an additional insured as its interest may appear for both the General and Auto Liability programs, and reference to the hold harmless and indemnification provisions in this Contract, such certificate to be provided on July 1st of each Contract year, or on renewal of such policies. All insurance policies shall provide that no coverage shall be canceled except by thirty (30) days written notice to CONTRACTOR and Alameda Unified. CONTRACTOR shall provide Alameda Unified with a certificate of insurance as evidence of having statutory workers' compensation coverage at levels and in forms required by the laws in which CONTRACTOR shall operate for this Contract. CONTRACTOR shall provide a certificate of insurance from an insurance company or companies' license to conduct business in the State of California by the State Commissioner of Insurance for the minimum amounts stated above. This insurance shall be with companies with a rating of A, AA or AAA or better as listed in Best's Insurance Guide's latest edition. Each policy shall provide that CONTRACTOR'S insurance policy shall be primary, and any insurance maintained by Alameda Unified shall apply, if required by law, in excess of, and not contributory with or to, insurance required under the terms of this Agreement.

5.2 Workers' Compensation. CONTRACTOR shall maintain at all times this Agreement is in effect a policy of workers' compensation insurance as required by applicable law. The policy shall provide for notification by the carrier to Alameda Unified at least thirty (30) calendar days prior to cancellation, failure to renew, or other termination. A certificate evidencing this coverage and notice to Alameda Unified requirement shall be filed with Alameda Unified no later than ten (10) calendar days after the date of the Agreement. By signing the Contract, CONTRACTOR makes the following certifications: "I am aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing performance of the work of this Contract."

5.3 Additional Insurance and Bonds.

a. Property Insurance. CONTRACTOR shall maintain property insurance covering vehicles and related personal and real property. Such insurance shall at a minimum be sufficient to repair or pay the replacement value of damaged property and shall be submitted to Alameda Unified for review and approval within Alameda Unified's reasonable discretion no later than five (5) calendar days following the effective date of this Agreement. CONTRACTOR'S failure to obtain and submit such insurance to Alameda Unified as specified herein shall be considered a material breach of the Agreement, giving Alameda Unified the right to terminate the Agreement in its sole discretion. In the event of any breach of this Article, or in the event Alameda Unified receives notice indicating any required insurance coverage will be materially diminished or cancelled, Alameda Unified at its option may, notwithstanding any other provision in this Agreement to the contrary, immediately declare a material breach of the Agreement and suspend all further services and/or payments under the Agreement.

b. Surety Bond. CONTRACTOR will furnish a corporate surety bond in the amount of One Hundred Percent (100%) of the estimated annual Contract price to guarantee the CONTRACTOR'S faithful performance of this Agreement. The faithful performance bond shall be approved as to surety and as to form by the General Counsel for Alameda Unified. CONTRACTOR shall submit the performance bond to Alameda Unified for review and approval no later than ten (10) calendar days after signing the Contract. If CONTRACTOR fails to provide the performance bond as required, Alameda Unified, at its sole option and in its sole discretion, may cancel the award of the Contract to CONTRACTOR, and may award the Contract to another responsive, responsible bidder. CONTRACTOR is responsible to ensure that the surety bond is issued to Alameda Unified at the beginning of each year of the Contract and it is not the responsibility of the surety company electing to non-renew should it make this election. CONTRACTOR'S failure to renew the bond as specified herein shall be considered a material breach of the Agreement, giving Alameda Unified the right to terminate the Agreement in its sole discretion

c. Sexual Misconduct Insurance. Contractor will provide coverage for sexual abuse and molestation which covers bodily injury, emotional distress or mental anguish related to any claim, cause of action or liability associated with child molestation or sexual abuse, with limits no less than \$3,000,000.00 per wrongful act and \$3,000,000.00 aggregate.

6. Indemnification/Hold Harmless Agreement.

6.1 CONTRACTOR shall hold harmless and indemnify Alameda Unified, its Board of Education, officers, agents, and employees from and against every claims or demand which may be made by reason of any injury to person or damage to property sustained by any person, firm or corporation, caused by any negligent act or omission, willful misconduct, or contractual default of the Bidder or of any person, firm, or corporation, directly or indirectly employed by Bidder upon or in connection with its performance under the Agreement. CONTRACTOR at its own expense and risk shall defend any legal proceeding that may be brought against Alameda Unified, its Board of Education, officers, agents, and employees, and each of them, on any such claim or demand, and shall satisfy any judgement that may be rendered against Alameda Unified, its Board of Education, officers, agents, and employees. In the event that any such proceeding is brought against Alameda Unified, its Board of Education, officers, agents, and employees on any such claim or demand, CONTRACTOR shall have the right to select and employ counsel, reasonably acceptable to Alameda Unified, to defend such persons and entities and shall have the right to settle any claims when Bidder, in its sole discretion, deems such a settlement advisable. Alameda Unified, its Board of Education, officers, agents, and employees shall cooperate in all reasonable manners in the defense of such claims. The duty of CONTRACTOR to indemnify and save harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

7. Safety Program.

7.1 CONTRACTOR shall provide formal safety instruction on a regular basis for all operating personnel assigned to this Agreement. Attendance is required for safety meetings.

8. Independent Contractor.

8.1 This is not an employment contract. CONTRACTOR, in the performance of this Agreement, shall be and act as an independent contractor. CONTRACTOR certifies that s/he performs work that is outside the usual course of Alameda Unified's business. CONTRACTOR further certifies s/he is customarily engaged in an independently

established trade, occupation, or business of the same nature as that involved in the work performed. CONTRACTOR understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of Alameda Unified, and are not entitled to benefits of any kind or nature normally provided employees of Alameda Unified and/or to which Alameda Unified's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. CONTRACTOR shall assume full responsibility for payment of all federal, state, and local taxes or contributions, including unemployment insurance, social security, and income taxes with respect to CONTRACTOR's employees. In the performance of the work herein contemplated, CONTRACTOR is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work. Alameda Unified's interest is only in the results obtained.

9. Assignments.

9.1 CONTRACTOR will not assign or transfer any of its rights, burdens, duties, or obligations under this Agreement to its parent company, affiliates, subsidiaries, related legal entities by operation of law or otherwise without the prior written consent of Alameda Unified.

10. Sub-Contracting.

10.1 CONTRACTOR will not subcontract any of its rights, burdens, duties, or obligations under this Agreement without the prior written consent of Alameda Unified.

11. Force Majeure. CONTRACTOR shall be excused from performance hereunder during the time and to the extent that it is prevented from performing in the customary manner by an act of God, fire, flood, war, riot, civil disturbance, terrorism, epidemic, quarantine, strike, lockout, labor dispute, oil or fuel shortage, freight embargo, rationing or unavailability of materials or products, loss of transportation facilities, commandeering of equipment, materials, products, plants, or facilities by the Government, or any other occurrence which is beyond the control of the CONTRACTOR, when satisfactory evidence thereof is presented to Alameda Unified. Alameda Unified shall not be responsible for any costs associated with this Agreement while performance is so excused.

12. Cross-Hiring of Employees. During the term of this Agreement, Alameda Unified shall not knowingly hire any management or supervisory employee of the CONTRACTOR or former management or supervisory employee of the CONTRACTOR without prior written approval of the CONTRACTOR. CONTRACTOR shall not knowingly hire any employee or former employee of Alameda Unified without prior written approval of Alameda Unified.

13. Routing and Scheduling.

13.1 Prior to the start of each school year covered by this Agreement, Alameda Unified shall provide CONTRACTOR with updated information regarding Alameda Unified students who had received transportation in the prior school year. Within twenty (20) days of receiving the updated information, CONTRACTOR shall establish routes and schedules conforming to the needs of Alameda Unified, and work cooperatively with Alameda Unified to adjust those routes and schedules as necessary. Alameda Unified shall promptly inform CONTRACTOR of any students requiring transportation who were not included in

the update. CONTRACTOR shall then make any necessary changes to the proposed routes and schedules, consistent with this Agreement.

13.2 Standards. All routes and schedules shall be developed by so as to transport pupils in accordance with the following minimum standards:

a. No special education pupil shall be required to ride or be in transit between home and school or school and home for more than sixty (60) minutes unless the pupil lives more than eighteen (18) miles from his/her school of attendance or unless otherwise approved in advance and in writing by Alameda Unified.

b. Special education pupils shall be dropped off at their assigned schools no more than fifteen (15) minutes and no less than five (5) minutes prior to the start of their classes and must be picked up not more than ten (10) minutes after the end of their classes.

c. Pupils shall not be transferred from one bus to another bus going to or coming from school except in the event of a legitimate emergency (e.g. bus breakdown), unless specifically approved by Alameda Unified.

d. Bus routes will be efficient and direct and made to accommodate the greatest number of students to and from each destination.

e. Designated pick up locations will be provided by Alameda Unified for those students not designated "door-to-door". "Door-to-Door" students must be so designated in the students Individualized Education Plan (IEP) unless mutually agreed upon to facilitate efficient routing.

f. Routing for the school year and ESY (Extended School Year) should be delivered to Alameda Unified no later than 7 business days before the start of the program.

g. CONTRACTOR will provide up-to-date route sheets and information, retained in an electronic routing system, that include, at a minimum, full driver names, full student names, bus/vehicle numbers, route names/numbers, and pick up and drop off sites and addresses, shall be available to Alameda Unified at any time upon request. The same route sheets and information must also be made available to Alameda Unified in hard copy format within two (2) business days of Alameda Unified's request.

h. When a pupil is added to the transportation list, the CONTRACTOR shall transport said pupil no later than the third school day following said notice.

13.3 Dry-Runs. Dry-Runs shall be conducted for all routes prior to the beginning of a new school year and/or summer session. A driver orientation will be conducted for all drivers who will be assigned to perform services for Alameda Unified. The driver orientation shall include, but will not be limited to student management; relationships with the school and the general public; discipline on the school bus; and other pertinent information. The cost of said dry-run and driver orientation shall be borne by the CONTRACTOR.

13.4 Notification of Schedule to Parents.

a. CONTRACTOR shall notify each family, no later than one (1) week before the beginning of the school year, of the pick-up and drop-off times and designated locations, allowing no more

than a ten (10) minute window for pick-up and drop-off. During morning pick-ups, drivers will wait for no more than three (3) minutes for a student to be brought to the vehicle.

b. Changes in pick-up or drop-off locations can only be made through Alameda Unified's Special Education Department. In the event of a route change, CONTRACTOR shall notify (by telephone and written confirmation) the parent(s) or guardian(s) of a student no later than three (3) days before any alteration of transportation services for said student, including but not limited to drop off or pick up time(s) or location(s) for that student. New students will be routed within 5 days of registration on on-line system.

c. CONTRACTOR shall telephone a student's parent or guardian if to pick-up or drop-off a student will be more than ten (10) minutes later than scheduled pick-up or drop-off times. Alameda Unified will provide CONTRACTOR with students' parents or guardian's phone numbers. CONTRACTOR agrees that it will use phone numbers only for this purpose and acknowledges that it is prohibited by law from sharing this information. CONTRACTOR further understands and agrees that pursuant to this Agreement it provides a service for Alameda Unified that Alameda Unified would otherwise provide for itself; CONTRACTOR has "legitimate educational interests" in any student information which it uses, maintains or to which it has access; and that CONTRACTOR is under the direct control of the with respect to the use and maintenance of information from educational records.

- 13.5** Departure without a student. Recognizing that exigent circumstances arise where a driver must leave a student at a pick up or drop off location (e.g., when a student refuses to enter the vehicle) in order to adhere to the driver's scheduled route and to not prejudice other students, the driver shall immediately communicate to the CONTRACTOR the circumstances that required the driver to depart without a student; the CONTRACTOR shall then immediately telephone and email Alameda Unified's designated personnel regarding the matter; and the CONTRACTOR shall also immediately telephone the student's parent/guardian regarding the matter. The CONTRACTOR shall, within three (3) business days of a driver departing without a student, provide Alameda Unified with a written report regarding the circumstances giving rise to that particular matter.
- 13.6** Improvements. If, at any time during the term of the Agreement, it is determined by either party that service may be improved by prospective revisions to routing, scheduling, or vehicle assignment, Alameda Unified and CONTRACTOR shall plan and institute such changes jointly. All routes, schedules, and bus stops shall initially be established by CONTRACTOR on such basis as may be determined by it to be most efficient, but shall be approved by Alameda Unified.
- 13.7** Notice to Alameda Unified. CONTRACTOR shall notify Alameda Unified whenever changes are necessary in routes or time schedules and CONTRACTOR shall make a reasonable effort to adjust its operations to incorporate such changes within five (5) business days after notice is given to Alameda Unified. CONTRACTOR shall further notify Alameda Unified if any student scheduled to receive transportation under this Agreement fails to use CONTRACTOR's transportation services for three or more consecutive days. Alameda Unified shall notify CONTRACTOR whenever changes are necessary in routes or time schedules and CONTRACTOR shall incorporate such changes within five (5) business days after notice is received from Alameda Unified. Alameda Unified and CONTRACTOR shall consult as to stops or portions of routes that CONTRACTOR considers to be a safety concern due to traffic patterns or configurations. In the event CONTRACTOR believes any stop or route presents an unacceptable safety risk to CONTRACTORS property or students, CONTRACTOR may reject the stop or

route portion requested by Alameda Unified and provide Alameda Unified with alternative designations by written notice. However, in all instances, CONTRACTOR shall conform to the guidelines set forth in this section.

13.8 Right to Change Route Details.

a. Alameda Unified reserves the right to change school hours, bus routes and schedules at any time; provided however, that the CONTRACTOR will be given at least two (2) days prior written notice. CONTRACTOR acknowledges and recognizes that Alameda Unified may be required to make the changes indicated above and agrees to effectuate these changes as quickly and expeditiously as possible, and within the time constraints indicated in this section.

b. CONTRACTOR shall implement Alameda Unified's addition of transportation service(s) for a student within five (5) business days of Alameda Unified's transmittal of the route change to the CONTRACTOR.

13.9 Access to Direct Communication. CONTRACTOR shall have installed and maintained at each bus yard used to service this Agreement and at CONTRACTOR's administrative office, a direct telephone tie line to Alameda Unified's Special Education Office.

13.10 DATABASE.

a. The CONTRACTOR shall supply and maintain a computerized student data base that contains all pertinent information for each student served. This database shall be accessible remotely by Alameda Unified's Special Education Office staff. Alameda Unified staff will enter all information relevant for scheduling each student for home to school routing. Contractor will download this information twice daily and use it to route and schedule students. Upon completion of the routing process, Alameda Unified staff shall have "Read Only" access to routing information and bus times, in order to inform parents, school sites, and administrators of the most current information. The student information will be rolled to the following session whether Extended School Year or the new School Year. In the event that the information is deleted from the system, the CONTRACTOR will input the student data into the database. Alameda Unified staff will make corrections, deletion and/or additions to the data base as necessary in a timely manner. This data base system is critical to the provision of timely, safe and reliable transportation for students. In the event of system failure, repairs must be made immediately and a reliable backup system, developed in advance by CONTRACTOR, shall immediately be placed into operation by CONTRACTOR. CONTRACTOR shall notify the Alameda Unified Special Education Department in advance of any delay from normal schedule for any reason.

b. CONTRACTOR shall establish all routes, schedules, and bus stops for students, in compliance with all schedules and other requirements of the contract. Up-to-date route sheets and information, retained in the aforementioned electronic routing system, that include, at a minimum, full driver names, full student names, bus/vehicle numbers, route names/numbers, and pick up and drop off sites and addresses, shall be available to Alameda Unified at any time upon request. The same route sheets and information must also be made available to Alameda Unified in hard copy format within two (2) business days of Alameda Unified's request.

c. CONTRACTOR will install a system for student attendance and schedule accountability. This system will indicate whether the student boarded the vehicle and if the vehicle reached the school on schedule.

13.11 Changes in Established Routes by CONTRACTOR

a. CONTRACTOR must inform Alameda Unified in writing, within two (2) business days, of any changes to established routes. Also, CONTRACTOR must inform parents by phone and in writing within three (3) business days of any such changes. This includes, but is not limited to, informing Alameda Unified of any instances where the CONTRACTOR determines that a student is not in need of transportation services on one or more routes.

14. Accident Reports

14.1 All Accidents shall be reported to Alameda Unified immediately. Internal communication problems shall in no way relieve the CONTRACTOR of its obligation to provide sufficient information and advance notification to Alameda Unified as specified in Sections 3.3.1 and 3.3.2 of the Passenger Transportations Safety Handbook published by the California Highway Patrol. Keep complete and accurate records of all reportable accidents (as defined by law including but not limited to Title 13 of the California Code of Regulations section 1219a) involving the CONTRACTOR'S equipment or personnel while operating for Alameda Unified. A preliminary oral report shall be made to Alameda Unified within thirty (30) minutes following the accident, and shall include whether any fatalities or injuries occurred and a general description of property damage. The parents/guardians and school of attendance, as well as any student affected, shall be notified by the CONTRACTOR as soon as possible and the whereabouts of the student disclosed. Follow-up accident written reports shall be made periodically until all the pertinent facts have been reported to Alameda Unified. A legible copy of both the responding police agency and the CONTRACTOR's accident investigator's final report shall be submitted to Alameda Unified within ten (10) working days following the accident or incident or when such report is completed, whichever occurs first. Finally, the CONTRACTOR's internal communication problems shall not relieve the CONTRACTOR of its obligation to provide sufficient information and advance notification to Alameda Unified, law enforcement or any other person/entity regarding an accident/incident as may be required by the California Highway Patrol's Passenger Transportation Safety Handbook.

14.2 The CONTRACTOR shall provide any and all operational records Alameda Unified deems necessary within ten (10) business days of Alameda Unified's request.

14.3 In the event of a lost or missing student the Contractor shall provide all assistance requested by Alameda Unified to locate the student.

15. Complaints. CONTRACTOR shall keep complete and accurate records of all written and oral complaints received regarding the CONTRACTOR's services for Alameda Unified from all sources including, but not limited to: Alameda Unified employees or agents, parents/guardians, students, school-related service providers, private schools, state or federal agencies and other school districts. CONTRACTOR shall provide to Alameda Unified a written monthly report listing said complaints and actions taken by the CONTRACTOR, if any, to resolve each complaint.

16. Other Transportation. CONTRACTOR and Alameda Unified shall work cooperatively, reasonably and in good faith to arrange "other transportation," as necessary, in the most cost-effective manner for Alameda Unified. If the Fee rate as indicated in Section 32 is unreasonable due to operational considerations such as excessive time, mileage or equipment required,

CONTRACTOR and Alameda Unified shall mutually agree upon the appropriate rate schedule(s) which shall apply in such instances.

17. Contractor's Personnel/Qualifications.

- 17.1** CONTRACTOR shall employ suitably qualified management personnel who shall be responsible for the efficient operation of the transportation services furnished hereunder and who shall be CONTRACTOR's liaison to Alameda Unified. CONTRACTOR will designate a crisis management contact person for emergency contact with Alameda Unified. By July 1st of each calendar year of this Agreement, CONTRACTOR shall inform Alameda Unified of the name(s), contact telephone number(s) and address(es) of such management personnel. Alameda Unified shall designate personnel who shall be responsible for coordination of the student transportation requirements furnished under this Agreement and who shall be Alameda Unified's liaison to CONTRACTOR. Alameda Unified will designate a crisis management contact person for emergency contact with CONTRACTOR. By July 1st of each calendar year of this Agreement, Alameda Unified shall inform CONTRACTOR of the name(s), contact telephone number(s) and address(es) of such management personnel.
- 17.2** CONTRACTOR shall employ a sufficient number of qualified drivers and support personnel to provide continuous, reliable, safe, and on time service. CONTRACTOR shall also employ substitute drivers to assure Alameda Unified of continuous and on-time service.
- 17.3** All drivers employed by the CONTRACTOR to provide service to Alameda Unified must have a valid and current California Driver's License and each school bus driver must hold any special certificates or licenses required by law to transport students appropriate for driving the vehicle type that corresponds with the assignment AND include SPAB or higher certification. The CONTRACTOR shall maintain a list of each driver's name, California Driver's License number and DMV summary record (also known as a DMV "employer pull notice"), which list shall be made available to Alameda Unified upon two (2) days request.
- 17.4** The CONTRACTOR shall not use drivers to provide Alameda Unified services who have accrued more than three (3) moving violations for any reason in the last two (2) years, and shall not use drivers who have had a DUI, DWI, or any controlled substance- related violation. CONTRACTOR is to conduct a Department of Motor Vehicle Record's Check on the historical driving record.
- 17.5** CONTRACTOR shall take reasonable steps to prevent its employees from exposing any pupil to inappropriate language or conduct. CONTRACTOR shall not permit its drivers to smoke in the vehicle. Drivers, as well as their vehicles, must not smell of smoke or any other offensive odor. CONTRACTOR shall require that drivers comply with all safety laws and regulations, including but not limited to the prohibition against driving while under the influence of drugs or alcohol. Such prohibition shall extend to the use of prescription and non-prescription drugs that impair the safe operation of the vehicle.
- 17.6** CONTRACTOR recognizes that, for the protection of students, drivers other contractors, and Alameda Unified, CONTRACTOR's employees who have contact with the students and their families must be of stable personality and high moral character. CONTRACTOR shall ensure that all of its personnel meet these qualifications. CONTRACTOR will not

allow any person to drive (a) whose conduct might in any way expose a child to any impropriety of word or conduct; (b) who CONTRACTOR knows or has reason to know is not in a condition of mental or emotional stability; or (c) who is under the influence of drugs or alcohol, including prescription and non-prescription drugs that impair the safe operation of the vehicle.

- 17.7** Lift Operation Requirements. Drivers who are required to lift students in and out of vehicles shall have special training, including refresher in-service training, provided by the CONTRACTOR in lifting techniques and treatment of the handicapped children who must be lifted, including appropriate methods of securing wheelchairs within a bus/vehicle. Such personnel shall be physically capable of performing the required lifting. Proof of training will be submitted to Alameda Unified within two (2) business days upon request.
- 17.8** Time Schedules. CONTRACTOR will provide and require all drivers to have an up-to-date route sheet, area map and a timepiece with them while on duty so that they can maintain established route and time schedules.
- 17.9** Strict Adherence to Routes. Drivers shall strictly adhere to the driver's specific route and schedule and shall not alter his/her route for any personal reason. He/she is prohibited from stopping along his/her route for any personal reason(s), including but not limited to making a stop at a convenience store, bank, or deli.
- 17.10** Hiring/Discharging. CONTRACTOR shall be responsible for hiring and discharging personnel employed by CONTRACTOR; provided, however, that Alameda Unified shall have the right to require CONTRACTOR to remove from service any employee who, in Alameda Unified's sole discretion, is deemed unsuitable for the performance of transportation services for Alameda Unified. Alameda Unified may make such request in writing and state the reasons therefore. Reasons may include failure of any driver to operate a vehicle in a safe manner, in accordance with the laws of the state of California and the ordinances of any city in which such vehicle operates, or a finding by Alameda Unified that the personal habits and/or conduct of an employee are detrimental to the best interests of Alameda Unified or to the welfare and best interests of the students being transported.
- 17.11** Drivers and School Bus Aides

a. CONTRACTOR shall provide drivers who are trained and licensed in accordance with the California Laws, Rules, and Regulations governing the operation of school transportation vehicles, Federal Laws Governing Class A or B License holders and experienced with the regulations, handling, and supervision of special education students. All drivers shall have CPR Training and First Aid Training and shall hold valid First Aid Certificates and CPR Certificates issued by the American Red Cross. Drivers are to be able to identify and properly cope with epileptic-type seizures.

b. Testing. CONTRACTOR shall show verification of enrollment in an on-going drug/alcohol testing at random, and "for cause" drug/alcohol testing as deemed appropriate for drivers authorized to perform services for this contract. All drivers must abstain from the use of alcohol and drugs during the performance of their duties under this contract. The CONTRACTOR shall be liable for all Drug and Alcohol Testing. No driver that fails a drug and/or alcohol test may be utilized for this contract.

c. Radio. Each driver shall have a working knowledge of the operation of the mobile two-way communication system used by CONTRACTOR and Federal and State Regulations covering its use.

d. Tuberculosis risk assessment. Each school bus driver employed by the CONTRACTOR to provide service to Alameda Unified shall submit a tuberculosis risk assessment obtained within the past 60 days, and, if tuberculosis risk factors are identified, submit to an examination to determine that he or she is free of infectious tuberculosis by a physician and surgeon consistent with Education Code section 49406. CONTRACTOR shall establish and maintain a record-keeping system to assure that each driver meets this requirement. These records shall be available to review by Alameda Unified within two (2) business days upon request. Drivers shall be required to check in with CONTRACTOR for messages via two-way communications devices each morning as they begin their route.

e. Aides/Attendants. CONTRACTOR shall employ and assign, at the request and approval of Alameda Unified bus aides or attendants for students who require aides because of the nature and/or severity of their handicapping condition.

f. Fingerprinting/Background Checks. The fingerprinting and criminal background investigation requirements of Education Code Section 45125.1 apply to CONTRACTOR's services under this Agreement and CONTRACTOR certifies its compliance with these provisions as follows: "CONTRACTOR has complied with the fingerprinting and criminal background investigation requirements of Education Code Section 45125.1 with respect to all CONTRACTOR's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by Alameda Unified or acting as independent contractors of CONTRACTOR, who may have contact with Alameda Unified pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code Section 45122.1. CONTRACTOR further certifies that it has received and reviewed fingerprint results for each of its Employees and CONTRACTOR has requested and reviewed subsequent arrest records for all Employees who may come into contact with Alameda Unified pupils in providing services to the District under this Agreement." The CONTRACTOR shall maintain a record keeping system available for Alameda Unified's inspection upon two (2) days request to verify the foregoing.

17.12 Additional Driver duties. CONTRACTOR shall require each and everyone one of its drivers to:

a. Supervise the loading and unloading of his or her vehicle at every pick up and delivery point; to ensure that all students are properly secured in their seats, as required by law and best practices, and ensure that all car seats meet all federal and state requirements.

b. Keep informed of and comply with all rules and regulations affecting the operation of school vehicles and standards of conduct;

c. Comply with all federal, state and local traffic laws while operating vehicles under this Contract;

d. Carry an accurate timepiece while on duty so that the driver can maintain established schedule times;

e. Notify CONTRACTOR's dispatcher immediately by two-way communications devices in the event of any traffic accident or medical emergency that involves a vehicle used in the performance of this Contract. CONTRACTOR's dispatcher shall promptly advise the appropriate legal, regulatory and medical authorities and Alameda Unified's designated liaison of each such accident or emergency. CONTRACTOR's employees shall not be required to perform any medical functions for passengers.

f. Deny transportation of persons other than an enrolled pupil or an employee of Alameda Unified or CONTRACTOR unless first obtaining permission from Alameda Unified.

g. Take daily attendance on automated system with a time stamp on both the morning and afternoon routes and notify Alameda Unified of any student who is absent for three (3) days without an excuse from the parent/guardian or Alameda Unified.

17.13 Standby Personnel. CONTRACTOR shall maintain a list of standby personnel to perform the work required pursuant to the contract if regularly assigned personnel are absent or otherwise unavailable. The CONTRACTOR shall submit this list of screened and qualified drivers to Alameda Unified prior to the commencement of work.

17.14 Training Requirements

a. CONTRACTOR shall provide thorough instruction to drivers in compliance with state and federal safety and operations guidelines and regulations. Alameda Unified shall have the right to review course content. At a minimum, new hires not already certified as California school bus drivers shall receive twenty (20) hours of classroom instruction and fifteen (15) hours of behind-the-wheel instruction prior to transporting students. Course content shall include, but not be limited to, instruction on the following topics: commercial driver's license requirements and test preparation, drug-free workplace requirements, pre-trip and post-trip equipment and safety inspections, defensive driving, loading and unloading procedures (including wheelchairs), railroad crossing safety procedures, backing maneuvers, emergency procedures, special equipment instruction (including car seat training), evacuation procedures, seasonal weather conditions and student discipline. These training records shall be filed in the driver record and available to Alameda Unified.

b. If needed as determined in its sole discretion, Alameda Unified shall train drivers in the supervision and control of school children as a supplement to (but not a substitute for) such training by CONTRACTOR, including specialized training necessary to transport special education children.

c. Recognizing that drivers are responsible for the orderly conduct of pupils while they are on buses and recognizing that students with disabilities have special needs and that they identify with and rely upon the authority of drivers with whom they are familiar, drivers shall be permanently assigned to the same bus routes and shall have no more than two (2) reassignments during the school year unless a reassignment is determined by Alameda Unified to be in the best interest of Alameda Unified. CONTRACTOR shall report all driver reassignments to Alameda Unified within two (2) business days of the reassignment. All drivers and relief/standby drivers shall participate in an Alameda Unified approved, Contractor-provided course of instruction which shall be conducted over a two (2) day period of time specializing in Special Education transportation. This in-service training is to be in addition to the normal driver instructions as provided for by the California Highway Patrol. Topics covered during this in-service training shall include, but not limited to, pupil management, disability awareness, sensitivity to students with disabilities, car seat security, safety training in the operation of the lift gate and appropriate methods in securing wheelchairs within the bus. Prior to changing route assignments, a driver shall receive the

appropriate in-service training for the new assignment. No driver shall be allowed to operate a lift gate bus without first receiving full instruction (or refresher in-service training) in the operation of the lift and appropriate methods in securing wheelchairs within the bus.

d. Evaluations. Drivers shall be evaluated by the CONTRACTOR at least once each semester for the purpose of observing their driving practices with respect to: safety; mechanical operation; conformance with laws, policies and regulations; adherence to established routes and schedules; handling of students; and other factors inherent in the transportation of special education pupils. Copies of the evaluations shall be maintained by the CONTRACTOR during the term of the driver's employment by the CONTRACTOR, plus one (1) year thereafter and shall be sent to Alameda Unified within five (5) business days of the request. All drivers assigned to perform services under the contract shall maintain a minimum evaluation rating of satisfactory in all evaluation categories. In the event of an "at fault" accident, the driver shall be re-evaluated and retrained.

18. Additional CONTRACTOR Duties

- 18.1** Notice to Parents before school year. No later than one (1) week before the beginning of the school year, CONTRACTOR shall notify each family of the pick-up and drop-off times and designated locations, allowing no more than a ten (10) minute window for pick-up and drop-off. CONTRACTOR shall either copy Alameda Unified on such notices or provide Alameda Unified with documentation showing that notices were sent consistent with this article. During morning pick-ups, drivers will wait for no more than three (3) minutes for a student to be brought to the vehicle.
- 18.2** Notice for new riders. No later than three (3) days prior to a new transport, or a change in schedule, CONTRACTOR shall notify affected families of any changes in pick-up and drop-off times and designated locations, and shall explain transportation procedures. **Changes in pick-up or drop-off locations can only be made through Alameda Unified's Special Education Department.**
- 18.3** Notice of delays. CONTRACTOR shall telephone a student's parent or guardian if pick-up or drop-off of a student will be more than ten (10) minutes later than scheduled pick-up or drop-off times. CONTRACTOR shall maintain a log of such calls showing the date of the call, the parent or guardian notified, and the CONTRACTOR representative who made the call. Alameda Unified will provide CONTRACTOR with students' parents or guardian's phone numbers. CONTRACTOR agrees that it may use phone numbers only for this purpose and acknowledges that it is prohibited by law from sharing this information. CONTRACTOR further understands and agrees that pursuant to this Agreement it provides a service for Alameda Unified that Alameda Unified would otherwise provide for itself; CONTRACTOR has "legitimate educational interests" in any student information which it uses, maintains or to which it has access; and that CONTRACTOR is under the direct control of Alameda Unified with respect to the use and maintenance of information from educational records.
- 18.4** Time limits. For transportation within Alameda Unified's boundaries, CONTRACTOR shall provide sufficient vehicles and drivers to assure Alameda Unified that no student shall spend more than sixty (60) minutes in a vehicle during any one way trip. Exceptions to this time limit include: (a) delays caused by conditions beyond the control of the CONTRACTOR, as determined by Alameda Unified; and (b) medical and/or behavioral needs of the student that necessitate less travel time, as documented in the student's IEP. Trips that will regularly exceed this time limit need to be approved by Alameda Unified.

18.5 Stops

a. At no time shall a driver disembark a special education student at an address other than specified (unless authorized to do so in advance in writing by Alameda Unified School District Special Education Department). Additionally, a child will not be dropped off at any location without a receiving adult in attendance unless a Release From Responsibility Form has been executed by the student's parent or guardian. Alameda Unified's Special Education Department will notify CONTRACTOR when a completed Release From Responsibility Form has been executed. In the event a claim, suit or other legal proceeding is filed alleging liability based on leaving a student without a receiving adult in attendance and no Release From Responsibility Form has been signed by the parent/guardian and CONTRACTOR has been properly advised, the CONTRACTOR shall be solely responsible for defense of any such action and for the payment of any judgment that may be rendered.

b. CONTRACTOR shall develop a fail safe system to ensure that students are safely off the vehicle and delivered to their designated location and shall be solely and strictly liable for its implementation.

18. Record Keeping and Accident Reports. CONTRACTOR shall be required to provide any and all operational records deemed necessary by Alameda Unified. All reportable accidents (as defined by law including but not limited to Title 13 of the California Code of Regulations section 1219a) involving the CONTRACTOR's equipment or personnel while operating for Alameda Unified shall be reported in writing within three (3) business days of the incident to Alameda Unified. Pupil injuries not involving acceleration, deceleration, or movement of the vehicle may be reported on forms provided by Alameda Unified, at its option.

19. Confidentiality. CONTRACTOR agrees that records relating to individual pupils provided by Alameda Unified are subject to the Family Educational Rights and Privacy Act ("FERPA"). Such records shall be confidential to the extent required by FERPA, 20 U.S.C. § 1232g; 34 C.F.R. Part 99; and California Education Code §§ 49060, et seq.; and other state and federal law. Each party to the Contract will provide satisfactory assurances to the other party that confidential education information will be appropriately safeguarded by its agents, personnel, employees, and/or subcontractors through the execution of the Contract. This requirement to maintain confidentiality shall extend beyond the termination of the Contract. The CONTRACTOR and its agents, personnel, employees, and/or subcontractors will be permitted access to student data only where permissible under state and federal law.

20. Payments for Services.

20.1 On or about the third (3rd) business day of each month, CONTRACTOR shall submit invoices in the form and number required by Alameda Unified for all services under this Agreement. Payment for such services will be made within a reasonable time thereafter, not to exceed forty-five (45) calendar days.

20.2 Any bill other than daily scheduled service must be billed separately. Alameda Unified has the right to withhold payment to the CONTRACTOR when in the sole opinion of Alameda Unified expressed in writing to CONTRACTOR within ten (10) working days after receipt of any demand for payment:

a. CONTRACTOR's performance under this Agreement, in whole or in part, has not been carried out or is insufficiently documented;

b. CONTRACTOR has neglected to, failed or refused to furnish information or to cooperate with the inspection, review, or audit of its program, work, or records.

20.3 Invoices for services performed shall be rendered electronically to Alameda Unified School District unless otherwise directed by Alameda Unified.

20.4 Alameda Unified shall maintain lists showing the total number of pupils authorized and eligible for daily transportation in accordance with the schedule which shall be incorporated by reference into this Agreement.

21. Adjustment of Rates.

21.1 Notwithstanding anything else in this Agreement to the contrary, in the event any unusual circumstances, such as but not limited to changes in federal, state, local, or other governmental body's statutes, laws, rules, or regulations are enacted/promulgated, the impact of which will materially impact the methods and/or costs of CONTRACTOR in connection with providing the services hereunder to increase at a rate in excess of the agreed upon percentage change, then, upon written notice to Alameda Unified, the CONTRACTOR may request a renegotiation of this Agreement. Such renegotiations shall include, but not be limited to, the payment schedule, duration of the Agreement, level of service, etc. Any modifications to this Agreement resulting from such renegotiations shall become effective at the agreed upon date or the beginning of the succeeding Renewal Term, whichever is first.

21.2 If, at any time during the term of this Agreement, it is determined that a significant reduction/increase in service is to be instituted due to changes in school start/end times (bell schedules), mandated reduction/increase in routes, or any other changes which significantly reduce or increase the existing service level(s), CONTRACTOR and Alameda Unified agree to negotiate in good faith regarding a potential adjustment to the rate schedules. The term "significant reduction/increase" as used herein is defined as any change of ten percent (10%) or more in the number of routes being operated.

22. Equipment Requirements.

22.1 All vehicles supplied under this Agreement shall meet or exceed the standards established by the laws and regulations of the State of California. CONTRACTOR shall maintain the school vehicles used to provide transportation services under this Agreement in accordance with law and accepted industry maintenance standards applicable in the nine San Francisco Bay Area counties.

22.2 CONTRACTOR shall perform regular preventive maintenance on all vehicles used in this Agreement. In addition, vehicles shall be cleaned and sanitized inside and out as necessary to maintain appropriate standards of hygiene, cleanliness, orderliness and safety, and repairs to visible body damage, inside or outside of the vehicle, shall be undertaken and completed within thirty (30) days from the date such damage occurs. CONTRACTOR shall maintain vehicle inspection reports and shall make said reports available to Alameda Unified for review within five (5) business days of Alameda Unified's request.

22.3 CONTRACTOR shall use only certified school buses, as required by federal and state laws and standards. Notwithstanding the above, CONTRACTOR may use vans or passenger cars subject to Alameda Unified's approval. All vehicles utilized by

CONTRACTOR under the Agreement shall be in excellent mechanical and safe operating condition during the entire term of the contract, and shall meet or exceed the applicable standards established by federal and California state laws and regulations, as well as accepted industry maintenance standards. Regular preventive maintenance shall be practiced on all vehicles. All vehicles utilized shall be clean and sanitary, and shall have an excellent exterior and interior appearance in accordance with DISTRICT standards during the entire term of the contract. All vehicles shall be equipped at all times with fully operational two-way communication devices and with fire extinguishers as described in Education Code Section 39838. Citizens band radios are not allowed. All communication equipment will be maintained in good working condition at all times during the term of the contract.

- 22.4** All vehicles shall also be equipped with first aid and blood borne pathogen kits. As required by law, vehicles transporting Special Education pupils must also be equipped with individual seat belts or harnesses and infant seats. CONTRACTOR's drivers will be responsible to ensure that such seat belts, car seats, restraints, or harnesses are properly adjusted and fastened as soon as the student occupies his/her seat and for the duration of the trip (including wheelchair students). CONTRACTOR shall at all times provide for the safety and welfare of the students transported. Vehicles transporting pupils in wheelchairs shall be equipped with hydraulic lifts and wheelchair securing devices that comply with federal and state requirements. Specialized equipment can only be utilized if designated in the IEP, or by mutual agreement of all parties involved. CONTRACTOR shall submit to Alameda Unified a vehicle manifest within five (5) business days of Alameda Unified's request.
- 22.5** Standby vehicles. CONTRACTOR shall provide standby vehicles, of appropriate sizes, that meet all of the noted requirements, which shall be located by the CONTRACTOR at points close enough to the District so they may be substituted for regularly assigned vehicles, if needed, for immediate use. Buses and vehicles designated as spare shall not be considered as part of the regular fleet necessary to provide spares for State-mandated safety inspections and/or preventative maintenance of the regular fleet.
- 23.** Bankruptcy. In the event that either party shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of the other party this Agreement shall terminate and be of no further force and effect, and any property or rights of such other party, tangible or intangible, shall forthwith be returned to it. CONTRACTOR shall notify Alameda Unified within ten (10) days of filing any bankruptcy petition under the Federal Bankruptcy Act.
- 24.** Contractor Insolvency/Surety Obligations
- 24.1** CONTRACTOR will notify Alameda Unified immediately of any financial circumstances that may impact CONTRACTOR ability to perform under this agreement and of CONTRACTOR's intention no less than ninety (90) days prior to filing bankruptcy.
- 24.2** If the CONTRACTOR should be adjudged bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should persistently or repeatedly refuse or fail, except in cases for which extension of time is provided to supply enough properly skilled employees or

proper equipment, or persistently disregard laws, ordinances or the instructions of Alameda Unified, then Alameda Unified may serve written notice upon the CONTRACTOR and his Surety of its intention to terminate the Contract and, unless within five (5) days after the serving of such notice, such violations shall cease and satisfactory arrangements for corrections thereof be made the Contract shall, upon the expiration of said five (5) days, cease and terminate.

- 24.3** In the event of any such termination, Alameda Unified shall immediately serve written notice thereof upon the Surety and the contractor, and the Surety shall have the right to take over and perform the Contract; provided, however, that if the Surety within ten (10) days after the serving upon it Notice of Termination does not give Alameda Unified written notice of its intention to take over and perform the Contract or does not commence performance thereof within the ten (10) days stated above from the date of the serving of such notice, Alameda Unified may take over the work and prosecute the same to completion by any other method it may deem advisable, for the account and at the expense of the CONTRACTOR, and the CONTRACTOR and his Surety shall be liable to Alameda Unified for any excess cost occasioned Alameda Unified thereby, and in such event Alameda Unified may without liability for so doing, take possession of and utilize in completing the work, such materials, appliance, plant and other property belonging to the CONTRACTOR as may be on the site of the work and necessary therefore. In such case the CONTRACTOR shall not be entitled to receive any further payment until the work is finished.
- 25.** **Alameda Unified's Right to Contract with Others.** The services defined in this Agreement and required during the period in which this Agreement is in full force and effect shall be ordered and purchased from CONTRACTOR. However, CONTRACTOR acknowledges and agrees that Alameda Unified shall have the right to acquire from other sources while this Agreement is in effect such services as may be required for special programs or other emergencies as Alameda Unified Superintendent or his or her designee from time to time determines. Alameda Unified shall also have the right to enter into separate agreements with the parents of special education students for the transportation of their respective children.
- 26. Labor Relations**
- 26.1** CONTRACTOR's Labor Relations: Ninety (90) days prior to the opening of school during each school year, CONTRACTOR shall provide Alameda Unified with a report on the current status of CONTRACTOR's employer-employee relations setting forth (a) the name of the labor organization, if any, which represents CONTRACTOR's employees; (b) pertinent information on the status of collective bargaining agreements, if any; (c) date of contract expiration; (d) procedures for resolving grievances and labor disputes; (e) information relating to current negotiations, if any; and (f) likelihood of resolving pending labor disputes, if any, prior to opening of school. No later than twenty (20) days prior to the commencement of the School Calendar Year, CONTRACTOR shall deposit with Alameda Unified a new or continuing agreement with CONTRACTOR's employees for the School Calendar Year. Prior to commencement of services, the parties shall formulate a plan for continuing transportation services under this Agreement during a work stoppage or labor dispute that would disrupt transportation services to Alameda Unified, and that plan shall be part of any labor agreement between CONTRACTOR and CONTRACTOR's employees. Alameda Unified shall pay CONTRACTOR the full amount due for services provided during any labor dispute.

26.2 Strike by Alameda Unified's Employees: In the event of a strike or work stoppage by any employee(s) of Alameda Unified, CONTRACTOR shall continue to fully perform all duties as set forth in this Agreement.

27. Termination of Agreement.

27.1 If CONTRACTOR refuses or fails to perform services as required to provide Alameda Unified with efficient, safe and economical transportation services, as specified in this Agreement, or any separable part thereof, including furnishing adequate equipment and properly trained personnel, or if it should be adjudged as bankrupt, or if it should make general assignment for the benefit of creditors, or if a receiver should be appointed on account of its insolvency or it should repeatedly or persistently refuse or fail to provide equipment and personnel in quantities required to provide transportation services as herein specified, or CONTRACTOR persistently disregards laws, ordinances, or instructions of Alameda Unified, or is otherwise guilty of a material breach of this Agreement, then Alameda Unified may, without prejudice to any other right or remedy, serve written notification upon it of intention to terminate and, unless within forty-five (45) business days after service of such written notice of the condition or violation shall cease and make satisfactory arrangements for the correction thereof, this Agreement shall then immediately, cease and terminate.

27.2 Notwithstanding any provision herein to the contrary, if for any fiscal year of this Agreement the governing body of Alameda Unified fails to appropriate or allocate funds for future periodic payments under the Agreement after exercising reasonable efforts to do so, Alameda Unified may upon thirty (30) days advance written notice to CONTRACTOR, terminate services. Alameda Unified will remain obligated to pay for the work already performed but shall not be obligated to pay the balance remaining unpaid beyond the fiscal period for which funds have been appropriated or allocated and for which the services have not been performed.

27.3 Alameda Unified shall have the option to terminate the Agreement, for any reason, in Alameda Unified's sole discretion. Alameda Unified may exercise this option by mailing written notice, postage prepaid, registered or certified, to CONTRACTOR between July 1st and February 1st of each year of this Agreement. If Alameda Unified exercises its option under this subsection, the Agreement will terminate on the August 15th following the notice.

28. Notices. Notices to either party to this Agreement shall be in writing and shall be considered duly served and delivered if such notice is delivered by hand; mailed via the United States mail, certified, return receipt requested or mailed via overnight mail service. All such notices shall be addressed to:

CONTRACTOR:

Mark Herington
Director, Business Development
DURHAM SCHOOL SERVICES
Cell: 702-290-9026
Office: 928-566-4300

Fax: 928-566-4384
mark.herington@nellc.com

ALAMEDA UNIFIED:

Pasquale Scuderi, Superintendent
Alameda Unified School District
2060 Challenger Drive
Alameda, CA 94501

29. Student Discipline.

29.1 CONTRACTOR shall submit a written report of serious or persistent misconduct on the part of students to Alameda Unified Special Education Department within twenty-four (24) hours of each such occurrence or occurrences. Any disciplinary measures taken and/or positive behavior supports will be in collaboration with Alameda Unified staff.

29.2 CONTRACTOR may refuse to transport any student who, based upon past conduct, and in the reasonable discretion of CONTRACTOR presents a potential danger to other persons. Alameda Unified shall notify CONTRACTOR of students who have current IEP behavior plans so that each such student's driver can be notified by CONTRACTOR. Alameda Unified shall provide CONTRACTOR with IEP Behavior Plan information as necessary for implementation during transportation.

29.3 CONTRACTOR agrees that it shall use IEP Behavior Plan information only for this purpose and acknowledges that it is prohibited by law from sharing this information. CONTRACTOR further understands and agrees that pursuant to this Agreement, it provides a service for Alameda Unified that Alameda Unified would otherwise provide for itself; CONTRACTOR has "legitimate educational interests" in any student information which it uses, maintains or to which it has access; and that CONTRACTOR is under the direct control of Alameda Unified with respect to the use and maintenance of information from educational records. Should any driver or drivers employed by CONTRACTOR require special training in respect to the safe transportation of any disabled student, Alameda Unified and CONTRACTOR shall work cooperatively to provide driver(s) with such training.

30. Compliance with the Law. CONTRACTOR shall comply with federal, state and local laws, rules and regulations in the performances of the services described herein.

31. Dispute Resolution.

31.1 The parties agree to meet and confer in good faith on all matters and disputes under this Agreement. If a dispute is not resolved under the foregoing, and one party informs the other in writing that it reasonably believes that the differences between the parties are not likely to be reconciled through further negotiation, then the parties agree to submit such dispute to non-binding arbitration under the Commercial Rules of the American Arbitration Association, or such other rules as the parties may mutually agree. Such arbitration shall be held as promptly as possible in Alameda County, California and shall be conducted before a single arbitrator. Alameda Unified and CONTRACTOR shall

mutually agree on the selection of this single arbitrator. All costs and expenses associated with the arbitration shall be borne entirely by the non-prevailing party.

- 31.2** In the event of a dispute between Alameda Unified and the CONTRACTOR as to an interpretation of any of the Specifications, the decision of Alameda Unified shall for the time being prevail and the CONTRACTOR, without delay, shall proceed as directed by Alameda Unified without prejudice to final determination by negotiation, arbitration by mutual consent or litigation.
- 31.3** In the event the CONTRACTOR shall neglect to prosecute the work properly or fail to perform any provisions of this Contract, Alameda Unified, after three days written notice to the CONTRACTOR, may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or there under due to the CONTRACTOR, subject to final settlement between the parties as in this paragraph herein above provided.

32. Fees.

- 32.1** In consideration of the performance on the part of CONTRACTOR of the terms of this Agreement, Alameda Unified agrees to pay the CONTRACTOR the following sums for pupil transportation services rendered during the Initial Term.

Regular Route Rates:

Per School Bus: \$434.15 for first 5.5 hours per day + \$76.50 each additional hour

Field Trip Rates:

Per School Bus: \$76.50 per hour (2 hour minimum)

For calculating Regular Route and Field Trip Rates, time in service shall be "Gate to gate" – i.e., based on total time from when drivers leave CONTRACTOR'S bus lot to when they return. CONTRACTOR'S bus lot is located at 4919 Tidewater Avenue, Oakland, CA 94601. If CONTRACTOR'S drivers drive from a further distance (i.e., alternative or relocated bus lot or from drivers' home), Alameda Unified shall not be charged, collectively, more than 22 minutes per day for the time the driver spends driving to the trip start point and returning from the trip end point.

The prices set forth in this section shall be increased by three percent (3%) at the beginning of the second and third contract year .

33. Liquidated Damages.

- 33.1** It is agreed by CONTRACTOR and Alameda Unified that should CONTRACTOR fail to provide services as agreed to in this Agreement: Alameda Unified shall be damaged. To recover losses Alameda Unified would suffer, it being agreed to by the parties that calculating the actual damages to Alameda Unified is impractical and unduly costly, in addition to being excused from making payment for any services not rendered, rendered incompletely or rendered late, Alameda Unified may assess liquidated damages. Therefore, if CONTRACTOR fails to provide any portion of the service required under

the terms of this Agreement, liquidated damage charges shall be assessed against CONTRACTOR according to the following:

a. MISSED TRIP: CONTRACTOR will be charged as follows: Should a trip be missed entirely, a deduction equivalent to one hundred fifty (150%) percent of the CONTRACTOR's regular charge for the said trip shall be deducted from the monthly claim for payment. If students are missed due to the fault of the CONTRACTOR, the CONTRACTOR agrees, at his own expense to pick-up and deliver missed students in a timely manner.

b. LATE TRIP: CONTRACTOR will be assessed as follows:

i. Should a scheduled pick-up or delivery time be 10 or more minutes late due to vehicle or driver miss out, a deduction of a flat fee of fifty dollars (\$50) per trip will be applied to the monthly invoice.

ii. For purposes of assessing damages, under this section when a bus is late by fifteen (15) minutes or more, it will be considered a missed trip. The sum of assessments for a given month shall be deducted and noted on the monthly invoice by the CONTRACTOR. The provisions of this paragraph do not apply when delays are caused by conditions beyond the control of the CONTRACTOR, as determined by the Director of Special Education Services, or an appointee, at Alameda Unified.

iii. Assessment of such deductions shall in no way relieve the contractor of his obligation to provide spare buses/vehicles and drivers to cover all interruptions in service to Alameda Unified due to failure of equipment or lack of personnel. Liquidated damages under this subsection shall be limited to two hundred (\$200.00) dollars per day per route.

33.2 Each CONTRACTOR-operated vehicle that is dispatched without the proper equipment (e.g., seat belts, harness) and/or functioning 2 way communication device shall be subject to the assessment of \$50.00 liquidated damages per day until corrected.

33.3 Accidents/Injuries. For each failure to provide a timely verbal or written report to Alameda Unified of a school bus accident or incident involving an injury, a charge of fifty dollars (\$50.00) shall be assessed against CONTRACTOR as liquidated damages and not as a penalty, it being agreed to by the parties that calculating the actual damages to Alameda Unified is impractical and unduly costly.

33.4 For each pupil the CONTRACTOR fails to transport as delineated in the established routes and schedules by reason of CONTRACTOR negligence or error, a charge of five hundred dollars (\$500.00) per pupil per day shall be assessed against the CONTRACTOR.

33.5 In addition to the liquidated damages provided for above, CONTRACTOR shall be assessed two thousand (\$2,000.00) dollars per day for uncorrected unsatisfactory service as described in section 34 below.

34. Satisfactory Service.

34.1 Alameda Unified shall provide CONTRACTOR with written notice of unsatisfactory service on any route and/or schedule. CONTRACTOR shall investigate and reply to Alameda Unified with a verbal report within two (2) business days and with a written report within five (5) business days regarding the cause of the situation and steps

CONTRACTOR shall take to remedy the situation. If CONTRACTOR thereafter fails to provide satisfactory transportation services as specified herein, Alameda Unified shall:

- a. Notify CONTRACTOR in writing within five (5) business days of failure to perform;
- b. CONTRACTOR shall be given four (4) business days to remedy the problem;

- 34.2** If, after four (4) business days, CONTRACTOR has not corrected the problem or provided a reasonable explanation, a liquidated damage of \$2,000.00 per day shall be assessed, effective the seventh (7th) business date of incident(s) giving rise to the liquidated damages assessment. The provisions of this paragraph do not apply when delays are caused by conditions beyond the control of CONTRACTOR, as determined by Alameda Unified. Additionally, CONTRACTOR shall reimburse Alameda Unified for additional Alameda Unified personnel costs necessitated by CONTRACTOR'S failure to follow this agreement (e.g., late bus, change to schedule without proper notification, lack of driver).
- 35.** **Changes/Supplemental Agreement.** CONTRACTOR and Alameda Unified agree that changes in this Agreement or in the work to be done under this Agreement shall become effective only when written in the form of Supplemental Agreement or Change Order and approved and signed by Alameda Unified and the CONTRACTOR. It is specifically agreed that Alameda Unified shall have the right to request any alterations, deviations, reductions, or additions to the Contract price aforesaid by fair and reasonable valuations thereof. No such change or modification shall release or exonerate any Surety upon any guarantee or bond given in connection with this Contract.
- 36.** **Entire Agreement/Modification.** This Agreement supersedes all previous contracts and constitutes the entire understanding of the parties hereto. No changes, amendments or alterations shall be effective unless in writing and signed by both parties.
- 37.** **Compliance with Laws.** CONTRACTOR must comply with all federal, state and local laws and regulations, statutes, ordinances, and rules applicable to CONTRACTOR's performance under the contract, including but not limited to: licensing, employment and purchasing practices, and wages, hours and conditions of employment, including non-discrimination.
- 38.** **Severability.** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- 39.** **Governing Law.** This Contract has been executed in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Alameda County shall be the venue for any action or proceeding, including non-binding arbitration pursuant to this Agreement, that may be brought or arise out of, in connection with or by reason of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date written below.

DURHAM SCHOOL SERVICES, L.P.
By: Durham Holding II, L.L.C.,
Its general partner

ALAMEDA UNIFIED SCHOOL
DISTRICT

By: 

Name: Gary L. Waits Jr.

Title: CEO Student Transportation

Date: 5/4/2020

DocuSigned by:
By: 

40A9D9C66773742E
Name: Marissa Bonta

Title: Board President

Date: 5/14/2020