

**AGREEMENT FOR SUPPLEMENTAL  
TRANSPORTATION SERVICES**

**By and Between**

**THE TUSTIN UNIFIED SCHOOL DISTRICT**

**And**

**[INSERT CONTRACTOR NAME]**

**Dated                     , 2023**

## AGREEMENT FOR SUPPLEMENTAL TRANSPORTATION SERVICES

This Agreement for Supplemental Transportation Services (“Agreement”) is made effective as of [redacted], 2023 (“Effective Date”) by and between the Tustin Unified School District (“District”), a California public school district, and [redacted] (“Contractor”), a [redacted] designated as entity number [redacted] by the California Secretary of State. The District and the Contractor may be referred to herein individually as a “Party” and collectively as the “Parties.”

### RECITALS

A. In accordance with Education Code (“EC”) Section 39802 and Public Contract Code Section 20111, the District published a Notice Inviting Bids for purposes of obtaining bids from efficient and experienced transportation companies that are qualified and able to transportation services for District students on a supplemental and as needed basis (“Transportation Services”) as described in “Bid Package No. [redacted] for Supplemental Transportation Services” (“Bid Documents”).

B. Based on its evaluation of the bids that it timely received in response to the Bid Documents, the District determined that selecting the Contractor to perform the Transportation Services in accordance with this Agreement will result in the lowest possible cost to the District consistent with proper and satisfactory service. The District intends that, during the period this Agreement is operative, the Contractor shall provide the Transportation Services, as and when requested by the District, for certain students as identified by the District (each a “District Student”) and for staff, caregivers, chaperones, and/or others who may from time to time be transported by the Contractor pursuant to this Agreement (collectively, including District Students, the “District Passengers”). The Contractor acknowledges that the Transportation Services shall be supplemental to the transportation services otherwise provided by or on behalf of the District.

C. The Contractor acknowledges that, aside from timely and efficient transportation, a primary goal of the District is, and, as a result of this Agreement, a primary goal of the Contractor shall be, to ensure the health, safety, and welfare of all District Passengers. The Parties acknowledge that, to the extent authorized by the District, District Passengers may include, among others, students with disabilities participating in special education programs and/or receiving special education services (each a “SPED Student”), parents or other caregivers for SPED Students, and children who are homeless as defined by the McKinney-Vento Homeless Assistance Act. The Contractor acknowledges and agrees, as part of its efforts to achieve the foregoing goal, that the Contractor shall perform the Transportation Services in strict accordance with all provisions of this Agreement.

D. The Parties intend that assistance for SPED students, as may be necessary for their use of the Transportation Services, will be provided by parents, guardians, or other caregivers, or by school or program personnel, when they are available and able to provide such assistance. However, the Contractor acknowledges that, as described in this Agreement, it may be necessary for drivers providing the Transportation Services, as a normal part of those services or in the event of an emergency situation, to assist the SPED Students in connection with their use of the Transportation Services and, therefore, that drivers must be trained and qualified to provide such assistance.

E. The Parties have entered into this Agreement at a time when there exists a declared public health emergency arising from exposure to the (evolving) coronavirus that causes COVID-19 (“Coronavirus”). In addition, children throughout the United States recently have been diagnosed with Respiratory Syncytial Virus (“RSV”) and it is possible that other significant or emergency health situations

will arise while this Agreement is in effect. The public health officers and other officials of the State of California (“State”), the County of Orange (“County”), and other governmental entities have issued mandatory orders, guidance, and/or laws (each a “Public Health Order”) regarding the COVID-19 public health emergency, and they may from time to time issue Public Health Orders relating to RSV and/or other significant public health concerns. The Parties intend and agree that, in connection with the Transportation Services, the Contractor shall be responsible for the implementation of, and compliance with, any and all applicable Public Health Orders, regardless of whether those are promulgated before or after the Effective Date.

F. The purpose of this Agreement is to set forth the terms and conditions for the Contractor to perform the Transportation Services, and for the District to compensate the Contractor for performance of the Transportation Services.

**Now**, in consideration of their respective rights and obligations pursuant to this Agreement, consideration that each Party hereby acknowledges is adequate, the Parties hereby agree as follows:

## **AGREEMENT**

### **PART 1. GENERAL PERFORMANCE-RELATED PROVISIONS**

**Section 1.1 Performance by Contractor.** The Contractor shall provide any and all labor, supervision, management, facilities, vehicles, equipment, parts, materials, supplies, fuel, and other things of whatever nature are necessary to perform the Transportation Services in strict accordance with all provisions of this Agreement. Without limiting the provisions herein for payment to the Contractor in exchange for performance of the Transportation Services, the Contractor shall perform the Services and its other obligations pursuant to this Agreement at its sole cost and expense.

**Section 1.2 Agreement Term.** Notwithstanding the Effective Date, the term of this Agreement (“Agreement Term”) shall commence on such date in January of 2023 as directed by the District (“Service Commencement Date”) and, unless this Agreement is earlier terminated as provided herein, the Agreement Term shall expire at 11:59 p.m. Pacific time on December 31, 2025. The Parties may agree, in writing, to extend the Agreement Term for up to two additional one-year periods.

**Section 1.3 Authorized Contractor Representatives.** The individuals who are authorized to represent the Contractor for purposes of this Agreement and the Transportation Services (each an “Authorized Contractor Representative”) are identified in Exhibit “A” attached to this Agreement. The Contractor must ensure that the Authorized Contractor Representatives have been fully authorized to represent the Contractor and make any and all decisions on behalf of the Contractor as required to implement this Agreement and perform the Transportation Services, provided that any and all modifications to this Agreement must be in writing, authorized, and signed by an officer of the Contractor. The Contractor shall not substitute any person in place of an Authorized Contractor Representative absent the written consent of the District, which consent the District shall not unreasonably deny, delay, or condition.

**Section 1.4 Authorized District Representatives.** The individuals who are authorized to represent the District for purposes of this Agreement and the Transportation Services (each an “Authorized District Representative”) are identified in Exhibit A hereto. In addition to any limitations on authority as may be specified in this Agreement, the authority of each Authorized District Representative is limited by the requirement that the Board of Education of the Tustin Unified School District (“District Board”) must approve any and all modifications to the Agreement or must have delegated the authority to approve such modifications to an Authorized District Representative. The

District may at any time substitute any person in place of an Authorized District Representative, and the District shall provide notice of any such substitution to the Contractor.

**Section 1.5 No Unauthorized Subcontracting.** The Contractor may not subcontract the performance of any portion of the Transportation Services absent the written authorization of the District, which authorization the District, in its sole discretion, may grant, deny, and/or condition. The factors considered by the Director in determining whether to authorize the use of any particular subcontractor may include, without limitation, the subcontractor's qualifications and experience, insurance coverage, experience modification rating, history of claims, *et cetera*. To the extent the District authorizes any subcontracting by the Contractor, the Contractor shall in each case be and remain fully responsible and liable for all acts and omissions (regardless of whether constituting negligence or willful misconduct) of its subcontractors.

**Section 1.6 Compliance with Applicable Law.** The Contractor, at all times during the Agreement Term, must make and keep itself aware of, must understand, and must comply with (and must cause all of those performing the Transportation Services to comply with) all federal, State of California, and local laws, regulations, rules, standards, guidance, and other governmental requirements applicable to, relating to, or otherwise affecting the safe transportation of pupils and others, the operation of its transportation business and the vehicles used in connection with that business, and/or its status as a transportation company ("Applicable Law"), regardless of whether any Applicable Law is in effect as of the Effective Date or takes effect thereafter. For avoidance of doubt, Applicable Law includes, without limitation, rules, and regulations promulgated by the California Highway Patrol ("CHP"), the California Department of Public Health ("CDPH"), the California State Board of Education, the California Department of Education ("CDE"), the South Coast Air Quality Management District, California Air Resources Board, and the U.S. Department of Transportation ("USDOT").

**Section 1.7 Compliance with District Policies.** The Contractor, at all times during the Agreement Term, must make and keep itself aware of, must understand, and must comply with (and must cause all of those performing the Transportation Services to comply with) all District policies, regulations, rules, guidelines, and directives relating to the transportation of District Passengers, including, without limitation, those relating to the health, safety, and welfare of SPED Students.

**Section 1.8 Registrations, Permits, Certifications, and Ratings.** Prior to the Service Commencement Date, the Contractor shall provide to the District all of the following information: (i) the name of each governmental entity (including, without limitation, USDOT, Uniform Carrier Registration, and CHP) with which the Contractor is registered in connection with the Contractor's status as a motor carrier and/or provider of transportation services and, if issued, corresponding registration numbers; (ii) the name of each governmental entity (including, without limitation, USDOT and CHP) that has issued a permit or certification to the Contractor in connection with the Contractor's status as a motor carrier and/or provider of transportation services and, if issued, corresponding permit and certification numbers; and (iii) if applicable, the Contractor's current CHP Motor Carrier Section rating ("MCR"). Within ten days of any and each revocation or other change in status of any such registration, permit, certification, or rating information, the Contractor shall provide written notice to the District describing in reasonable detail the change and its impact, as applicable, in regard to: (i) the Contractor; (ii) the Contractor's status as a motor carrier and/or provider of transportation services; and (iii) the Transportation Services.

**Section 1.9 Meetings.** In order to establish and maintain effective communications between the Parties, and thereby maximize the positive outcomes associated with the Transportation Services, the Contractor shall, upon request of the District, meet and confer with the District regarding the

Transportation Services and/or this Agreement. Unless the District agrees otherwise (such as an agreement to confer online), each such meeting shall occur at the District's offices located at 1302 Service Road, Tustin, California. During meetings conducted pursuant to this Section 1.9, each Party and its representatives shall reasonably cooperate with the other Party and its representatives. Notwithstanding the foregoing: (i) the District may call a meeting of the Parties in order to discuss any matter of urgent concern to the District, by telephoning or otherwise contacting either of the Authorized Contractor Representatives for that purpose; and (ii) the Authorized Contractor Representatives shall meet with the District representatives within a reasonable period of time after the District calls the meeting, not in excess of five business days if the meeting is to be in person.

## **PART 2: TRANSPORTATION SERVICES**

**Section 2.1 Technology Platform and Application.** The Contractor shall provide to the District for its use in connection with this Agreement a technology platform and mobile application ("Platform/Application") that shall do all of the following: (i) allow the District to arrange, schedule and track rides provided to individual District Students, including, without limitation, confirmation in each case that the ride commenced and was successfully completed; (ii) allow such District, school, and/or program personnel as the District may from time to time authorize ("District Personnel") to view information regarding the identity of drivers and vehicles transporting District Passengers, view information identifying one or more specific District Passengers being transported, and to track the specific locations of those vehicles and District Passengers, including, without limitation, confirmation in each case that the ride commenced and was successfully completed; and (iii) with respect to District Students, allow, as applicable, the District Student's parent, guardian, or other caregiver as the District from time to time may identify to view information regarding the identity of the driver and vehicle transporting the District Student, and to track the specific location of the vehicle and District Student, including, without limitation, confirmation that the ride commenced and was successfully completed.

**Section 2.2 Arranging and Scheduling Rides.** The Platform/Application shall: (i) permit only District personnel, and no other person, to arrange and schedule transportation of District Passengers pursuant to this Agreement; (ii) permit District personnel to specify particular pickup and drop-off time requirements for each trip scheduled through the Platform/Application; and (iii) provide notice of each trip scheduled for a District Passenger, by text message, to that District Passenger and, as applicable, his, her, or their parent, guardian, or other caregiver. The Contractor shall ensure that Platform/Application provides a response to each District scheduling request within not more than five minutes of the District submitting the request.

**Section 2.3 Transportation Window.** Except as the District and the Contractor may agree in writing, the Contractor shall have drivers and vehicles available to provide rides for District Passengers on each day, Monday through Friday, between the hours of 6:30 a.m. and 5:30 p.m. ("Transportation Window"), or until such later time during any particular day as the Contractor has confirmed that all rides provided pursuant to this Agreement have been completed. The District may schedule rides to occur outside the Transportation Window if the Contractor has drivers and vehicles available to accommodate such scheduling requests.

**Section 2.4 Passenger Assistance.** Drivers providing the Transportation Services shall be trained and qualified to provide, and as may be necessary shall provide, assistance to District Passengers with respect to the following ("Passenger Assistance"): (i) entering into vehicles; (ii) fastening and release of seatbelts or other safety restraints; (iii) loading and securing of personal property, including, without limitation, bags, backpacks, educational materials, wheelchairs, healthcare equipment, *et cetera* ("Passenger Items"); (iv) safely exiting vehicles and removal of Passenger Items. In those situations that

a parent, guardian or other caregiver provides Passenger Assistance to a SPED Student, the driver shall in each case confirm that seatbelts and/or other safety restraints are appropriately in place and being used. In addition, and regardless of whether a parent, guardian, or other caregiver has provided Passenger Assistance to a District Passenger, the driver shall, upon dropping off the District Passenger, confirm that all Passenger Items have been removed from the vehicle and taken by or with the District Passenger.

**Section 2.5 Technology and Services Support.** The Platform/Application shall be operational, for all purposes of this Agreement, at all times, twenty four hours per day, seven days per week, except in the event of: (i) scheduled updating and/or maintenance (which shall be conducted only outside the Transportation Window and during overnight hours); and (ii) unplanned outages over which the Contractor reasonably had no control. The Contractor, using knowledgeable and qualified personnel, shall provide live support, via telephone and electronic messaging: (i) for the Platform/Application at all times, twenty four hours per day, seven days per week; (ii) for the Transportation Services at all times during the Transportation Window and until such later time during any particular day as the Contractor has confirmed that all rides provided pursuant to this Agreement have been completed. The Contractor shall make such services available, as applicable, to District, school and program personnel, and to District Passengers and the respective parents, guardians, and other caregivers of District Students being or to be transported pursuant to this Agreement.

**Section 2.6 Notice of Emergencies.** The Contractor shall require the driver of each vehicle carrying any District Passenger to immediately call 911 to obtain emergency services in the event: (i) the vehicle is involved in a traffic accident (whether or not involving another vehicle) that has or possibly could have resulted in injury to the District Passenger and the driver was not incapacitated as a result of such accident; and/or (ii) the District Passenger appears to be in distress or suffers a medical emergency, regardless of whether such condition is the result of any traffic or other accident. The Contractor shall require further that the driver provide immediate telephonic notice of any such event to the Contractor. Immediately upon learning of any such event involving a District Passenger, the Contractor shall provide telephonic notice to the District.

### **PART 3: CONTRACTOR COMPENSATION**

**Section 3.1 Service Fees.** In exchange for the satisfactory performance of the Transportation Services required pursuant to this Agreement, the District shall pay to the Contractor such compensation as is specified in Exhibit "B" attached hereto ("Service Fees"). The Service Fees shall be deemed and construed for all purposes to be all-inclusive compensation for performance of the Transportation Services, including, without limitation, compensation for any and all administrative costs, business or other licensing fees or charges, personnel costs, overhead, and other expenses and costs that the Contractor incurs in connection with performance of the Transportation Services.

**Section 3.2 Contractor Invoices.** On or about the fifth day of each month following a month in which the Contractor performed any of the Transportation Services, the Contractor shall provide an invoice to the District seeking payment for the Service Fees earned during the preceding one-month period. Any and all invoiced amounts are subject to verification by the District. The Contractor must in each invoice specifically itemize each ride based on date performed, District Passenger(s) transported (including, without limitation, any parent, guardian, or other caregiver), pick-up location and time, and drop-off location and time. The District shall pay the undisputed portion of each such invoice within thirty days after receipt of the invoice. However, within ten days after receipt of any invoice from the Contractor, the District may request in writing that the Contractor provide additional information relating to some or all of the amounts specified in the invoice, and, in such event: (i) the Contractor shall

provide such information to the District within five days following receipt of the District's request; and (ii) if the Contractor does not provide such information within such five-day period, the date by which the District must pay such amounts to the Contractor shall be extended for each day or portion of day in excess of the applicable five-day period, until such time as the Contractor provides the requested additional information to the District.

**Section 3.3 Indexing of Service Fees.** Effective as of January 1, 2024, and January 1, 2025, the Service Fees in effect immediately prior to those dates shall be increased or decreased based on the net change in the Consumer Price Index, not to exceed three percent change, as described in this Section. For purposes of such adjustments to the Service Fees, the Consumer Price Index shall be the CPI for All-Urban Consumers for the Los Angeles-Long Beach-Anaheim area, not seasonally adjusted, and base year 1982-84 = 100, published by the U.S. Department of Labor, Bureau of Labor Statistics. For purposes of the adjustment to occur on January 1, 2024, the net change in the Consumer Price Index shall be calculated as the percentage change in the Consumer Price Index over the one-year period from November 1, 2022, through October 31, 2023, and, for purposes of the adjustment to occur on January 1, 2025, the net change in the Consumer Price Index shall be calculated as the percentage change in the Consumer Price Index over the one-year period from November 1, 2023, through October 31, 2024. However, if a net change in the Consumer Price Index exceeds three percent (regardless of whether it is a positive or negative change), the corresponding adjustment to the Services Rates shall be limited to three percent.

#### **PART 4: SERVICE PERSONNEL**

**Section 4.1 Contractor Responsible for Service Personnel.** As an independent contractor to the District, the Contractor shall be solely responsible for ensuring compliance with all laws related to or affecting the Service Personnel (defined in Subsection 4.5.1) and its other employees, subcontracted employees and agents, including, without limitation, laws relating to workers' compensation, work hours, rest periods, payment of wages, vacations and other benefits, *et cetera*. The Service Fees payable to the Contractor in accordance with this Agreement are all-inclusive and shall not be increased as a result of any costs or expenses attributable to such compliance. The Contractor shall indemnify, defend and hold-harmless the District with respect to any and all claims and other liabilities arising from the Contractor's workforces, regardless of whether the Contractor considers its drivers or employees to be independent contractors, and including, without limitation, any and all workers' compensation claims filed in connection with or as a result of the Transportation Services.

**Section 4.2 Contractor Responsible for Compliance with Law.** In connection with the Transportation Services, the Contractor shall comply with any and all federal, state, and other governmental laws, regulations, rules, and other requirements relating to selection and employment of drivers and/or to the Transportation Services, including, without limitation, transportation of SPED Students. The foregoing shall be deemed and construed to include, without limitation, requirements for licensing of drivers, and the Contractor shall comply with the provisions of the pull-notice system specified in Vehicle Code Section 1808.1, regardless of whether those provisions would otherwise apply to the Transportation Services or whether any particular driver is a "casual" driver for purposes of those provisions. Without limiting anything else in this Agreement, the Contractor shall be responsible for ensuring that the Service Personnel perform the Transportation Services in full compliance with Applicable Law, including without limitation, prohibitions against driving while impaired by drugs or alcohol.

**Section 4.3 Contractor Responsible for Compliance with IRCA.** At all times while this Agreement is in effect, the Contractor, with respect to its officers, employees, subcontracted

employees, and other agents and representatives, must be in full compliance with the provisions of the Immigration Reform and Control Act of 1986 (“IRCA”). In connection with any and all claims, actions, other proceedings, penalties, costs and expenses (including, without limitation, attorneys’ fees), and other liabilities of any nature whatsoever that arise out of any failure by the Contractor to strictly comply with the IRCA, the Contractor shall indemnify, hold harmless, and defend the District in accordance with Part 9 herein.

**Section 4.4 Driver Qualifications.** The Contractor shall be solely responsible for ensuring that each driver who will provide any Transportation Services possesses any and all training, qualifications, and experience as necessary and appropriate for the driver to provide the Transportation Services in compliance with all requirements of this Agreement and provisions of Applicable Law. Without limiting the foregoing, each driver: (i) must have a valid California driver’s license; and (ii) must be trained and able to provide any and all Passenger Assistance as may be needed.

**Section 4.5 Certification of Service Personnel Status.**

**Subsection 4.5.1 Criminal-History Background Checks.** With respect to any and each of its officers, employees, subcontracted personnel, agents, and other representatives, including, without limitation, drivers (collectively, “Service Personnel”) who will or might be present in the vicinity of any District Student, the Contractor, at its sole cost and expense, shall cause each such person to comply with the background-check requirements of EC Section 45125.1. For avoidance of doubt, the Contractor shall not permit: (i) any particular driver to perform any Transportation Services without the Contractor having first complied with, and such driver having been “cleared” in accordance with, EC Section 45125.1; and (ii) any other Service Personnel to be present in the vicinity of any District Students without the Contractor having first complied with, and such persons having been “cleared” in accordance with, EC Section 45125.1.

**Subsection 4.5.2 Tuberculosis Assessment and Examination.** With respect to Service Personnel who will or might have any frequent or prolonged exposure to any District Passenger (including, without limitation, in the confined space of a vehicle), the Contractor, at its sole cost and expense, shall cause each such person to comply with the Tuberculosis assessment and examination procedures specified in EC Section 49406. For avoidance of doubt, the Contractor shall not permit: (i) any particular driver to perform any Transportation Services without the Contractor having first complied with, and such driver having been “cleared” in accordance with, EC Section 49406; and (ii) any other Service Personnel to be present in the vicinity of any District Passengers without the Contractor having first complied with, and such persons having been “cleared” in accordance with, EC Section 49406.

**Subsection 4.5.3 Contractor Submission of Certification.** The Contractor shall complete, execute and deliver to the District one or more copies of the “Certification Regarding Service Personnel” form attached as Exhibit “C” to this Agreement that, together, list all drivers and other Service Personnel who will or might be present in the vicinity of any District Student. In no event shall the Contractor authorize or permit any driver to perform any of the Transportation Services, or any other Service Personnel to be in the vicinity of any District Student, unless and until the Contractor has submitted to the District a certification that lists that driver or other Service Personnel. So that the certifications pursuant to this Section are current at all times, the Contractor shall promptly: (i) update the certifications to reflect changes in status of drivers and Service Personnel, including, without limitation, to reflect the addition or elimination of any driver or Service Personnel, or any change in the criminal-history or tuberculosis-related status of any driver or Service Personnel; and (ii) provide the updated certifications to the District.



**Section 4.6 COVID-19 Related Requirements.**

**Subsection 4.6.1 Specific COVID-19 Related Requirements.** The Contractor shall: (i) cause the frequently touched (aka, “high touch”) areas of each of the vehicles used to transport District Passengers (including, without limitation, doors, grab bars, seat belts, and seats) to be wiped down with disinfectant wipes prior to each trip; and (ii) cause each of the vehicles used to transport District Passengers to be thoroughly cleaned and sanitized regularly.

**Subsection 4.6.2 Notice of Infection or Suspected Infection.** Immediately upon becoming aware or reasonably suspecting that any person (including, without limitation, any driver) has been or is infected with the Coronavirus, and that person and any District Passengers were present at the same time in any of the vehicles used to provide the Transportation Services, the Contractor shall: (i) give written notice to the District; and (ii) take all steps required and/or recommended by the Public Health Orders, including, without limitation, seeking to identify, through contact tracing, those who may have been exposed to the Coronavirus and otherwise taking steps necessary to limit the number of additional people who may become exposed to the Coronavirus. Any and each failure by the Contractor to give such notice when required by this Subsection shall constitute a material breach by the Contractor of its obligations pursuant to this Agreement. Upon receipt of such notice, the District shall reasonably cooperate with respect to attempts to confirm whether exposure to and/or infection by the Coronavirus has occurred and related contact tracing efforts.

**PART 5: CONFIDENTIAL INFORMATION**

**Section 5.1 Definitions.** For all purposes of this Agreement, the capitalized terms set forth below shall have the corresponding meanings specified in this Section:

- (i) The term “Confidential Information” means any and all information regarding the identity, condition, family members, caregivers, home address, participation in programs, or other “personally identifiable information” of or relating to District Passengers that is provided to, learned by, or inferred by the Contractor or any of the Service Personnel in connection with this Agreement, including, without limitation, any information volunteered by a District Student;
- (ii) The term “Recordings” means any and all pictures, videos, audio recordings, video and audio recordings, and other electronic and non-electronic images and recordings of a District Passenger recorded (actively or passively) by any driver, any other representative of the Contractor, or by any vehicle used in connection with the District Passenger’s use of the Transportation Services;
- (iii) The phrase “personally identifiable information” means any information (in whatever form or format) that: (i) can be used to distinguish or trace an individual’s identity, such as name, social security number, personal identification number, student identification number, date and place of birth, mother’s maiden name, street address, email address, internet protocol address, telephone number, photograph, and fingerprints or other biometric information; or (ii) is linked or linkable to an individual, such as medical, educational, financial, and employment information, race, religion and activities;
- (iv) The phrase “trace an individual’s identity” means to process sufficient information to make a determination about a specific aspect of an individual’s activities or status; (ii) information that is “linked” to an individual is information about or related to that individual that is logically associated with other information about that individual; and

- (v) The term “linkable” means, with respect to information about or related to an individual, that there is the possibility of a logical association between that information and other information about the individual.

**Section 5.2 Forms of Confidential Information.** For all purposes of this Agreement, Confidential Information may be in any tangible or non-tangible form, and shall be deemed and construed to Confidential Information regardless of whether it is labeled or otherwise marked as being confidential. Confidential Information in tangible form may include, without limitation, information or material that is in written, printed, graphic, recorded, photographic, digital, or in machine-readable form. Information or material that is not in tangible form, such as information provided orally, shall nonetheless be considered Confidential Information if it is within the meaning and scope of Confidential Information described in Section 5.1 herein. Without limiting the foregoing, the fact that Confidential Information may have been obtained by or provided to the Contractor or any Service Personnel orally shall not be deemed or construed to: (i) adversely affect the confidential nature of that Confidential Information; or (ii) relieve the Contractor of its obligations pursuant to this Part 5 or other provisions of this Agreement.

**Section 5.3 Contractor Obligations.** Except as provided in Section 5.4, the Contractor and each of the Service Personnel (including, without limitation, drivers) shall keep confidential and not disclose to any other person or entity any of the Confidential Information obtained as a result of or in connection with the Transportation Services. For avoidance of doubt, any and all Recordings shall be deemed and construed to be Confidential Information. The Contractor shall: (i) provide written notice to the District if the Contractor permits drivers or vehicles to make Recordings; (ii) require each driver and other Service Personnel who makes or has control over any Recordings to provide all copies of those Recordings to the Contractor (in the same format, resolution, aspect ratio, *et cetera* as the original Recording) and, thereafter, delete or otherwise destroy all copies of those Recordings remaining in the possession of such Service Personnel; and (iii) maintain any and all Recordings as part of the Contractor Records (defined in Section 7.5). The Contractor may use the Recordings solely for purposes associated with administration of this Agreement and/or disputes and claims arising from this Agreement or the Transportation Services; provided that, in all events except as provided in Section 5.4, the Contractor (and all Service Personnel) shall strictly maintain the confidentiality of the Recordings. The Contractor may delete or otherwise destroy physical copies of the Recordings or other Confidential Information only: (i) if the applicable record retention period specified in Section 7.5 has expired; or (ii) upon written consent of the District given, denied, or conditioned in the District’s reasonable discretion, which may include, without limitation, a condition that the District receive full and unaltered copies of the Confidential Information that is to be destroyed.

**Section 5.4 Limitations on Disclosure.** The Contractor shall provide written notice to the District immediately upon becoming aware that any subpoena, order, demand, or other process seeking or requiring disclosure or release of any Confidential Information is being sought or has been issued. In each such event, the District shall be permitted to intervene for purposes of attempting to stop or limit the disclosure of Confidential Information. Except for disclosures to the District as provided in this Section and, otherwise, notwithstanding anything to the contrary, the Contractor may disclose Confidential Information if, but only if a court or other governmental entity with competent jurisdiction has ordered that the information be disclosed or has authorized a subpoena seeking disclosure of the information. In such event, disclosure shall be limited solely to the scope of disclosure ordered by the court or other governmental entity. Upon request of the District from time to time, the Contractor shall provide to the District full and unaltered copies of any or all of the Recordings and/or other Confidential Information. The provisions of this Section 5.4 shall be deemed and construed to constitute the sole

and exclusive bases for disclosure or release, by the Contractor or any Service Personnel of any Recordings or other Confidential Information.

**Section 5.5 Family Educational Rights and Privacy Act.** The Family Educational Rights and Privacy Act set forth in 20 U.S.C. Section 1232g (“FERPA”) and 34 CFR Part 99, the federal regulations that implement FERPA, set forth requirements for protecting the privacy of parent and student information, including, among others, requirements for maintaining the confidentiality of personally identifiable information. If and to the extent, in connection with the Transportation Services, the Contractor accesses, obtains, stores, uses, or discloses any information within the scope of FERPA (regardless of whether inadvertently, accidentally, purposefully, or otherwise), then, without limiting anything else in this Agreement, the Contractor shall comply with any and all applicable requirements of FERPA and its implementing regulations.

**Section 5.6 Health Insurance Portability and Accountability Act.** The Health Insurance Portability and Accountability Act, Public Law 104-191 (“HIPAA”) and the federal regulations that implement HIPAA, set forth requirements for, among other things, use and disclosure of individuals’ health information, including, among others, requirements for individuals to control use of their health information and for entities possessing such health information to properly protect it from unauthorized disclosure. In addition, the Health Information Technology for Economic and Clinical Health Act of 2009, Public Law 111-0005 (“HITECH”) and the federal regulations that implement HITECH, address concerns associated with electronic transmission of health information and establishes penalties for violations. If and to the extent, in connection with the Transportation Services, the Contractor accesses, obtains, stores, uses, or discloses any information within the scope of HIPAA and/or HITECH (regardless of whether inadvertently, accidentally, purposefully, or otherwise), then, without limiting anything else in this Agreement, the Contractor shall comply with any and all applicable requirements of HIPAA and HITECH, and their respective implementing regulations.

**Section 5.7 Non-Disclosure Agreements.** Prior to allowing any particular driver to perform any Transportation Services, and prior to allowing any other Service Personnel to have access to Confidential Information, the Contractor shall cause the driver or other Service Personnel to execute a valid and binding confidentiality and non-disclosure agreement consistent with the provisions of this Part 5 (“NDA”). The form of the NDA is subject to advance approval by the District in its reasonable discretion, and the Contractor must provide a copy of each executed NDA to the District for its records.

**Section 5.8 Survival.** The Parties’ respective rights and obligations pursuant to this Part 5 shall survive expiration of the Agreement Term or, if applicable, other termination of this Agreement.

## **PART 6: DATA SECURITY.**

**Section 6.1 Security of Confidential Information.** The Contractor shall make reasonable efforts to secure, protect the privacy of, and prevent the unauthorized disclosure of, any and all Confidential Information that it collects or otherwise obtains in connection with the Transportation Services and/or this Agreement. Such reasonable efforts may include, but are not limited to: (i) network and system controls (such as firewalls and network segmentation) intended to prevent introduction of computer viruses and malware; (ii) operational procedures (such as multi-factor authentication and least privilege) intended to prevent unauthorized access to Confidential Information; and (iii) behavioral analytics intended to identify suspicious and/or anomalous activities affecting the Platform/Application and/or the Contractor’s other systems and/or software.

**Section 6.2 Security Protocols.** The Contractor shall promulgate or otherwise have in effect policies, procedures, protocols, guidelines and other data-security requirements (collectively, "Security Protocols") based on appropriate and adequate identification and quantification of data-security risks. In developing the Security Protocols, the Contractor shall consider and, to the extent required, incorporate into the Security Protocols any comments and/or suggestions from the insurer that provides the Contractor's cyber liability insurance.

**Section 6.3 Response Plan.** Prior to the Contractor or any driver collecting or otherwise obtaining any Confidential Information, the Contractor shall have in effect reasonable and comprehensive written policies and procedures for responding to the unauthorized disclosure or loss of control of Confidential Information and/or activities and incidents (such as hacking attempts) constituting a significant risk to the security of such Confidential Information ("Response Plan"). The Response Plan shall conform to all Applicable Law and current industry standards, and the Contractor shall as reasonably necessary update the Response Plan from time to time. The Response Plan must include, among other required provisions: (i) provisions for the Contractor, on behalf of itself and the District, to give any and all notices required in connection with any data security breach as may be required by Applicable Law and this Agreement; and (ii) provisions for prompt post-breach activation of credit monitoring and reporting services for individuals whose Confidential Information was disclosed in connection with the security breach, at no cost to such individuals or the District. Promptly following any request by the District, the Contractor must provide to the District a copy of the Response Plan and/or any updates to the Response Plan.

**Section 6.4 Data Breaches.** In each case that the Contractor experiences a security breach or other incident that leads to inadvertent disclosure or loss of Confidential Information, the Contractor shall immediately notify the District, implement the Response Plan, and otherwise take immediate steps to limit and mitigate the effects of such security breach. The District, in its sole and absolute discretion, may terminate this Agreement in the event of any security breach or any unauthorized disclosure or loss of any Confidential Information, or any material breach by the Contractor and/or any driver of the confidentiality provisions of this Agreement. The Contractor shall indemnify and hold the District harmless with respect to any and all losses, costs, damages and/or expenses incurred in connection with any such security breach or unauthorized disclosure or loss, including, without limitation, costs of notice provided by the District to affected persons.

**Section 6.5 Survival.** The Parties' respective rights and obligations pursuant to this Part 6 shall survive expiration of the Agreement Term or, if applicable, other termination of this Agreement.

## **PART 7: CONTRACTOR STATUS**

**Section 7.1 Independent Contractor.** The Contractor is, for any and all purposes of or related to this Agreement, an independent contractor. In no circumstances shall the Contractor or any of its officers, employees, contractors, subcontractors, agents, or other representatives be deemed or construed to be an officer, employee, agent, or other representative of the District as a result of this Agreement. The Contractor must at all times conduct its activities in a manner consistent with its status as an independent contractor, and, except as provided in this Agreement, the Contractor shall have the right to determine the methods, means and mechanisms by which it shall perform the Transportation Services. The Contractor shall not suffer or permit any third party (whether person or entity) to continue in any apparent belief that the Contractor or any of its officers, employees, contractors, subcontractors, agents or other representatives is an officer, employee, agent, or other representative of the District. The Contractor shall be responsible for ensuring compliance with all Applicable Law related to its employees, including, without limitation, laws relating to Workers' Compensation. The

compensation payable to the Contractor pursuant to this Agreement shall not be increased as a result of any costs incurred by the Contractor that are attributable to such compliance.

**Section 7.2 Contractor Capability.** The Contractor represents and warrants that: (i) it has any and all licenses, certifications, and approvals as are necessary, appropriate, and required by law to permit the Contractor to enter into this Agreement and perform the Transportation Services; (ii) all drivers performing any Transportation Services shall be qualified and appropriately licensed to perform the tasks, duties and responsibilities required pursuant to this Agreement and assigned to them by the Contractor; (iii) any and all persons who will provide or perform the Transportation Services, including, without limitation, drivers and/or persons providing support services pursuant to Section 2.5 herein, shall have the qualifications, technical and/or other skills, and experience required to perform the Transportation Services in an efficient, timely, and satisfactory manner; and (iv) the Contractor has the financial, personnel, and other resources as are necessary to adequately and timely perform the Transportation Services as required pursuant to this Agreement.

**Section 7.3 Incorporation of Bidding Certifications.** Each and all of the following certifications as executed by the Contractor and submitted with its bid for the Services (“Bidding Certifications”) are hereby incorporated as operative and effective provisions of this Agreement: (i) Certification Regarding Prohibition of Collusion; (ii) Certification Regarding Drug-Free Workplace; (iii) Certification of Tobacco-Free Workplace; (iv) Certification Regarding Workers’ Compensation; and (v) Certification Regarding Bidder Questionnaire. The Bidding Certifications are attached as Exhibit “D” to this Agreement.

**Section 7.4 Infringement.** The Contractor hereby represents and warrants that it has all necessary power and authority to make the Platform/Application, including, without limitation, any third-party programs incorporated into the Platform/Application, available for use pursuant to this Agreement, free from infringement or other violation of any copyright, trademark, or trade secret of any third party. In connection with any and all claims of infringement or other violation of such rights: (i) should use of the Platform/Application pursuant to this Agreement become enjoined, this Agreement shall terminate; and (ii) without limiting any other rights of the District or third parties in connection with this Agreement, the Contractor shall indemnify and defend the District with respect to any and all such claims.

#### **Section 7.5 Contractor Records.**

**Subsection 7.5.1 General Requirements.** The Contractor must prepare and maintain, in accordance with generally accepted accounting principles, all financial and other records related to this Agreement and the Transportation Services as necessary, appropriate or required by Applicable Law (“Contractor Records”). The Contractor Records shall include any and all incident reports (whether internal or external to the Contractor), claims, demands, court filings, pictures, witness statements, invoices, and other records of whatever nature that reasonably or arguably relate to injuries, accidents, assault, abuse, molestation and other situations, events, or incidents that potentially could result in any liability for personal injury, property damage, criminal violations, or other matters (“Incident Records”). The Contractor shall maintain: (i) all Contractor Records, generally, for a period of three years following final payment pursuant to this Agreement; and (ii) any and all Incident Records for a period of four years following final payment pursuant to this Agreement. Notwithstanding the foregoing, if the District notifies or otherwise informs the Contractor that federal funds will be used to pay for any portion of the Transportation Services (e.g., CARES Act funding), the Contractor shall maintain all Contractor Records (including, without limitation, all Incident Records) for such longer period as may be required by federal law (e.g., five years in the case of CARES Act funding).

**Subsection 7.5.2 Rights to Review, Copy, and Audit.** Pursuant to Government Code Section 8546.7, the California State Auditor has the right, for a period of three years following final payment, to review, audit, and/or copy records of the contracting parties with respect to each contract providing for expenditure of public funds in excess of \$10,000. Pursuant to this Agreement, the State of California, the federal government, the District, and other governmental entities with competent jurisdiction shall have the rights: (i) to review, copy, and/or audit some or all of the Contractor Records, at any time during the applicable records retention period(s) specified in Subsection 7.5.1 herein.

**Subsection 7.5.3 Access to Records.** The Contractor must make the Contractor Records (including, without limitation, all Incident Records) available for review and/or copying at all reasonable times during the applicable records retention period(s) specified in Subsection 7.5.1 herein. Notwithstanding the foregoing or anything else in this Section 7.5, if a governmental entity commences, but does not complete, an audit within an applicable records retention period, the Contractor must retain and make available all Contractor Records (including, without limitation, all Incident Records) until such time as the audit has been completed and all applicable appeal periods have expired without appeal (or, if applicable, without additional appeal).

## **PART 8: CONSULTANT INSURANCE**

**Section 8.1 Required Insurance.** Prior to commencing any of the Transportation Services, the Contractor must procure at its sole cost and expense, and, during all periods as required by this Agreement, must maintain in effect, the insurance policies required pursuant to this Part 8 (“Required Policies”). The Required Policies include the following:

- (i) **General Liability Insurance.** A policy of commercial general liability insurance (“GL Policy”) that: (i) is written on an “occurrence” basis; (ii) has coverage limits of not less than \$2,000,000 per occurrence and, if an aggregate limit applies, not less than \$4,000,000 aggregate applicable specifically in connection with this Agreement; (iii) provides coverage for the acts and omissions of the Contractor pursuant to this Agreement or in connection with the Transportation Services; (iv) without limiting any of the foregoing, covers bodily injury, personal and advertising injury, property damage, and the contractual liability assumed by the Contractor pursuant to this Agreement; and (v) except to the extent the foregoing requires additional or broader coverage, provides coverage at least as broad as Insurance Services Office (“ISO”) Form CG 00 01 10 93.
- (ii) **Commercial Auto Liability Insurance.** A policy of transportation or commercial auto liability insurance, however denominated (“VL Policy”) that: (i) is written on an “occurrence” basis; (ii) has coverage limits of not less than \$2,000,000 per occurrence and, if an aggregate limit applies, not less than \$5,000,000 aggregate applicable specifically in connection with this Agreement; (iii) provides coverage for all owned, non-owned, and hired vehicles used for or in connection with the Transportation Services; (iv) without limiting any of the foregoing, covers bodily injury, property damage, and uninsured-underinsured motorists; and (v) except to the extent any of the foregoing requires additional or broader coverage, provides coverage at least as broad as ISO Form CA 00 01.
- (iii) **Abuse-Molestation Insurance.** A policy of abuse-molestation insurance (“SAM Policy”) that: (i) is separate from the GL Policy and any professional liability and other insurance policies that the Contractor may have in effect; (ii) is written on an “occurrence” basis; (iii) has limits of not less than \$2,000,000 per occurrence and, if an aggregate limit applies, not less than \$4,000,000 aggregate; (iv) provides coverage for direct and vicarious liability associated with sexual misconduct and other physical abuse, and for verbal, emotional, mental, and other non-physical abuse; (v) covers acts and omissions by, among others, the Contractor’s authorized subcontractors, if any; (vi) provides coverage for the District prior to any determination that an

accused abuser is guilty; and (vii) provides for payment of defense costs outside the SAM Policy's coverage limits. The Contractor shall comply with any and all risk management controls reasonably required by the insurer that issues the SAM Policy.

- (iv) Workers' Compensation Insurance. A policy of Workers' Compensation insurance as required by California law ("WC Policy") and employer's liability insurance with coverage in an amount not less than: (i) \$1,000,000 for each accident for bodily injury by accident; (ii) \$1,000,000 for each employee for bodily injury by disease; and (iii) \$1,000,000 aggregate. Notwithstanding the insurer standards set forth in Section 8.2 herein, coverage provided by the California State Compensation Insurance Fund shall be deemed, with respect to the WC Policy, to satisfy such insurer rating standards.

**Section 8.2 Insurer Standards.** The Required Policies must be issued by one or more insurance companies, each of which: (i) is authorized to conduct business in the State of California; (ii) has an A.M. Best Company rating of not less than "A-" (A minus) and a financial size category of "VIII"; and (iii) otherwise is acceptable to the District in its reasonable discretion. Prior to the Service Commencement Date, the Contractor must provide documentation issued or made available by governmental entities with competent jurisdiction that reasonably evidence compliance by the Contractor's insurers with such insurer standards.

**Section 8.3 Additional Insureds.** Each of the Required Policies except the WC Policy shall be endorsed to name, as additional insureds, the District, the District Board and each of its individual members, and the District's officers, employees, contractors, subcontractors, volunteers, agents, and other representatives (collectively, not including the District, the "District Agents"), with respect to the acts and omissions (regardless of whether constituting negligence) of the Contractor and/or Service Personnel in connection with this Agreement and the Transportation Services. The additional insured endorsements must be ISO form CG 2010 11/85 or an alternative form approved in advance by the District. For purposes of this Section, and without otherwise limiting the District's discretion to determine an alternative to ISO form CG 2010 11/85, a combination of ISO forms CG 2010 10/01 and CG 2037 10/01 shall be deemed to be an acceptable alternative to the ISO form CG 2010 11/85.

**Section 8.4 Waiver of Subrogation.** The Contractor hereby waives, on behalf of itself and its insurers, any and all rights to subrogation against the District and the District Agents that any such insurer may acquire through payment of any loss or claim in connection with this Agreement and/or the Transportation Services. Each of the Required Policies except the WC Policy must be endorsed with both a cross-liability endorsement and a waiver of the insurer's rights of subrogation, and the WC Policy must be endorsed with a waiver of the insurer's rights of subrogation.

**Section 8.5 Contractor Insurance is Primary.** Except as expressly limited by California law, any and all insurance policies maintained or held by the Contractor shall be primary and non-contributing with respect to any and all insurance, self-insurance, and/or cooperative/joint powers insurance policies and programs covering the District and/or any of the District Agents. Each of the Required Policies must be endorsed to provide that they are primary and non-contributory.

**Section 8.6 Deductibles and Self-Insured Retentions.** Prior to the Service Commencement Date, the Contractor must disclose in writing to the District any and all deductibles and, if applicable, self-insured retentions applicable to the Required Policies. Each such deductible or self-insured retention, to the extent it exceeds the lesser of ten percent of an applicable per-occurrence coverage limit or \$250,000, shall be subject to written approval by the District in its reasonable discretion and, upon request of the District absent such approval, the Contractor must either: (i) cause the insurer to reduce or eliminate the deductible or self-insured retention with respect to claims arising in connection

with this Agreement; or (ii) provide an additional financial guarantee satisfactory to the District that guarantees payment of losses and related investigations, claim administration, and defense expenses. The Required Policies that are subject to any deductible or self-insured retention must be endorsed to permit the District to pay or otherwise fund the deductible or self-insured retention in the event the Contractor is the subject of any bankruptcy proceeding (whether voluntary or involuntary) or otherwise is unable to pay or fund such amounts. The District shall be entitled to reimbursement, from the Contractor, of any and all deductibles and retentions paid by the District pursuant to this Section and, in each case that the Contractor does not pay an amount within thirty days of receiving an invoice from the District, the amount shall accrue interest at the maximum rate payable pursuant to Applicable Law or such other rate as determined by an applicable court of competent jurisdiction, from the date expended by the District and until paid to the District.

**Section 8.7 Evidence of Coverage.** Prior to the Service Commencement Date, the Contractor must provide to the District such duly authorized and executed certificates of insurance evidencing that the Required Policies are in full force and effect in accordance with the provisions of this Part 8 (each a "Certificate of Insurance"), together with a copy of each endorsement to such insurance as is required pursuant to this Agreement. The delivery of such Certificates of Insurance and endorsements shall be a condition precedent to the Contractor commencing any of the Transportation Services. The Certificates of Insurance must (except as to the WC Policy) identify the District and the District Agents as additional insureds. In the case of each Required Policy, the Contractor, not less than thirty days prior to the expiration of the Required Policy, must provide to the District an updated Certificate of Insurance and, if applicable, endorsements, evidencing the renewal of the Required Policy.

**Section 8.8 Notice of Change in Policies.** Each Required Policy must be endorsed to require, that the insurer notify the District not less than thirty days prior to any cancellation, termination, reduction in coverage, or expiration without renewal of the Required Policy, except for cancellation due to non-payment of premium, in which case the insurer must provide such notice not less than ten days prior to cancellation. Language in any Certificate of Insurance or Required Policy to the effect that the insurer shall "endeavor" to provide such notice, or to the effect that "failure to mail such notice shall impose no obligation and liability upon the company, its agents or representatives," shall not be acceptable. In addition, the Contractor shall have an independent obligation to provide written notice to the District not less than thirty days prior to any cancellation, termination, reduction in coverage, or expiration without renewal of any Required Policy, except for cancellation due to non-payment of premium, in which case the Contractor must provide such notice not less than ten days prior to cancellation.

**Section 8.9 Review of Coverage.** The District may at any time request that the Contractor provide a full and complete copy of any or all of the Required Policies, and the Contractor must provide each such copy to the District within twenty days of the District's request, regardless of whether any dispute between the Parties is then pending, and such obligation shall survive the termination of this Agreement. The District may review copies of the Required Policies and associated Certificates of Insurance and endorsements to determine whether the Contractor's insurance complies with the requirements of this Part 8 or to otherwise determine the scope and extent of applicable insurance coverage. However, no failure by the District to conduct such review, to properly or completely conduct such review, or to identify any non-compliance with the requirements of this Part 8, shall be deemed or construed to: (i) relieve the Contractor from any of its obligations pursuant to this Part 8; or (ii) constitute a waiver or release by the District. Notwithstanding anything else in this Agreement, any failure by the Contractor to comply with the requirements of this Part 8 shall constitute a material breach by the Contractor of its obligations pursuant to this Agreement and not a waiver of any such requirement.



## **PART 9: INDEMNIFICATION**

**Section 9.1 General Requirement.** The Contractor shall indemnify and hold harmless the District and the District Agents, and each of them, with respect to any and all damages, losses, judgments, costs and expenses (including, without limitation, attorneys' fees and expenses), and other liabilities of whatever nature (each a "Liability" and, if multiple, the "Liabilities") that may arise from the acts or omissions (regardless of whether negligent) of the Contractor or any of its officers, employees, subcontracted employees, contractors, subcontractors, agents, or other representatives (collectively, not including the Contractor, the "Contractor Agents") in connection with this Agreement and/or the Transportation Services. The scope of the Contractor's obligations pursuant to this Section shall include, without limitation: (i) any disputes of any nature between the Contractor and any of the Contractor Agents; and (ii) the injury or death of any person or the damage to any property arising from the activities of the Contractor and/or any of the Contractor Agents in connection with the Transportation Services.

**Section 9.2 Subcontracted Drivers.** If and to the extent the Contractor considers the drivers who will provide any of the Transportation Services to be independent contractors of the Contractor, then, without limiting anything in Section 9.1, the Contractor shall fully indemnify and hold harmless the District and the District Agents, and each of them, with respect to: (i) any and all claims that would, if the drivers were employees, be wholly or partially within the scope of reasonable policy of workers' compensation insurance; and (ii) any other matters that arise from or relate to any driver's status as an independent contractor.

**Section 9.3 Defense of District.** The Contractor shall defend the District with respect to any and each claim, demand, action, or other proceeding that allegedly or impliedly is within the scope of the Contractor's indemnification obligations pursuant to Sections 9.1 and/or 9.2 herein. Any defense of the District or any of the District Agents conducted pursuant to this Agreement must be conducted by qualified and appropriately experienced legal counsel reasonably acceptable to the District, but selected and retained by the Contractor, at no cost to the District or any of the District Agents.

**Section 9.4 Limitation on Contractor Obligations.** The Contractor shall not be obligated pursuant to Sections 9.1 and 9.2 of this Agreement to the extent any Liability is attributable to the sole negligence, active negligence, or willful misconduct of the District or any of the District Agents. In each such event, the Parties shall be responsible and liable on a comparative basis.

**Section 9.5 Insurance Not a Limitation.** The obligations of the Contractor pursuant to this Part 9 shall not be deemed or construed to be: (i) conditioned upon or in any other manner limited by the existence of any insurance coverage maintained by any person or entity; or (ii) conditioned upon the receipt by any person or entity of, or limited to the amount of, any insurance proceeds.

**Section 9.6 Survival of Obligations.** With respect to any and all acts, omissions or incidents occurring prior to termination of this Agreement, the Contractor's obligations pursuant to this Part 9 shall survive termination of this Agreement.

## **PART 10: DISPUTE RESOLUTION**

**Section 10.1 Notice and Opportunity to Cure.** If a Party ("Alleging Party") alleges that the other Party ("Responding Party") has defaulted with respect to any of its material obligations pursuant to this Agreement, the Alleging Party shall provide written notice to the Responding Party, specifying in

reasonable detail the nature and extent of the alleged default (“Notice of Default”). If the Responding Party has not cured the alleged default within the applicable period of days specified in this Section (each a “Cure Period”), then the Alleging Party in its discretion may seek any remedy available pursuant to this Agreement and Applicable Law. For purposes of this Agreement: (i) the Cure Period applicable to any alleged default that, as reasonably determined, endangers the health, safety, or welfare of any District Passenger, shall be 72 hours; (ii) the Cure Period applicable to any alleged default of an obligation to pay money, or to post or otherwise secure any monetary obligation, shall be twenty days; and (iii) the Cure Period applicable any and all other alleged defaults shall be thirty days. Neither the giving of any Notice of Default, nor the initiation by the Alleging Party of any action or other proceeding in connection with the alleged default, shall by itself operate to terminate this Agreement.

**Section 10.2 Exercise of Available Remedies.** In the event of any dispute between or involving the Parties in connection with this Agreement and/or the Transportation Services (each a “Dispute”), either Party, subject to compliance with Section 10.1 herein, may initiate any legal or equitable action or other proceeding in response to the Dispute as may be available pursuant to this Agreement and Applicable Law. However, if a Notice of Default has been provided pursuant to Section 10.1 herein, no such legal or equitable action may be initiated until the applicable Cure Period specified in Section 10.1 has expired without the alleged default having been cured. In connection with any particular Dispute, and except as expressly provided in this Agreement, each Party may exercise any or all rights and remedies available pursuant to this Agreement and Applicable Law. No such available remedy shall be deemed or construed to be exclusive, and a Party may exercise any available remedy individually or in combination with any other available remedies.

**Section 10.3 Governing Law and Venue.** This Agreement shall be interpreted and enforced in accordance with California law, notwithstanding any choice-of-law, conflict-of-law, or other provision in any local, state, or federal law that may be interpreted to the contrary. Each and every action and other proceeding that arises from, or is initiated in connection with, this Agreement shall be initiated and conducted only in an appropriate court or other forum located in the County of Orange, California.

**Section 10.4 Government Claims Act.** Nothing in this Agreement shall be deemed or construed to obviate, modify, or otherwise circumscribe the applicability of Division 3.6 of Title 1 of the California Government Code (commencing with Section 810) to claims, demands, disputes, and similar matters that arise from this Agreement and/or the Transportation Services.

**Section 10.5 Attorneys' Fees.** With respect to any and each Dispute, action, and other proceeding that arises from or is initiated in connection with this Agreement, each Party shall be responsible for paying its own attorneys’ fees and other legal costs and expenses, including, without limitation, court filing costs and expert witness fees.

**Section 10.6 Severability.** If a court of competent jurisdiction determines, for any reason, that any provision or requirement of this Agreement is invalid or unenforceable, such determination shall not be deemed or construed to invalidate or render unenforceable any other provision or requirement of this Agreement. In such event, the remaining provisions and requirements shall be interpreted, to the extent permitted by law, in a manner that is consistent with the intent and purpose underlying the invalid or unenforceable provision or requirement.

**Section 10.7 Survival.** The Parties’ respective rights and obligations pursuant to this Part 10 shall survive termination of this Agreement.

## **PART 11: TERM AND TERMINATION**

**Section 11.1 Manner of Termination.** In addition to any other bases for termination set forth in this Agreement, this Agreement shall terminate, or may be terminated, as follows:

- (i) This Agreement shall automatically terminate, without need for action by either Party, upon expiration of the Agreement Term absent a renewal or extension thereof, or, if applicable, absent a further renewal or extension thereof.
- (ii) The District may terminate this Agreement, without need for reason or to show cause, and with respect to some or all of the routes or other portions of the Transportation Services, by giving written notice of termination to the Contractor. A termination pursuant to this clause (ii) shall be effective on the date that is 90 days following receipt of the notice by the Contractor, or on such later date as may be specified in the notice. If the termination relates to all of the Transportation Services, the Agreement shall terminate in its entirety.
- (iii) Either Party, subject to compliance with Section 10.1 herein, may terminate this Agreement if, through no fault of the terminating Party, the other Party fails to perform any of its material obligations in strict accordance with this Agreement or otherwise defaults with respect to any of its material obligations pursuant to this Agreement. A termination pursuant to this clause (iii) shall be effective immediately upon receipt by the other Party of the notice of termination or as of such later date as the notice may specify; provided that nothing in this Agreement shall be deemed or construed to prohibit the other Party from alleging or otherwise asserting that a termination was wrongful.

**Section 11.2 Compensation Following Termination.** Following termination of this Agreement in its entirety, the District's sole and exclusive obligation to compensate the Contractor pursuant to this Agreement shall be to pay the Contractor, in accordance with this Agreement, for the Transportation Services satisfactorily performed prior to the termination. However, the District shall be entitled to offset any and all such compensation payable to the Contractor against amounts that the Contractor owes or allegedly owes to the District or any of the District Agents in connection with this Agreement.

**Section 11.3 No Consequential Damages.** Except as may be expressly provided in this Agreement, neither Party shall be responsible or liable to the other Party in connection with this Agreement for any special, indirect, consequential, remote, punitive, exemplary, or similar damages, regardless of how characterized, regardless of the legal theory underlying such damages, and regardless of whether the other Party or both Parties have been advised of the possibility or potential of such damages. For avoidance of doubt, the foregoing limitations on liability shall not be deemed or construed to apply: (i) to any obligations of a Party to indemnify, defend, and hold-harmless the other Party or its board members, officers, employees, agents, and other representatives; or (ii) in the event of fraud or intentional misconduct.

**Section 11.4 Survival.** The Parties' respective rights and obligations pursuant to this Part 11 shall survive termination of this Agreement.

## **PART 12: GIVING OF NOTICE**

**Section 12.1 General Requirements.** Any and all notices required or permitted to be given pursuant to this Agreement (each a "Notice") must be in writing and must be given or served in accordance with this Part 12.

**Section 12.2 Methods of Delivery.** Each Notice must be delivered via: (i) registered or certified U.S. mail (postage pre-paid and return receipt requested); (ii) FedEx, UPS or other reliable, private delivery service (with name and signature of recipient obtained on electronic or other delivery

receipt); or (iii) electronic mail (i.e., email) transmission (with original of the Notice deposited into the U.S. mail, first-class postage prepaid, within twelve hours after transmission).

**Section 12.3 Persons to Whom Notices Must be Sent.** Notices given to the District must be addressed and delivered to each of the District Representatives as specified in Exhibit A hereto. Notices given to the Contractor must be addressed and delivered to the Contractor Representative as specified in Exhibit A hereto.

**Section 12.4 Changes in Contact Information.** A Party may give notice of each change in its address, person to whom attention should be directed, or email address by giving Notice in accordance with this Part 12.

**Section 12.5 Additional Requirements for Giving Notice by Email.** As an additional condition to sending a Notice by email, the reference (or "re") line must be specified as "NOTICE: AGREEMENT FOR TRANSPORTATION SERVICES." Because email addresses are subject to change more frequently than physical addresses, if a Notice is to be sent by email, unless the sender has actual knowledge of the then-current correct email address of each intended recipient, the sender must call and verify the then-current email address of each intended recipient prior to sending the Notice, or must use some other method of delivering the Notice.

**Section 12.6 Effect of Receipt.** A Notice shall be deemed to have been given or served only upon actual receipt by the addressee. In the case of email, "actual receipt" shall mean delivery to the recipient's email in-box. However, if any Notice (including, without limitation, any Notice sent by email) is delivered after 4:00 p.m. on any business day, or is delivered on any day that is not a business day, the Notice shall be deemed to have been given or served as of 9:00 a.m. on the next subsequent business day.

**Section 12.7 Applicability of Notice Requirements.** The requirements of this Part 12 shall not be deemed or construed to apply to: (i) communications between the District and/or the Contractor necessary for day-to-day administration of this Agreement or performance of the Transportation Services; or (ii) service of process in accordance with any Applicable Law or rule of court.

## **PART 13: MISCELLANEOUS**

**Section 13.1 Fair and Reasonable Interpretations.** Each Party hereby acknowledges and agrees that, prior to execution and delivery of this Agreement, it has received, or had unqualified opportunities to receive, independent legal advice from its legal counsel with respect to the advisability of entering into this Agreement and the meaning of the provisions herein. Therefore, the provisions of this Agreement shall be construed based on their fair and reasonable meaning, and not for or against any Party based on whether such Party or its legal counsel was primarily responsible for drafting this Agreement or any particular provision herein.

**Section 13.2 Headings and Captions.** The headings and captions set forth in this Agreement are for the convenience of the reader only and shall not be deemed or construed to establish, define or limit the meaning of any Part, Section, or other provision herein.

**Section 13.3 Recitals and Exhibits.** Each Recital set forth herein and each Exhibit referenced herein and attached hereto is hereby incorporated as an effective and operative provision of this Agreement. In the event of any conflict between any provision in the main body of this Agreement and any provision in the Exhibits, the provision in the main body of this Agreement shall govern.

**Section 13.4 Interpretation of Time Periods.** Except as expressly provided in this Agreement in any particular case, each reference in this Agreement to a specific number of days or other periods of time shall be construed to mean consecutive days or other periods of time. Unless expressly qualified as business days, each reference in this Agreement to a period of days shall be construed to mean calendar days. For purposes of this Agreement, the term “business day” means any day that is not: (i) a Saturday or Sunday; (ii) an official federal or State of California holiday; or (iii) with respect to the District’s administrative staff, a furlough day mandated by any agency, department, or board of the State of California or by the District Board.

**Section 13.5 Entire Agreement.** This Agreement constitutes the entire understanding and agreement between the Parties pertaining to the performance of the Transportation Services by the Contractor, and any and all prior and contemporaneous agreements, representations and understandings of the Parties relating to such subject matter, whether oral or written, are hereby superseded and replaced.

**Section 13.6 Modifications of Agreement.** This Agreement may be amended or otherwise modified only by means of duly-approved written instrument executed and delivered by both Parties.

**Section 13.7 Waiver.** A waiver by a Party of any provision of this Agreement shall be binding only if the waiver is set forth in writing and has been duly approved and signed by the waiving Party. Unless so specified in the written waiver, a waiver by a Party of any provision of this Agreement shall not constitute a waiver of any other provision(s) herein, similar or not, and shall not be construed as a continuing waiver. Except as waived in accordance with this Section, neither the failure by a Party at any time to require performance of any requirement of this Agreement, nor any forbearance or indulgence of the Party in regard to such requirement, shall in any manner affect the Party’s right at a later time to enforce the same or any other provision of this Agreement.

**Section 13.8 Successors and Assigns.** The Contractor shall not assign this Agreement or any of its rights pursuant to this Agreement, or delegate any of its responsibilities pursuant to this Agreement, without first obtaining the express written consent of the District, which consent the District may grant, deny, and/or condition in its sole discretion. Absent the requisite consent, any attempt by the Contractor to assign this Agreement or any of its rights pursuant to this Agreement, or to delegate any of its responsibilities pursuant to this Agreement, shall be null and void *ab initio*. Subject to the foregoing, this Agreement shall inure to the benefit of, and be binding on, the Parties and their respective successors and assigns.

**Section 13.9 No Third-Party Beneficiaries.** The Parties have entered into this Agreement solely for their own purposes, and this Agreement shall not be deemed or construed to: (i) benefit any third party; (ii) create any right for any third party; or (iii) except as provided by law, provide a basis for any claim, demand, action or other proceeding by any third party.

**Section 13.10 Agreement is Public Record.** Notwithstanding anything in any proposal or any discussions or writings relating hereto: (i) nothing in this Agreement shall be deemed or construed to constitute confidential information; and (ii) this Agreement is a public record which the District may disclose in accordance with California law or otherwise.

***(The remainder of this page intentionally left blank.)***

**PART 14: EXECUTION OF AGREEMENT**

**Section 14.1 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, taken together, shall constitute one and the same instrument. Signature pages may be detached from counterpart originals and combined to physically form one or more copies of this Agreement having original signatures of both Parties.

**Section 14.2 Due Authority.** Each person who has signed this Agreement on behalf of a Party shall be deemed and construed to thereby represent and warrant that he or she has been duly authorized by such Party to sign, and thereby bind such Party to, this Agreement.

**IN WITNESS WHEREOF,** the duly authorized representatives of the Parties have executed this Agreement as evidenced by their signatures below.

**Tustin Unified School District**

**[INSERT CONTRACTOR NAME]**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

Fed. Tax ID No: \_\_\_\_\_

**Board Approved:** \_\_\_\_\_, 2023

**EXHIBIT "A"**  
**CONTACT INFORMATION AND AUTHORIZED REPRESENTATIVES**

**1. Contractor**

Authorized Contractor Representatives (Section 1.3 of main body of this Agreement):

Name (Primary Contact): [Insert Representative's Name]  
Title: [Insert Representative's Title]  
Scope of Authority: Has full authority with respect to administration of this Agreement and the Transportation Services, and is the Contractor's primary contact person for purposes of this Agreement and the Transportation Services.

Name (Secondary Contact): [Insert Representative's Name]  
Title: [Insert Representative's Title]  
Scope of Authority: Has full authority with respect to administration of this Agreement and the Transportation Services, and is the Contractor's secondary contact person for purposes of this Agreement and the Transportation Services in the event the primary contact is unavailable or in other extraordinary circumstances.

Contact Information for purposes of Notices (Section 12.3 of the main body of this Agreement):  
Notices and other communications to the Contractor must be addressed and sent to both of the Contractor representatives identified in the following table.

<u>Send to:</u>	<u>With copy to:</u>
[Insert Company Name]	[Insert Company Name]
Attn: [Insert Contact Person's Name] [Insert Contact Person's Title]	Attn: [Insert Contact Person's Name] [Insert Contact Person's Title]
[Insert Street Address]	[Insert Street Address]
[Insert City, State, Zip Code]	[Insert City, State, Zip Code]
Email: [Insert email address]	Email: [Insert email address]
Telephone: [Insert telephone number]	Telephone: [Insert telephone number]

**2. District**

Authorized District Representatives (Section 1.4 of the main body of this Agreement):

Name (Primary Contact): Salvador Sanchez  
Title: Senior Director, Maintenance & Operations  
Scope of Authority: Has full authority with respect to administration of this Agreement and the Transportation Services, and is the District's primary contact person for purposes of this Agreement and the Transportation Services. Notwithstanding anything to the contrary, no modification to this Agreement shall be valid or

binding on the District unless and until approved or ratified by the District Board.

Name (Secondary Contact): Patricia Mena  
Title: Account Clerk II, Maintenance & Operations  
Scope of Authority: Is the District’s secondary contact person in the event the primary contact is unavailable or in other extraordinary circumstances. Notwithstanding anything to the contrary, no modification to this Agreement shall be valid or binding on the District unless and until approved or ratified by the District Board.

Name (Tertiary Contact): [Insert Representative’s Name]  
Title: [Insert Representative’s Title]  
Scope of Authority: Has full authority with respect to administration of this Agreement and the Transportation Services, and is the District’s tertiary contact person in the event the primary and secondary contacts are unavailable or in other extraordinary circumstances. Notwithstanding anything to the contrary, no modification to this Agreement shall be valid or binding on the District unless and until approved or ratified by the District Board.

*Contact Information for purposes of Notices (Section 12.3 of the main body of this Agreement):*  
Notices and other communications to the District must be addressed and sent to each and all of the District representatives specified in the following table. (Note that the following table continues on the next page.)

Send to: With copies to:

Tustin Unified School District  
Attn: Salvador Sanchez, Senior Director,  
Maintenance & Operations  
1302 Service Road  
Tustin, CA 92780  
Email: [ssanchez@tustin.k12.ca.us](mailto:ssanchez@tustin.k12.ca.us)  
Telephone: (714) 730-7515

Tustin Unified School District  
Attn: [Insert name], Chief Financial Officer  
300 South C Street  
Tustin, CA 92780  
Email: [Insert email address]  
Telephone: (714) 730-7301

Tustin Unified School District  
Attn: Dr. Amy Lambert, Asst. Superintendent,  
Special Education  
300 South C Street  
Tustin, CA 92780  
Email: [alambert@tustin.k12.ca.us](mailto:alambert@tustin.k12.ca.us)  
Telephone: (714) 730-7301



Tustin Unified School District  
Attn: Gloria Olamendi, Director, Special Education  
300 South C Street  
Tustin, CA 92780  
Email: [golamendi@tustin.k12.ca.us](mailto:golamendi@tustin.k12.ca.us)  
Telephone: (714) 730-7301

Tustin Unified School District  
Attn: Tom Rizzuti, Director, Facilities & Planning  
1302 Service Road  
Tustin, CA 92780  
Email: [trizzuti@tustin.k12.ca.us](mailto:trizzuti@tustin.k12.ca.us)  
Telephone: (714) 730-7515

Tustin Unified School District  
Attn: Jose "Pepe" Vasquez, Assistant Director,  
Maintenance & Operations  
1302 Service Road  
Tustin, CA 92780  
Email: [pvazquez@tustin.k12.ca.us](mailto:pvazquez@tustin.k12.ca.us)  
Telephone: (714) 730-7515

Tustin Unified School District  
Attn: Patricia Mena, Account Clerk II, Maintenance  
& Operations  
1302 Service Road  
Tustin, CA 92780  
Email: [pmena@tustin.k12.ca.us](mailto:pmena@tustin.k12.ca.us)  
Telephone: (714) 730-7515

**EXHIBIT "B"**  
**COMPENSATION PAYABLE TO CONTRACTOR**

[Insert tables consistent with those filled out by successful bidder]

**EXHIBIT "C"**  
**CERTIFICATION REGARDING SERVICE PERSONNEL**

**District:** Tustin Unified School District

**Contractor:** [Insert Contractor Name]

**Agreement:** Agreement for Supplemental Transportation Services dated \_\_\_\_\_, 2023

---

The undersigned hereby certifies to the District, subject to penalty for perjury pursuant to the laws of the State of California, that all of the following is true and correct:

- (i) The undersigned is a duly authorized representative of the Contractor identified above on this form and, in that capacity, has executed this certification on behalf of the Contractor;
- (ii) The Contractor has fully complied with the requirements of this Agreement for criminal-history background checks of Service Personnel, including, without limitation, with respect to drivers that the Contractor may consider to be its subcontractors;
- (iii) None of the Service Personnel identified on the Attachment(s) to this certification have any pending criminal proceeding for, or have been convicted of, any violent or serious felony as defined in Subdivision (c) of Education Code Section 45122.1;
- (iv) The Contractor has fully complied with the requirements of this Agreement for determining that all drivers, and all other Service Personnel who will or might have frequent or prolonged exposure to District Passengers, are free of tuberculosis risk factors or infectious tuberculosis.
- (v) Each of the Service Personnel identified on the Attachment(s) to this certification has:
  - (1) submitted to a tuberculosis risk assessment within the 60-day period prior to the scheduled commencement of the Transportation Services and either (a) been found not to have any tuberculosis risk factors, or (b) if such risk factors were identified, was examined as contemplated by Section 49406 and found to be free of infectious tuberculosis; or
  - (2) previously acted in a similar capacity pursuant to any contract with the District or another California public school district and both (a) was certified at such time to be free of tuberculosis risk factors or, alternatively, to be free of infections tuberculosis, and (b) has since then and within the last four years been tested and found to have no infectious tuberculosis.
- (vi) The Contractor shall permit only those persons identified on the Attachment(s) to this certification to provide any of the Transportation Services, or otherwise have frequent or prolonged exposure to any District Passengers.

Representative Name: \_\_\_\_\_

Representative Title: \_\_\_\_\_

Representative Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

**CERTIFICATION REGARDING CONTRACTOR AGENTS – ATTACHMENT SHEET**

**Contractor:** [Insert Contractor Name]

**Instructions**

- (i) For each person, insert all required information (as specified in the table below) in one row of the table.
- (ii) In the “Driver License/ID” column in the table below: (i) specify the California driver’s license or identification number; and (ii) specify the state that issued the driver’s license or identification.
- (iii) In the “Driver” column in the table below, enter “Y” (for yes) or “N” (for no) if the person will be driving any District Passengers.
- (iv) If identifying more than ten Service Personnel: (i) use copies of this Attachment to identify the additional Service Personnel; and (ii) on each such copy, specify the page number and total number of pages where indicated at the bottom of this Attachment.

	Service Personnel Name	Sex	Date of Birth	Height	Weight	Hair Color	Eye Color	Driver License/ID	Driver (y/n)
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									

Page \_\_\_\_\_ of \_\_\_\_\_

**EXHIBIT "D"**  
**INCORPORATED BIDDING CERTIFICATIONS**