MT. DIABLO
UNIFIED SCHOOL DISTRICT

ADDENDUM NO.: **ONE**

DATE: **May 19, 2025**

PROJECT: **RFP #1957 2025 CHARTER BUS SPAB TRANSPORTATION SERVICES**

RFP DUE DATE: **5/22/25 at 10:00 a.m.**

NOTICE TO ALL VENDORS SUBMITTING RFPs FOR THIS WORK:

You are hereby notified of the following changes, clarifications or modifications to the original Contract Documents, Specifications and subsequent Addenda. This Addendum shall supersede the original Contract Documents, and previous Addenda wherein it contradicts the same and shall take precedence over anything to the contrary therein. All other conditions remain unchanged. ***Receipt of this addendum shall be acknowledged by inserting the addendum number and its date on the RFP form.***

CONFORMANCE WITH CONTRACT DOCUMENTS AND SPECIFICATIONS:

All addenda work shall be in strict conformance with the Contract Documents and Specifications as they pertain to work of a similar nature.

REVISIONS/CLARIFICATIONS TO THE RFP DOCUMENTS AND SPECIFICATIONS

This notice responds to the questions received by the Mt. Diablo Unified School District regarding the above RFP.

Q #1	Regarding Cyber Liability Insurance as it relates to this project. Since school spay via Purchase Order (and not a credit card), and since field trips and athletic transportation don't require sensitive information, what is the need for cyber liability insurance?
A #1	Cyber Liability Insurance is applicable if the Contractor will be using, storing, or accessing, the District's private, confidential, or protected information.

Q #2	Please clarify that the insurance requirement for sexual and molestation insurance is $3,000,000 combined single limit for each occurrence and $6,000,000 in the aggregate? Typically those policies are not written in combination with GL policies and so they are purchased and covered separately by our insurance.
A #2	This requirement does not mandate that SAM (Sexual Abuse & Molestation) insurance be included within a GL policy. Vendors may satisfy this requirement through a separate

	SAM policy, provided the coverage limits meet or exceed the stated thresholds. Please ensure that your Certificate of Insurance (COI) clearly reflects the SAM coverage and limits, whether included in a combined policy or issued separately.

Q #3	Why would the general liability insurance limit be higher than the auto insurance limit for a contract like this?
A #3	General Liability has a broader scope and can cover matters that Auto alone cannot.

Q #4	Besides the Appendixes, what else is needed to be signed and returned?
A #4	The RFP response is all Appendix, A-D. **Revised Contact attached to this Addendum**.

Q #5	Is there something specific that gets sent to you directly?
A #5	**A Hardcopy of the Response must be submitted, in its entirety, (attachments accepted) in a sealed envelope with the wording "RFP #1957" marked on the outside before 5/22/25 at 10:00a.m.** (a) Please submit a additional digital copy of the Pricing Spreadsheet (Appendix B) by USB, or email to McClanahanE@mdusd.org, AFTER 5/22/25,at 10:00a.m**.** (b) All documentation of unit pricing or other cost breakdowns as outlined in this RFP must be submitted to support the total RFP price.

Q #6	Are we still having to hand deliver the finished RFP, or can if me sent via email or by Pony Express?
A #6	Yes. We are not accepting electronic, faxed, or digital Responses. Original signature, hardcopies only. The RFP must be submitted, in its entirety, (attachments accepted) in a sealed envelope with the wording "RFP #1957" marked on the outside, and delivered to: **Mt. Diablo Unified School District** **Purchasing & Warehouse Department** **ATTN: RFP 1957** **2326 Bisso Lane** **Concord, CA 94520-4802** RFP Bidders are solely responsible for ensuring their RFP is received by the Mt. Diablo Unified School District in accordance with the solicitation requirements, before the date and time specified in the RFP, and at the place specified. The Mt. Diablo Unified School District shall not be responsible for any delays in mail or by common carriers or or mistaken delivery. RFPs/corrections received after the closing time will not be opened.

Q #7	Page 6, Section 14 states contract extension pricing will be at negotiated rates with a 5% cap while page 17, Section 4.2.8 states extension pricing will be based on CPI with a 2% cap. Please clarify which will govern this RFP.
A #7	Thank you for finding this discrepancy. The maximum cap is 2%.

Q #8	Appendix A, question 1, if we are offering only school buses, the SPAB certificate is not applicable. Please consider adding this to the end of the question, "*(If including SPAB buses in its proposal)*".
A #8	IF a CONTRACTOR submits a bid response which includes school buses only, all school bus drivers are required to have a Class B or Class A drivers' license AND a current School Bus Certificate issued from the California Highway Patrol.

Q #9	Sample Agreement, Article 2.1 we request the district edit this as follows: *2.1 Term of Agreement. The initial term of this Agreement shall be from July 1, 2025 to June 30, 2026. The Parties have ~~District has~~ two (2) opinions exercisable by mutual agreement ~~at its sole discretion~~, to extend the term for a period or periods of up to one (1) year each. The maximum possible term of this Agreement shall be three (3) years to June 30, 2028.*
R #9	The District initiates the extension, and the CONTRACTOR can accept the continuance. We will not be modifying this article. Stands as written.

Q #10	Sample agreement, article 4.2, we request the district edit this as follows because the CPI increase for June is not available until mid-July so we would be unable to submit a request 30 days before the anniversary date of the contract. CPI data for the Bay Area is only published bi-monthly. *4.2 Amount. The breakdown of costs and payment schedule associated with this Agreement are detailed in the attached APPENDIX A ("Pricing Matrix"). All pricing shall be firm for the first full year of the Agreement. The Contractor will be allowed to escalate its billing rates based only on the annual percentage change of the Consumer Price Index ("CPI") for the San Francisco Bay Area for Urban Wage Earners and Clerical Workers using the CPI change for the month of April. at the end of the first full year of the Agreement. The Contractor should request an escalation of rates no later than thirty (30) days before the annual anniversary of the award of the contract. In no event shall the amount of the increase, if granted by the District, exceed two (2) percent annually. The requests should be submitted to the District as required under the notice provisions of Article 13 of this Agreement.*
A #10	Accepted. Please see revised Agreement (Appendix B)

Q #11	Sample agreement, article 9.1, we provide molestation insurance with a separate policy and it is excluded from our general liability policy. We request the District strike this from section 9.1.b since molestation coverage is outlined in section 9.1.c: "Insurance coverage shall not exclude molestation"
A #11	SAM insurance is required. As it might have a separate policy number from General Liability, or any other section, it is to be included in your insurance coverage, therefore this will not be adjusted. If needed multiple Certificates of Insurance (COI) can be provided showing all required insurance, if unable to list on a single COI.

Q #12	Sample agreement, article 14, it appears that the District no longer requires COVID vaccination for students or staff. Will the District remove this article from the RFP?
R #12	Article 14 has been modified and requirement of proof of vaccine documentation, and mandated vaccines have been removed. Revised Contract is attached.

Q #13	Will the District consider changing the time the proposals are due on May 22nd from 10:00 AM to 2:00 PM to allow for more time for overnight delivery?
A #13	The District is not looking to extend. Proposals are due May 22, 2025 at 10:00 a.m.

A = Answer, Q = Question, R = Revision/Clarification to

Elizabeth McClanahan
MDUSD Director of Purchasing & Warehouse

AGREEMENT
BETWEEN MT. DIABLO UNIFIED SCHOOL DISTRICT AND

_____

This Agreement (the "Agreement") made as of the date specified in Article 3 in the City Concord and County of Contra Costa, State of California, by and between _____ _____("Contractor") and the Mt. Diablo Unified School District ("District").

RECITALS

WHEREAS, District desires to retain Contractor to provide end-to-end transportation services for students' field trips, excursions and sporting events;

WHEREAS, this Agreement was competitively procured as required by the California Public Contract Code ("PCC") Section 20111 et. seq. through a Request for Proposal ("RFP") number **RFP #1957** issued on _____**, 2025** from which Contractor was selected as one of the five top ranked respondents pursuant to the RFP;

WHEREAS, Contractor represents itself able and, for a consideration, willing to provide the services required by the District as described in this Agreement;

WHEREAS, the Board of Education approved the award of this Agreement on _____**, 2025** by Education Board Docket, Item # _____;

NOW, THEREFORE, the Parties agree as follows:

ARTICLE 1
DEFINITIONS AND OTHER TERMS

The following definitions apply to this Agreement.

1.1. "Agreement." The term Agreement refers to (a) this Agreement and (b) any and all appendices, exhibits, other schedules attached hereto and (c) any and all statutes, ordinances, regulations or other documents expressly incorporated by reference herein; and (d) any and all amendments, modifications, or supplements hereto.

1.2. "Contractor." The term Contractor shall mean _____

1.3. "District" or "MDUSD." The terms District or MDUSD shall mean the Mt. Diablo Unified School District.

1.4. "Party" or "Parties." The terms Party or Parties shall mean the District and Contractor either collectively or individually.

ARTICLE 2
TERM AND EFFECTIVE DATE

2.1 **Term of Agreement.** The initial term of this Agreement shall be from July 1, 2025 to June 30, 2026. The District has two (2) options exercisable at its sole discretion, to extend the term for a period or periods of up to one (1) year each. The maximum possible term of this Agreement shall be three (3) years, to June 30, 2028.

2.2 **Effective Date of Agreement**. This Agreement shall become effective only upon the proper execution by the Parties, approval by the District's Board of Education in an open, noticed meeting, and certification by the Chief Financial Officer as to the availability of funds.

ARTICLE 3
SCOPE OF WORK

3.1 **Services Requested.** Transportation services requested under this RFP will be performed on an as-needed basis for Mt. Diablo Unified School District. The Scope of Work serves as a general guideline for selecting contractors to provide transportation services. The District may assign transportation tasks during standard business hours (8:00 AM to 5:00 PM), as well as evenings and weekends, for events including but not limited to student field trips, excursions, and sporting events. Trips may vary in size, with passenger counts ranging from approximately 15 to over 250.

The District's intent is to establish an approved list of SPAB (School Pupil Activity Bus) providers for student transportation from District school sites and school programs. The Transportation Department is the only authorized contact for the District for quotes and trip planning. Contractors shall not provide quotes or reserve services in response to inquiries from District school site employees.

The Transportation Department will contact the selected contractor for each transportation request. The contractor must acknowledge the request within two (2) business days from the date of the order using the contractor's standard confirmation form.

3.2 **Protocol for Scheduling Services**. After contracts are awarded, the Mt. Diablo Unified School District Transportation Department will maintain a list of approved contractors, including their rates and cancellation policies. Any school site or department requiring transportation services must contact the Trip Scheduler at the District's Transportation Department with the necessary trip details, such as time, duration, and passenger count.

ONLY ORDERS, VERBAL OR WRITTEN, PLACED BY THE TRANSPORTATION DEPARTMENT WILL BE ACKNOWLEDGED AND AUTHORIZED BY THE DISTRICT.

The Transportation Trip Scheduler will then contact the appropriate contractor. Contractors must respond within two (2) business days of the reservation request with the following:

- Confirmation of ability to provide the requested service;
- Type and seating capacity of the vehicle;
- Total cost, including any additional or incidental charges;
- Cancellation policy, as submitted in Appendix B and C
    - No cancellation charges shall be incurred for cancellations made twenty-one (21) days or more prior to the trip.
- Contact information for customer service must be provided and available during the trip to address any service issues, including delays, quality concerns, or breakdowns.

For short-notice requests, particularly during athletic playoffs or similar events, the District may require services within 24 hours. In such cases, the contractor must respond within three (3) hours of receiving the request. The District recognizes that short-notice fulfillment may not always be possible and will consider higher pricing on a case-by-case basis.

The contractor is responsible for tracking all transportation services provided and must invoice the Mt. Diablo Unified School District Transportation Department directly within ten (10) working days following the service date. By submitting an invoice, the contractor certifies that services were provided in compliance with contractual obligations.

ARTICLE 4
PAYMENTS

4.1 **Maximum Compensation.** Compensation to Contractor shall not exceed _____. This amount is the maximum amount of compensation due Contractor and not a guarantee of total payment to Contractor as this is an as-needed Agreement and Contractor is paid in arrears for services rendered.

4.2 **Amount**. The breakdown of costs and payment schedule associated with this Agreement are detailed in the attached APPENDIX A ("Pricing Matrix"). All pricing shall be firm for the first full year of the Agreement. The Contractor will be allowed to escalate its billing rates based only on the annual percentage change of the Consumer Price Index ("CPI") for the San Francisco Bay Area for Urban Wage Earners and Clerical Workers using the CPI change for the month of April. at the end of the first full year of the Agreement. The Contractor should request an escalation of rates no later than thirty (30) days before the annual anniversary of the award of the contract. In no event shall the amount of the increase, if granted by the District, exceed two (2) percent annually. The requests should be submitted to the District as required under the notice provisions of Article 13 of this Agreement.

All requests for escalation of rates should include evidence of the change in the CPI for the San Francisco Bay Area for Urban Wage Earners and Clerical Workers. Failure to request an escalation of rates no later than thirty (30) days as required or to provide evidence of the basis of the request may result in a denial of the request. The District will review all requests for escalation of rates within thirty (30) days of receipt and notify the Contractor of either an

approval or denial. If approved, the new rates will become effective on the anniversary date of the contract or later. In no event will the start of the new rates be backdated unless it can be shown that there was a delay on the part of the District in reviewing the request for escalation of rates

4.3 **Budget and Fiscal Provisions**. This Agreement is subject to the budget and fiscal policies, regulations and practices of the District, and approval and appropriation of funds for this Agreement. The District's obligation hereunder shall not at any time exceed the amount herein stated. Except as may be provided by District ordinances governing emergency procedures, officers and employees of the District are not authorized to request, and District is not required to reimburse the Contractor for commodities or services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the District are not authorized to offer or promise, nor is the District required to honor any offered or promised additional funding in excess of the maximum amount of funding stated herein.

4.4 **Risk of Non-Appropriation for Funds.** If funds are appropriated for only a portion of a fiscal year, this Agreement will terminate without penalty at the end of the period for which the funds are appropriated. Contractor's assumption of the risk of non-appropriation is part of the consideration for this Agreement.

4.5 Disallowance.

a. If Contractor claims or receives payment from the District for a service that is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to the District upon the District's request. At its option, the District may offset the amount disallowed from any payment due or that may become due to Contractor under this Agreement.

b. By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal or state programs. Contractor acknowledges that this certification of eligibility to receive state or federal funds is a material term of this Agreement.

ARTICLE 5
AUDITS; NOTICE OF CHANGES
PENALTIES FOR FALSE CLAIMS

a. **Inspection and Audit**. Contractor shall make available to District, its employees and authorized representatives during regular business hours, all files, records, books, invoices, documents, and other data relating to this Agreement. Contractor shall permit District, its employees, and authorized representatives to inspect, audit, examine and make excerpts and transcripts from any of the foregoing. To the extent any of the foregoing are not located within ten (10) miles of the geographic boundaries of District, Contractor shall make them available, within forty-eight (48) hours after any request by District within such physical boundaries or

within ten (10) miles thereof. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five (5) years after final payment under this Agreement or until final audit has been resolved, whichever is later.

b. **Notification of Changes in Circumstances**. Contractor shall notify District immediately of any change of circumstances that would cause any of the representations and warranties contained in Article 7 to be false or misleading at any time during the term of this Agreement.

c. **Submitting False Claims; Monetary Penalties**. Pursuant to Government Code §12650 et. seq., any person, including a contractor or subcontractor who submits a false claim, shall be liable to the District for three times the amount of damages which the District sustains because of the false claim. A person who commits a false claim act shall also be liable to the District for the costs of a civil action brought to recover any of those penalties or damages, and may be liable to the District for a civil penalty of up to ten thousand dollars ($10,000) for each false claim. A person will be deemed to have submitted a false claim to the District if the person:

i. knowingly presents or causes to be presented to an officer or employee of the District, a false claim for payment of approval;
ii. knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the District;
iii. conspires to defraud the District by getting a false claim allowed or paid by the District;
iv. has possession, custody, or control of public property or money used or to be used by the District and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate of receipt;
v. is authorized to make or deliver a document certifying receipt of property used of to be used by the District and knowingly makes or delivers a receipt that falsely represents the property used or to be used;
vi. knowingly buys or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property;
vii. knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the District; or
viii. is a beneficiary of an inadvertent submission of a false claim to the District, subsequently discovers the falsity of the claim and fails to disclose the false claim to the District within a reasonable time after discovery of the false claim.

ARTICLE 6
TAXES

6.1 **Contractor to Pay All Taxes**. Except for any applicable California sales and use taxes, Contractor shall pay to the appropriate governmental authority, as and when due, any and all taxes, fees, assessments or other governmental charges, including possessory interest taxes levied upon or in connection with this Agreement or any of the activities contemplated by this Agreement.

6.2 **Use of District Real Property**. If at any time under this Agreement Contractor obtains any right to the possession, occupancy or use of District real property for private gain, the following provisions shall apply:

a. Contractor, on behalf of itself and any subcontractors, successors and assigns, recognizes and understands that this Agreement may create a possessory interest subject to property taxation and Contractor, and any subcontractor, successor or assign, may be subject to the payment of such taxes.

b. Contractor, on behalf of itself and any subcontractors, successors and assigns, further recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created hereunder. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the District to the County Assessor the information required by Revenue and Taxation Code Section 480.5, as amended from time to time, and any successor provision.

c. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change or ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax Code Section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

d. Contractor shall provide such other information as may be requested by District to enable District to comply with any reporting requirements under applicable law with respect to possessory interests.

ARTICLE 7
REPRESENTATIONS AND WARRANTIES

Contractor represents and warrants each of the following as of the date of this Agreement and at all times throughout the term of this Agreement:

7.1 **Valid Existence; Licenses and Permits**. Contractor is a duly formed legal entity, validly existing and in good standing under the laws of the jurisdiction of its formation. Contractor is qualified to do business in the State of California and has obtained all necessary licenses, permits, approvals and authorizations necessary or proper in order to perform Contractor's obligations hereunder.

7.2 **Authorization; Enforceability**. Contractor has duly authorized by all necessary action, the execution, delivery and performance of this Agreement. Contractor has duly executed

and delivered this Agreement and this Agreement constitutes a legal, valid and binding obligation of Contractor, enforceable against Contractor in accordance with the terms hereof.

7.3 **No Misstatements**. No document furnished or to be furnished by Contractor to District in connection with this Agreement or any other document relating to any of the foregoing, contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

ARTICLE 8
INDEMNIFICATION AND GENERAL LIABILITY

8.1 **Indemnification**. Contractor shall indemnify, protect, defend and hold harmless the District and its officers, agents, and employees from and against any and all losses arising from, in connection with or caused by: (a) a material breach of this Agreement by Contractor; (b) a material breach of any representation or warranty of Contractor contained in this Agreement; (c) any personal injury caused, directly by any act or omission of Contractor or its employees, subcontractors or agents; (d) any property damage caused, directly by any act or omission of Contractor or its employees, subcontractors or agents; (e) the use, misuse or failure of any equipment or facility used by Contractor, or by any of its employees, subcontractors or agents, regardless of whether such equipment or facility is furnished, rented or loaned to Contractor by the District; (f) any tax, fee, assessment or other charge for which Contractor is responsible under Article 6; or (g) any infringement of patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person in consequence of the use by the District of any goods or services furnished to the District in connection with this Agreement.

8.2 **Duty to Defend; Notice of Loss**. Contractor acknowledges and agrees that its obligation to defend the District under Article 8.1: (a) is an immediate obligation, independent of its other obligations hereunder; (b) applies to any loss which actually or potentially falls within the scope of Article 8.1, regardless of whether the allegations asserted in connection with such loss are or may be groundless, false or fraudulent; and (c) arises at the time the Loss is tendered to Contractor by the District and continues at all times thereafter. The District shall give Contractor prompt notice of any loss under Article 8.1 and Contractor shall have the right to defend, settle and compromise any such loss, provided, however, that no delay on the part of District in notifying Contractor shall relieve Contractor from any obligation hereunder unless (and then solely to the extent) (i) such failure materially impairs Contractor's ability to defend such loss; (ii) subject to Contractor's obligation to reimburse District's reasonable costs of same, District agrees to assist Contractor in the defense of the loss by providing information and witnesses, as needed to the extent there is no material conflict of interest; and (iii) Contractor has sole control over resolution of the loss, however, that Contractor will not consent to the entry of any judgment or enter into any settlement with respect to the loss without the prior written consent of District, which consent will not be unreasonably withheld, unless the judgment or proposed settlement involves only the payment of money damages by Contractor and does not impose any obligation upon District and Contractor obtains the full and complete release of

District; District shall have the right to have any suit or proceeding monitored by counsel of District's choice and at its expense. If Contractor does not assume the defense of a Loss as required above, (i) District may defend against, and consent to the entry of any judgment or enter into any settlement with respect to the claim in any manner it reasonably may deem appropriate, and District need not consult with, or obtain any consent from Contractor, and (ii) Contractor will remain responsible for any losses District may suffer resulting from, arising out of, relating to, in the nature of, or caused by the claim to the fullest extent provided in this section.

8.3 **LIMITATION ON LIABILITY OF DISTRICT**. DISTRICT'S OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENTS REQUIRED UNDER ARTICLE 4. NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THIS AGREEMENT OR ANY OTHER DOCUMENT OR COMMUNICATION RELATING TO THIS AGREEMENT, IN NO EVENT SHALL DISTRICT BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING LOST PROFITS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY SERVICES OR GOODS FURNISHED IN CONNECTION WITH THIS AGREEMENT.

ARTICLE 9
INSURANCE

9.1 **Insurance**. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force during the full term of the Agreement, insurance in the following amounts and coverages:

a. Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than One Millions Dollars ($1,000,000) each accident, injury, or illness; and

b. Commercial General Liability Insurance with limits not less than Three Million Dollars ($3,000,000) each occurrence and Six Million Dollars (6,000,000) in the aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations, Employers Liability, and Independent Service Providers; Insurance coverage shall not exclude molestation; and

c. Sexual Abuse and Molestation Insurance with limits not less than $2,000,000 per occurrence or claim and $4,000,000 in the aggregate; and

d. Commercial Automobile Liability Insurance with limits not less than Two Million Dollars ($2,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable; Proof of coverage shall be provided to the District on or before the effective date of the Contract; and

d. Professional liability insurance, applicable to Contractor's profession, with limits not less than $1,000,000 each claim and $2,000,000 aggregate with respect to

negligent acts, errors or omissions in connection with the Services; and Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

e. Name as Additional Insured the District, its Officers, Agents, and Employees only for claims arising out of the acts or omissions of Contractor in the performance of the services under the contract.

f. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

9.2 All policies shall be endorsed to provide thirty (30) days' advance written notice to the District of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the District address set forth in Article 13, entitled "Notices and Other Communications."

9.3 Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

9.4 Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

9.5 Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the District receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the District may, at its sole discretion, terminate this Agreement effective on the date of such lapse of insurance.

9.6 Before commencing any Services, Contractor shall furnish to District certificates of insurance and all required policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to District, in form evidencing all coverages set forth above. Approval of the insurance by District shall not relieve or decrease Contractor's liability hereunder.

9.7 The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the District for all work performed by the Contractor, its employees, agents and subcontractors.

9.8 If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the District, its officers, agents and employees and the Contractor as additional insureds.

ARTICLE 10
EVENTS OF DEFAULT BY CONTRACTOR; REMEDIES

10.1 **Events of Default**. The occurrence of any one or more of the following events shall constitute an "Event of Default" by Contractor under this Agreement:

a. **False Statement**. Any statement, representation or warranty contained in this Agreement or in any other document submitted to District under this Agreement is found by District to be false or misleading.

b. **Failure to Perform Other Covenants; Breach of Warranty**. Contractor fails to perform or breaches any warranty, agreement, provision, or covenant of this Agreement to be performed or observed by Contractor as and when performance or observance is due.

c. **Voluntary Insolvency**. Contractor (i) is generally not paying its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee, or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (v) takes action for the purpose of any of the foregoing.

d. **Involuntary Insolvency**. Without consent by Contractor, a court or government authority enters an order, and such order is not vacated within fifteen (15) days, (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

10.2 **Remedies upon Event of Default**. Upon and during the continuance of an Event of Default by Contractor hereto, the District may do any of the following, individually or in combination with any other remedy:

a. **Termination**. District may terminate this Agreement upon ten (10) days written notice. Such termination shall not waive any rights or remedies of District hereunder.

b. **Offset**. District may offset the amount of any outstanding liability of Contractor against any funds otherwise due and owing hereunder or any other agreement with Contractor.

c. **Right to Cure**. The District may cure the default by the Contractor. All amounts expended by the District in effecting such cure shall be deemed losses hereunder and shall accrue interest from the date of incidence at the maximum rate permitted by law.

d. **Legal Action**. District may take whatever action at law or in equity necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of Contractor under this Agreement.

10.3 **Remedies Nonexclusive**. Each of the remedies provided for in this Article 10 may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations, including the right to bring suit for damages. The remedies contained herein are in addition to all other remedies available to District at law or in equity by statute or otherwise and the exercise of any such remedy shall not preclude or in any way be deemed to waive any other remedy.

ARTICLE 11
DISCLOSURE OF INFORMATION AND DOCUMENTS

11.1 **Proprietary or Confidential Information of District**. Contractor understands and acknowledges that in the performance of this Agreement or in contemplation thereof, Contractor may have access to private or confidential information that may be owned or controlled by District and that such information may contain proprietary or confidential information, the disclosure of which to third parties may be damaging to District. Contractor agrees that all information disclosed by District to Contractor shall be held in confidence and used only in the performance of this Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent business person would use to protect its own proprietary data.

11.2 **Public Records Act**. Contractor acknowledges and agrees that this Agreement is subject to the provisions of the California Public Records Act which provides that subject to certain exceptions, public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record.

11.3 Independent Contractor; Payment of Employment Taxes and Other Expenses.

11.3.1 **Independent Contractor**. For the purposes of this Article, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by District under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the District at any time. Contractor or any agent or employee of Contractor shall not have employee status with District, nor be entitled to participate in any plans, arrangements, or distributions by District pertaining to or in connection with any retirement, health or other benefits that District may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law,

including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between District and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from District shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. District does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to District, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should District determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, District shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if District believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, District shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

11.3.2 **Payment of Employment Taxes and Other Expenses**. Should District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). District shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for District, upon notification of such fact by District, Contractor shall promptly remit such amount due or arrange with District to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this paragraph shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of District. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless, District and its officers, agents and employees from, and if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees arising from this section.

ARTICLE 12
ASSIGNMENTS

12.1 **No Assignment**. Neither Contractor nor District shall, either directly or indirectly, assign, transfer, hypothecate, sublet or delegate all or any portion of this Agreement or any of its rights, duties or obligations hereunder without the prior written consent of the other Party, which shall not be unreasonably withheld. This Agreement shall not, nor shall any interest herein, be assignable as to the interest of Contractor involuntarily or by operation of law without the prior written consent of District. A change of ownership or control of Contractor or a sale or

transfer of substantially all of the assets of Contractor shall be deemed an assignment for purposes of this Agreement.

12.2 **No Public or Private Offerings**. Without limiting the scope of Article 12.1, Contractor shall not effect a private or public offering of certificates of participation, municipal securities or other debt instruments representing fractionalized interest in this Agreement without first obtaining the written consent of District, as such consent shall be approved as to form by District's Attorney. District shall have the right to require Contractor to satisfy any conditions District imposes before it consents to any offering of any such certificates, securities or instruments, including approval by District's Board of Education.

12.3 **Agreement Made in Violation of this Article**. Any agreement made in violation of Article 12.1 or 12.2 shall confer no rights on any Person and shall automatically be null and void.

12.4 **Assignor Retains Responsibility**. No assignment or transfer pursuant to this Article 12 shall relieve the assigning Party of liability for the performance by any assignee or transferee of all of the covenants, terms and conditions contained in this Agreement.

ARTICLE 13
NOTICES AND OTHER COMMUNICATIONS

13.1 **Requirements**. Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications which may affect either Party's performance hereunder shall be in writing, shall be addressed to the person and address set forth below and shall be (a) deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, (b) hand delivered or (c) sent via electronic mail with a read receipt request Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party.

Notices to the District:

Mt. Diablo Unified School District
Cristian Lepe, Director
Transportation Department
1490 Gasoline Alley
Concord, CA 94520
lepec@mdusd.org
(925) 825-7440 x3713

Notices to the Contractor

_____

_____

_____

13.2 **Notice to Director of Procurement**. Whenever Contractor delivers any notices required under Article 13.1 above, it shall also send a copy of that notice to the Director of Procurement at:

Mt. Diablo Unified School District
Elizabeth McClanahan, Director
Purchasing & Warehouse
2326 Bisso Lane
Concord, CA 94520

13.3 **Effective Date**. All communications that must be in writing pursuant to Article 13.1 shall become effective on the date of receipt. Such date of receipt shall be determined by: (a) if mailed, the return receipt, completed by the U.S. Postal Service; (b) if sent via hand delivery, a receipt executed by a duly authorized agent of the Party to whom the notice was sent; or (c) if sent by electronic mail, the date on which the communication was read by the recipient as indicated on the read receipt.

13.4 **Change of Address**. From time to time any Party hereto may designate a new address for purposes of this Article 13 by notice to the other Party.

ARTICLE 14
COMPLIANCE

14.1 COVID-19 Health & Safety Requirements for Contractors

a. If Contractor, its employees and/or sub-Contractors ("Contractor Parties") will be entering a District school site or facility in connection with performance of services under this Agreement such that Contractor Parties will be in contact with District staff, contractors, or students, then Contractor shall at all times during the duration of the Agreement maintain compliance with the Covid-19 certification requirements as set forth herein.

b. Contractor is encouraged to follow current public health guidelines and best practices regarding communicable disease prevention. The District no longer requires documentation of COVID-19 vaccination or testing. However, Contractor shall remain responsible for ensuring that all Contractor Parties comply with applicable federal, state, and local health and safety regulations when entering District school sites or facilities. Contractor agrees to cooperate with the District in the event of a public health directive or emergency and shall take appropriate precautions as requested by the District.

c. All costs to comply with the Covid-19 certification requirements are the Contractor's responsibility.

d. Contractor shall indemnify, defend and hold harmless the District and its officers, directors, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from any failure to comply with these Covid-19 certification requirements.

14.2 Criminal Background Check/Subsequent Arrest Notification Requests

a. Criminal Background Check

1) Throughout the term of this Agreement, if Contractor or any of its employees, agents or volunteers that Contractor hires or assigns, will have more than limited contact with MDUSD students, Contractor is required to comply with the criminal background check provisions of Education Code Section 45125.1. Contractor must conduct criminal background checks through the California Department of Justice (CDOJ), including both CDOJ and Federal Bureau of Investigation (FBI) background checks, and must obtain subsequent arrest notification (as below), for all Contractor employees, agents, and volunteers who will have more than limited contact with District students pursuant to this Agreement.

2) Contractor certifies that no Contractor employee, agent or volunteer who has been convicted of a serious or violent felony as defined by Education Code Section 45125.1 (citing Education Code Section 45122.1), a sexual offense as defined by Education Code Section 44010, a controlled substance offense as defined by Education Code Section 44011, or any other offense that renders Contractor's proximity to children or services to the District inappropriate, shall have contact with District students under this Agreement. This prohibition does not apply to an employee, agent or volunteer who has obtained a certificate of rehabilitation and pardon pursuant to California Penal Code Section 4852.01 et seq. for a serious or violent felony listed under Education Code Section 45122.1.

3) It is the Contractor's sole responsibility to comply with the CDOJ fingerprint and criminal background investigation requirements and maintain compliance throughout the duration of this Agreement.

4) The District will not be responsible for the costs of the criminal background checks.

5) Contractor's employees, agents or volunteers who will have no contact or only limited contact with students are not required to meet criminal background check and subsequent arrest notification requirements.

6) If Contractor asserts that all of its employees, agents or volunteers will have no contact or only limited contact with District students, the District Administrator supervising this Agreement will be required to affirm that Contractor has correctly disclosed the level of student contact associated with the services provided under this Agreement. The District's determination shall control.

b. Subsequent Arrest Notification.

1) In addition to the initial criminal background check, Contractor will obtain from CDOJ subsequent arrest notification to monitor future arrests of employees, agents and volunteers who will have more than limited contact with District students pursuant to this Agreement. District shall not be responsible for the costs associated with the subsequent arrest notifications.

2) Upon receipt of notice that any of its employees, agents, or volunteers

who will have more than limited contact with District students pursuant to this Agreement has been arrested or convicted of a serious or violent felony as defined by Education Code Section 45125.1 (citing Education Code Section 45122.1), a sexual offense as defined by Education Code Section 44010, or a controlled substance offense as defined by Education Code Section 44011, or any other offense that renders Contractor's proximity to children or services to the District inappropriate Contractor will immediately prohibit such employee, agent, or volunteer from having any contact with District students pursuant to this Agreement, and Contractor will immediately notify the District of such arrest.

3) Without limiting any other available legal remedies, failure by Contractor to comply with this Section may result in termination of this Agreement at the District's sole discretion.

c. Contractor certifies that it will comply with all CDOJ fingerprint and criminal background investigation requirements of Education Code section 45125.1 et seq., and maintain compliance throughout the duration of this Agreement with MDUSD.

d. Evidence of compliance with these requirements shall be immediately available to the District upon request or audit.

14.3 <u>Tuberculosis Screening Requirement</u>.

a. California law requires that school consultants working with students be free of infectious tuberculosis (TB).

b. If Contractor, its employees and/or sub-Contractors ("Contractor Parties") shall or may be on a District school site and have contact with District students three or more times per month during the term of this Agreement, then Contractor shall at all times during the duration of the Agreement maintain compliance with the tuberculosis ("TB") certification requirements as set forth herein.

c. Contractor shall maintain on file documents confirming that Contractor Parties received a TB test or TB assessment that complies with the requirements of California Education Code section 49406. These documents shall be regularly maintained and updated by Contractor and shall be available to District upon request or audit. Contractor further agrees and acknowledges that all new personnel hired after the Effective Date of this Agreement are subject to the TB certification requirements and shall be prohibited from having any contact with District students until the TB certification requirements have been satisfied.

d. All costs to comply with the TB certification requirements are the Contractor's responsibility.

e. Contractor shall indemnify, defend and hold harmless the District and its officers, directors, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from any failure to comply with these TB certification requirements.

f. Evidence of compliance with these requirements shall be immediately available to the District upon request or audit.

14.4 <u>California State Teachers Retirement Services – Postretirement Earnings</u>

Limit.

a. A school district is required to report post-retirement earnings to CalSTRS for retired members who perform creditable service whether the retired member was compensated as an employee of the district, independent contractor or employee of a third party.

b. When a retired member's earnings exceed the fiscal year limitation, their retirement benefit will be reduced by the amount earned over the annual limit.

c. The amount reduced may be equal to their monthly retirement benefit payable but shall not exceed the annual retirement benefit payable to the member.

d. Contractor certifies that it is cognizant and fully informed of regulations regarding Postretirement Earnings Limits applicable to retirees from California State Teachers Retirement Services (CalSTRS). (California Education Code Sections 22714, 24114, 24116, 24214, 24214.5 and 24215.)

e. Contractor shall inform the District if owner and/or their employees is a retired member of CalSTRS before receiving payment for services under this Agreement, and all post-retirement earnings shall be reported to CalSTRS.

f. Contractor shall indemnify, defend (by counsel reasonably acceptable to the District) and hold harmless the District and its officers, directors, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from any failure to adhere to CalSTRS regulations applicable to retirees Postretirement Earnings Limit.

14.5 Conflict of Financial Interest.

a. It shall be Contractor's responsibility to know, and comply with, all requirements of California law pertaining to Conflicts of Financial Interest in contracting with public agencies. It is the obligation of the Contractor to determine whether or not participation in a contract may constitute a conflict of interest. While the District staff maintains records regarding the award and execution of contracts, it does not have access to specific information concerning which entities, partners, subcontractors or team members perform specific work on these contracts. A conflict of interest or an unfair advantage may exist without any knowledge of the District. The determination of the potential for a conflict must be made by the Contractor. Contractor is responsible to notify the District immediately if it finds that a potential conflict may exist.

b. Contractor certifies that it has read, understood and will comply with conflict of interest laws and regulations, set-forth in Board Rule and Procedure 9270 / Conflict of Interest and the Appendix to Board Rule and Procedure 9270 / Conflict of Interest.

c. Contractor certifies that it is familiar with the provisions of set-forth in Board Rule and Procedure 9270 / Conflict of Interest and the Appendix to Board Rule and Procedure 9270; certifies that it does not know of any facts that constitute a violation of such provisions; and agrees to promptly notify the District if it becomes aware of any such facts during the term of this Agreement. Please refer to the following links for the complete text of Board Rule and Procedure 9270 and Appendix to Board Rule and Procedure 9270, and can also be found on the District website, www.mdusd.org, under Board Policies:

- Board Policy 9270: Conflict of Interest
- Board Policy 9270-E(1):Conflict of Interest Appendix

14.6 **Nondiscrimination**. The District is committed to providing equal opportunity for all individuals in education. Contractor understands and agrees that in providing services to the District, it is Contractor's obligation to comply with Board Policy 0410 / Nondiscrimination in District Programs and Activities, which requires that all District programs, activities, and practices be free from discrimination based on race, color, ancestry, national origin, ethnic group identification, age, religion, marital or parental status, physical or mental disability, sex, sexual orientation, gender, gender identity or expression, or genetic information; the perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics. To the extent that the services Contractor will provide to the District under this Agreement include the provision of services to students, Contractor further understands and agrees that, in providing such services to the District, Contractor shall comply with Board Policy 6141 / Curriculum Development and Evaluation, which recognizes that the District's curriculum may sometimes include instruction related to controversial issues that may arouse strong reactions based on personal values and beliefs, political philosophy, culture, religion, or other influences. The services provided by Contractor shall not reflect adversely upon persons because of their race, color, ancestry, national origin, ethnic group identification, age, religion, marital or parental status, physical or mental disability, sex, sexual orientation, gender, gender identity or expression, or genetic information; the perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics. By signing this Agreement, Contractor certifies that its programs, activities, and practices are free from discrimination and that it shall strictly adhere to and comply with District policies. Please refer to the following links for the complete text of Board Policy 0410 and Board Policy 6141:

- Board Policy 0410: Nondiscrimination In District Programs and Activities
- Board Policy 6141: Curriculum Development and Evaluation

14.7 **Compliance with Laws and Regulations**. Contractor shall keep itself fully informed of the applicable federal, state and local laws, regulations and orders affecting the performance of, or necessary to ensure the safe and appropriate performance of, this Agreement, and shall at all times comply with such laws, regulations, and orders as they may be amended from time to time.

14.8 **Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of both Parties, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

14.9 **Compliance with Americans with Disabilities Act.** Contractor acknowledges that, pursuant to the Americans with Disabilities Act ("ADA"), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor or subcontractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation including without limitation Section 504 of the Rehabilitation Act. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agree that any violation of this prohibition on the part of Contractor, its agents or assigns will constitute a material breach of this Agreement.

ARTICLE 15
MISCELLANEOUS

15.1 **No Waiver**. No waiver by either Party of any default or breach of this Agreement by the other Party shall be implied from any failure to take action on account of such default if such default persists or is repeated. No express waiver by either Party shall affect any default other than the default specified in the waiver and shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval of any action requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

15.2 **Administrative Remedy for Agreement Interpretation**. Should any question arise as to the meaning or intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the District's Director of Procurement, who shall decide the true meaning and intent of the Agreement. Such decision shall be the District's final administrative determination but in no way shall limit a Party's right to seek any other remedy at law or equity.

15.3 **Governing Law; Venue**. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, without regard to its conflict of laws principles. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in Contra Costa County.

15.4 **Force Majeure.** The parties agree that neither shall be liable to the other under this Agreement as a result of any delay, failure or interruption in services directly caused by an act of God or public enemy; acts of civil or military authorities; catastrophes such as an earthquake, epidemic, pandemic, viral or communicable disease outbreak; quarantines; disruption of supply chains, transportation systems, or national emergency, that is beyond the reasonable control of the Party and which renders impossible the performance of contractual obligations, either totally or in part (a "Force Majeure Event"), excluding in all cases claims of financial hardship, and such nonperformance will be excused and will not be deemed a default hereunder or a ground for termination of the Agreement, provided that as soon as reasonably possible the affected Party (1) provides the other party with notice of such Force Majeure Event,
(2) provides detailed documentation establishing that such Force Majeure Event was beyond the Party's reasonable control and not due to any fault or negligence on its part, and (3) works diligently to restore services as soon as reasonably possible. In no event shall any work stoppage, strike or labor dispute at a District or Contractor site, or by District or Contractor personnel, constitute a Force Majeure Event under this Agreement. In no event shall District be liable to Contractor for payment for services that cannot be and are not provided as a result of a Force Majeure Event. In no event shall District be liable to Contractor for payment for services that cannot be and are not provided as a result of a Force Majeure Event.

15.5 **Headings**. All article and section headings and captions contained in this Agreement are for reference only and shall not be considered in construing this

Agreement.

15.6 **Entire Agreement**. This Agreement sets forth the entire Agreement between the Parties, and supersedes all other oral or written provisions, other than any express warranty contained in any written materials (including any bid or proposal documents) delivered to District in connection herewith.

15.7 **Signatory Authority**. Upon request of District, Contractor shall deliver to District a copy of the corporate resolution(s) authorizing the execution, delivery and performance of this Agreement, certified as true, accurate and complete by the secretary or assistant secretary of Contractor.

15.8 **Time**. Time is of the essence in this Agreement.

15.9 **Further Assurances**. From and after the date of this Agreement, Contractor agrees to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the transactions contemplated by this Agreement and to carry out the purpose of this Agreement in accordance with this Agreement.

15.10 **Severability**. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

15.11 **Successors; No Third-Party Beneficiaries**. The terms of this Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any Person (other than the Parties hereto and their respective successors and assigns and, in the case of Article 9, the Indemnification and General Liability) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

15.12 **Use of Name; Marketing.** Excluding a simple statement or acknowledgement that Contractor has a written agreement with the District, Contractor will not use the name, marks or logos of the District in any planned advertisement, press release, or other planned publicity or marketing materials, in any form or media, without the prior written approval of the District. Notwithstanding the foregoing provisions of this Section, nothing in this Section shall infringe upon the First Amendment rights of either Party.

15.13 **Waiver of Personal Liability**. No member of District's Board of Education nor any elected official, officer, agent or employee of District shall be individually or personally liable for the Payments or any other payments coming due hereunder or be subject to any personal liability or accountability by reason of this Agreement.

15.14 **Survival of Terms**. The obligations of Contractor and the terms of the following

provisions of this Agreement shall survive and continue following expiration or termination of this Agreement: Articles 5.1 and 5.3, Article 6, Article 8, Article 9, Article 11, Article 12, Article 13, and this Article 16.

15.15 **Modification**. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

15.16 **Appendices.** The following appendices are hereby attached and incorporated into this Agreement as though fully set forth herein and together form the complete Agreement between the Parties: **A: Pricing Matrix**

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date herein specified.

Contractor:_____ **Approved by:** _____ Authorized Signature _____ Printed Name _____ Title _____ Company Name _____ Address _____ City, State, Zip _____ Phone Number _____ Email _____ Federal Employer ID Number	**Mt. Diablo Unified School District** **Approved by:** _____ Adrian Vargas Chief Business Officer Mt. Diablo Unified School District **Approved as to Form by:** _____ Susanne Starecki Kim General Counsel Mt. Diablo Unified School District **Reviewed by:** _____ Elizabeth McClanahan Director of Purchasing & Warehouse Mt. Diablo Unified School District **Recommended by:** _____ Cristian Lepe Director of Transportation Mt. Diablo Unified School District

MT. DIABLO
UNIFIED SCHOOL DISTRICT

Exhibit 1

Pricing
Matrix

(Complete RFP #1957 Appendix B,
attached hereto and incorporated into this agreement)