

FONTANA UNIFIED SCHOOL DISTRICT AGREEMENT FOR SERVICES

THIS AGREEMENT FOR SERVICES (“**Agreement**”) is made and entered into effective as of _____ (“**Effective Date**”), by and between FONTANA UNIFIED SCHOOL DISTRICT, a public agency of the State of California (“**District**”), and _____ (“**Proposer**”).

RECITALS

WHEREAS, Provider represents to Board (as defined herein) that it is specially trained, experienced, qualified and competent to perform the Services (as defined herein); and

WHEREAS, based on Provider’s representations, the Board of Education of the District (“**Board**”) desires to contract with Provider to provide the Services (as defined herein) and Provider desires to render the Services (as defined herein) pursuant to the terms of this Agreement.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the above recitals and of the covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Term.** This Agreement shall cover Services (as defined herein) performed during the period (the “**Term**”) from the Effective Date through two (2) additional years, not to exceed three (3) years total. (the “**Termination Date**”). This Agreement shall automatically terminate on the Termination Date, unless earlier terminated pursuant to **Section 14** hereof.
2. **Services.**
 - 2.1. As directed by District, Provider shall provide certain services as required by District including, without implied limitation, the following: provide transportation coordination services for District students and families to appointments and meetings, all as more particularly set forth in **Exhibit “A”**, **Exhibit “B”** and **Exhibit “C,”** attached hereto and incorporated by reference herein. In the event that the provisions of **Exhibit “A”**, **Exhibit “B”**, and/or **Exhibit “C,”** conflict with the terms of this Agreement, the terms of this Agreement shall control.
 - 2.2. In connection with the services described in **Section 2.1** above, Provider also shall provide the following product(s): N/A (collectively, “**Products**”). The services described in **Section 2.1** above and the Products shall hereinafter collectively be referred to as the “**Services**.”
 - 2.3. Provider shall provide the Services to District Superintendent and/or designee for this matter (“**District’s Designee**”), who is the Associate Superintendent, Business Services, or successor. The scope of the Services shall be subject to the approval of District’s Designee in District’s Designee’s sole and absolute discretion.

2.4. Provider shall perform all Services so as to avoid injury or damage to any person or property by exercising all necessary safety and security precautions as may be appropriate to the nature of the Services and the conditions under which the Services are to be performed. Provider further agrees to comply with all of the following:

- (i) Identification: When performing Services on District property, Provider shall be in appropriate work attire (or uniform, if applicable) at all times. If Provider does not have a specific uniform, then Provider shall provide identification tags and/or any other mechanism the District in its sole discretion determines is required to easily identify Provider, as opposed to faculty, staff, parents, students, or other members of the public. Provider and its employees shall (i) display on their clothes the above-mentioned identifying information and (ii) carry photo identification and present it to any District personnel upon request. If Provider cannot produce such identification or if the identification is unacceptable to District, District may provide, at its sole discretion, District-produced identification tags to Provider, at Provider's sole cost and expense.
- (ii) Sign-in Required: As required by schools and other District locations, Provider personnel must sign into the location's main office to receive an in-school identification/visitor tag. Such individuals must display this tag on their person at all times while on District property.

3. Remuneration.

- 3.1. District shall pay Provider _____ base fee, _____ per mile plus _____ Regulatory Ride California Access for All fee for the services, upon completion of the Services as approved by District's Designee; described further in **Exhibit "B"** attached hereto and incorporated by reference herein; provided that, in no event shall the total amount payable under this Agreement exceed _____.
- 3.2. Provider shall not be entitled to any other compensation or benefit from District of any kind or type, including, without implied limitation, health insurance, pension, sick leave and/or vacation.
- 3.3. Provider shall bill the District for the Services rendered pursuant hereto each month, and District shall pay the same upon presentation and approval of said invoice or within a reasonable time thereafter, but in no event shall the period exceed thirty (30) days after District's receipt and approval of the invoice. The invoice shall contain an attachment that shows the days and hours billed by person and by the project, subproject or other billing breakdown as may be required by the District's Designee. A District purchase order is required before Services may begin. The purchase order number must be shown on each invoice. If this Agreement covers more than one fiscal year, a new purchase order will be issued for each fiscal year. Provider shall, when requested by District, invoice individual projects separately

by line item showing the type and quantity of time expended on the specified project(s). Provider shall account for and invoice hours worked on this Agreement separately from any other agreement between the parties.

4. Independent Contractor.

- 4.1. In connection with the performance of the Services, District and Provider acknowledge and agree that Provider is an independent contractor and not an officer, agent, or employee of the District. Consequently, Provider shall pay all State and Federal taxes as an independent contractor and acknowledges and agrees that, as an independent contractor, Provider (and its agents, employees, and other representatives) is not covered under California workers' compensation, unemployment insurance or other employment-related laws.
- 4.2. District and Provider hereby acknowledge and agree that Provider shall determine Provider's own hours of work and work location; purchase, lease and/or maintain Provider's own office, facilities, and equipment; hire, fire, direct and control Provider's agent(s), employee(s) or other representative(s) at Provider's sole discretion; and shall be available to perform services for other school districts and/or the general public.
- 4.3. District and Provider further acknowledge and agree that District shall not provide Provider with any training or instructions (other than job specifications) or tools and equipment (other than occasional use of District facilities and equipment). Should Provider require the use of District's facilities and equipment, Provider accepts the responsibility to coordinate with District's Designee the specific time(s) and use(s) in order to avoid any conflict of time(s) and use(s) of such District facilities and equipment.
- 4.4. As an independent contractor performing the Services, Provider shall determine the methods, details, and means of providing the Services; however, upon request, Provider shall submit to District an oral and/or written summary of Provider's methods, details and means of providing the Services.
- 4.5. Provider shall assume all ordinary expenses incurred in the performance of this Agreement including, without implied limitation, document reproduction expenses and telephone charges. Services and expenses that are above the ordinary and may be required shall not be reimbursable unless previously authorized in writing by District's Designee and shall be covered by a specific addendum to this Agreement.
- 4.6. Provider shall at all times remain solely responsible for the Services to be provided pursuant to this Agreement, regardless of whether Provider should choose to employ any agent(s), employee(s) or other representative(s) to perform any or all of such Services; provided, however, that because of Provider's special expertise and potential contact with students, Provider shall not subcontract, assign or otherwise transfer any portion of the Services or this Agreement or any interest therein, without the prior written approval of District's Designee in the District's

Designee's sole and absolute discretion. Any such attempt to subcontract, assign or otherwise transfer any portion of the Services or this Agreement without District's Designee's prior written approval shall be void and without effect, and shall permit District to immediately terminate this Agreement. In the event that District's Designee delivers to Provider prior written approval of the use of subcontractors (collectively, "**Subcontractors**"), Provider acknowledges and agrees that all Subcontractors shall comply with the terms of this Agreement, including, without implied limitation, **Section 5** of this Agreement. Any failure of Provider's Subcontractors to comply with the terms of **Section 5** of this Agreement shall subject Provider to liability under this Agreement pursuant to **Section 9** of this Agreement.

- 4.7. Any Subcontractor(s) shall be at no additional expense to District and shall be paid from Provider's own resources and billings. Provider shall pay all wages, salaries, benefits and other amounts due Provider's Subcontractors, and shall be responsible for all reports and obligations respecting Provider's Subcontractors.
- 4.8. Provider shall perform the Services under this Agreement in a skillful and competent manner, consistent with the standard generally recognized as being employed by professionals in the same discipline in the State of California. Provider represents and maintains that Provider is skilled in the professional calling necessary to perform the Services. Provider warrants that all employees and Subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Provider represents that Provider, Provider's employees and Subcontractors, if approved pursuant to **Section 4.6** of this Agreement, have all licenses, certifications, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a business license from the community where Provider's business is located, and that such licenses and approvals shall be maintained throughout the Term of this Agreement. Provider shall perform, at its own cost and expense and without reimbursement from District, any Services necessary to correct errors or omissions that are caused by Provider's failure to comply with the standard of care provided for herein, and shall be fully responsible to the District for all damages and other liabilities provided for in the indemnification provisions of this Agreement arising from Provider's errors and omissions.
- 4.9. Provider shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the Services to be provided pursuant to this Agreement, unless otherwise arranged with site. Provider's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession.
- 4.10. If any of Provider's officers, employees, agents, contractors or Subcontractors is determined by the District to be uncooperative, incompetent, a threat to the adequate or timely performance of the tasks assigned to Provider, a threat to persons or property, or if any of Provider's officers, employees, agents, contractors or Subcontractors fail or refuse to perform the Services in a manner acceptable to the

District in the District's sole unfettered discretion, such officer, employee, agent, contractor or Subcontractor shall be promptly removed by Provider and shall not be re-assigned to perform any of the Services.

5. Criminal Background Check.

- 5.1. Provider shall ensure all Drivers comply with all requirements related to fingerprinting set forth in California Education Code Section 45125.1 and in District Administrative Regulations related to fingerprint background checks. Provider shall ensure that Provider and any of Provider's Drivers (as defined in **Exhibit "A"** attached hereto), CarePartners (as defined in **Exhibit "A"** attached hereto), employees and Subcontractors who interact with District students outside of the immediate supervision and control of the student's parent or a school employee, whether in person or online ("Unsupervised Contact"), or at the District's discretion as described in Section 45125.1(c) of the California Education Code will comply with the requirements of this Section prior to the initiation of performance under this Agreement. For the purpose of this Agreement, "**Parent**" refers collectively to the natural or adoptive parent(s), legal guardian(s), or a surrogate parent(s) appointed by District.
- 5.2. In the event that Unsupervised Contact with District students is anticipated, then, in accordance with and as required by California Education Code Section 45125.1, upon receipt of any employee or Subcontractor criminal background checks required under **Section 5.1**, Provider shall certify in writing to District the following: "Neither the Provider nor any of its employees and/or Subcontractors who are required in accordance with Section 45125.1 of the California Education Code to submit or have their fingerprints submitted to the California Department of Justice and who may interact with District students have been convicted of a violent or serious felony as defined in Section 45122.1 of the California Education Code." No employee or Subcontractor shall be permitted to interact with District students until the Department of Justice has ascertained that the employee or Subcontractor has not been convicted of a violent or serious felony as defined in California Education Code Section 45122.1 pursuant to prohibition and exceptions described in California Education Code Section 45125.1.
- 5.3. Provider shall register with the California Department of Justice for subsequent offender notification of its employees and Subcontractors who provide Services to, or may have Unsupervised Contact with, District students. Provider shall immediately provide any subsequent arrest and conviction information it receives to the District pursuant to the subsequent arrest service. It is Provider's responsibility prior to commencing Services and on an ongoing basis through the Term of this Agreement, to provide District with updated information and changes in status on such employees and Subcontractors in full and complete compliance with California Education Code Section 45125.1.

6. Ownership of Materials/Confidentiality.

- 6.1. All pre-existing data, materials and other intellectual property of Provider that is provided to District by Provider in connection with the performance of this Agreement (collectively, "**Provider's Pre-Existing Intellectual Property**") shall remain Provider's property.
- 6.2. All pre-existing District data, materials and other intellectual property provided to Provider by District in connection with this Agreement (collectively, "**District's Pre-Existing Intellectual Property**") shall remain District's property. Except as otherwise provided herein, Provider shall obtain District's prior written authorization before using or sharing any of District's Pre-Existing Intellectual Property.
- 6.3. Each party is authorized to have limited access to and make use of the other's Pre-Existing Intellectual Property as is appropriate for the performance of its obligations under this Agreement. Except as provided above in **Sections 6.1 and 6.2** of this Agreement, upon expiration or termination of this Agreement for any reason, each party shall request instructions from the other party regarding whether the requesting party should (i) erase or destroy the data files containing the other party's Pre-Existing Intellectual Property that are maintained by the requesting party, or (ii) return the data to the other party. Except as provided above in **Sections 6.1 and 6.2**, neither party may utilize the other's Pre-Existing Intellectual Property for any purpose other than in performing or utilizing the Services pursuant to this Agreement.
- 6.4. Except as specifically provided above in **Sections 6.1, 6.2 and 6.3** of this Agreement, all plans, specifications, studies, drawings, estimates, data, text, sound recordings, graphics, audiovisual recordings, and other original works of authorship fixed in any tangible medium of expression now known or later developed, including works magnetically, digitally or otherwise recorded, transmitted or stored, that are subject to copyright protection under the Copyright Act of 1976 or otherwise, prepared by Provider on behalf of District in the performance of this Agreement (collectively, "**Documents and Data**"), shall become the property of District upon their creation, except that Provider shall have the right to retain copies of all such Documents and Data for its records. Provider shall maintain all such Documents and Data in strict confidence and shall not disclose any such Documents and Data, or copies thereof, to any person or entity other than District's legal counsel. Should Provider, either during or following termination of the Agreement, desire to use any Documents and Data, it shall first obtain the prior written approval of District. This Agreement creates a non-exclusive and perpetual license for District to copy, distribute, perform, display, use, modify, reuse, or sublicense any and all of Provider's Pre-Existing Intellectual Property embedded in the Documents and Data that are prepared under this Agreement (such embedded Pre-Existing Intellectual Property hereinafter referred to, collectively, as "**Licensed Intellectual Property**"). Provider shall require all Subcontractors to agree in writing that District is granted a non-exclusive and perpetual license for any Licensed

Intellectual Property the Subcontractor prepares under this Agreement. Provider represents and warrants that Provider has the legal right to license any and all Licensed Intellectual Property under this Agreement. District shall not be limited in any way in its use of the Licensed Intellectual Property at any time, provided that any such use not within the purposes intended by this Agreement shall be at District's sole risk.

- 6.5. Except as specifically provided above in this **Section 6**, all ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, and other written information provided by District to Provider in connection with the performance of this Agreement shall be held in strict confidence by Provider. Provider shall not use such materials for any purposes other than the performance of the Services and shall not disclose such materials to any person or entity without the prior written consent of District. Nothing furnished to Provider that is otherwise known to Provider or is generally known, or has become known, to the related industry shall be deemed confidential.
- 6.6. This **Section 6** shall not be construed as prohibiting either party hereto from disclosing information to the extent required by law, regulation, or court order, provided such party notifies the other party promptly after becoming aware of such obligations and permits the other party to seek a protective order or otherwise to challenge or limit such required disclosure.
- 6.7. Provider shall not photograph or film District students or staff, unless requested to do so by the District, or use District's name or insignia, photographs, or audiovisual recordings of the Services, or any publicity pertaining to the Services, online or in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of District.

7. **Records.** Pursuant to California Government Code Section 8546.7, Provider is hereby advised that every contract involving the expenditure of public funds in excess of Ten Thousand Dollars (\$10,000) shall be subject to examination and audit by the State Auditor for a period of three (3) years after final payment under the contract as specified in the Government Code. Provider shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Provider shall allow a representative of District during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Provider shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

8. **Insurance.**

- 8.1. Provider shall, at Provider's expense, procure and maintain for the duration of this Agreement commercial general liability, workers' compensation, if required by applicable law, automobile liability, sexual abuse and molestation liability and other insurance to protect against claims for injuries to persons or damages to

property which may arise from or in connection with the performance of the Services or this Agreement by Provider and Provider's Subcontractors, officers, employees, agents, or representatives. District in no way represents or warrants that the insurance required under this **Section 8** is sufficient to protect Provider for liabilities that may arise from or relate to this Agreement.

- 8.2. The commercial general liability insurance shall have a per-occurrence limit of not less than One Million Dollars (\$1,000,000), Two Million Dollars (\$2,000,000) in the aggregate. All such insurance will be equivalent to coverage offered by a commercial general liability form, including, without implied limitation, personal injury and contractual liability coverage for the performance by Provider of the indemnity provisions set forth in this Agreement.
- 8.3. The workers' compensation insurance, if required by applicable law, shall insure Provider's obligations and liabilities under the workers' compensation laws of California, including, without implied limitation, employers' liability insurance in the limits required by the laws of California. If workers' compensation insurance is not required by applicable law, Provider must attach a District's certification stating Provider is an owner or a partner and is exempt from having to provide workers' compensation insurance because of having no employees.
- 8.4. The automobile liability insurance shall have an each-occurrence limit of not less than One Million Dollars (\$1,000,000) for bodily injury and property damage. The automobile insurance shall be at least as broad as the latest version of the Insurance Office Business Auto Coverage form number CA 001, code 1 (any auto). The automobile liability policy shall be endorsed to state that: (A) the District, its Board members, superintendent, officers, employees, volunteers, agents and representatives shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Provider or for which Provider is responsible; and (B) the insurance coverage shall be primary insurance as respects the District, its Board members, superintendent, officers, employees, volunteers, agents, and representatives or, if excess, shall stand in an unbroken chain of coverage excess of the Provider's scheduled underlying coverage. Any insurance or self-insurance maintained by District, its Board members, superintendent, officers, employees, agents and volunteers shall be excess of Provider's insurance and shall not be called upon to contribute with it.
- 8.5. Provider shall procure and maintain for the duration of this Agreement sexual abuse and molestation liability insurance. Such insurance shall provide for limits of not less than One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) in the aggregate.
- 8.6. All commercial general liability, automobile liability, sexual abuse and molestation liability or comparable policies maintained by Provider shall name District and such other persons or firms as District specifies from time to time as additional insureds, entitling them to recover under such policies for any loss sustained by them, their

agents, and employees as a result of the negligent acts or omissions of Provider. All such policies maintained by Provider shall ensure that they may not be terminated nor may coverage be reduced except after thirty (30) days' prior written notice to District. All commercial policies maintained by Provider will be written as primary policies, not contributing with and not supplemental to the coverage that District may carry. Certificates of insurance, together with originals of the endorsements that name District as an additional insured, extending coverage on a primary, non-contributory basis, shall be delivered to District prior to Provider's commencement of the Services and from time to time at least thirty (30) days prior to the expiration of the term of each such policy. The certificate(s) of insurance shall reference this Agreement by name, and the insured party named on the certificate(s) shall match the name of the Provider as identified in this Agreement. If an insurance policy is provided on a claims-made basis, then (i) the retroactive and continuity dates must begin before the Effective Date of this Agreement, (ii) Provider shall maintain the insurance for five (5) years after the completion of the Services under this Agreement, and (iii) if the coverage is cancelled or non-renewed and not replaced with another claims-made policy with a retroactive date prior to the Effective Date of this Agreement, Provider must purchase extended reporting coverage for a minimum of five (5) years after the completion of the Services under this Agreement. Provider shall require the carriers of all the required insurance coverage to waive all rights of subrogation against the District, its officers, employees, agents, volunteers, contractors, and subcontractors. Certificates of insurance must be provided through the period of the extended reporting option, or a copy of the endorsement evidencing the purchase of the extended reporting option shall be provided. Provider shall not commence providing the Services under this Agreement until it has provided evidence satisfactory to District that Provider has secured all insurance required under this section. Neither District's failure to obtain a complying certificate of insurance or endorsement from Provider, nor District's receipt of or failure to object to a non-complying insurance certificate or endorsement or any other insurance documentation provided by Provider, its insurance broker and/or insurer(s), shall be construed as a waiver of any of the insurance requirements of this **Section 8**; provided however, that District may, in its sole discretion and in limited circumstances, modify or waive certain of these insurance requirements pursuant to an insurance sufficiency review based on the nature and scope of the Services. Provider also shall require all of Provider's Subcontractors to procure and maintain the same insurance for the duration of the Agreement. In addition, Provider shall not allow any Subcontractor to commence work on any subcontract until the Subcontractor has provided evidence satisfactory to District that the Subcontractor has secured all insurance required under this section.

9. **Indemnity.** Provider indemnifies and shall defend, with counsel chosen by District, and hold free and harmless District, its elected and appointed Board members, superintendent, employees, volunteers, attorneys and agents from any and all claims, demands, causes of action, costs, expenses, reasonable attorney fees, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death (collectively, the "**Claims**"), in

any manner arising out of or incident to (i) any breach by Proposer of its representations and warranties in this Agreement (including, without limitation, those set forth in **Section 12**), (ii) any alleged acts, omissions or willful misconduct of Proposer, Provider's Subcontractors, officers, employees, agents and representatives arising out of or in connection with the performance of the Services or this Agreement; including, without implied limitation, the payment of all consequential damages and reasonable attorneys' fees and other related costs and expenses, and notwithstanding any limits on Provider's insurance coverage or benefits, or (iii) any liability for damages which may arise from the use of any copyrighted or uncopyrighted matter or patented or unpatented invention under this Agreement. Provider shall defend, with counsel chosen by District, at Provider's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against District, its elected and appointed Board members, superintendent, employees, volunteers, attorneys and agents. Provider shall pay and satisfy any judgment, award or decree that may be rendered against District or its elected and appointed Board members, superintendent, employees, volunteers, attorneys and agents, in any such suit, action or other legal proceeding. Provider shall reimburse District and its elected and appointed Board members, superintendent, employees, volunteers, attorneys and agents, for any and all reasonable legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Provider's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by District, its elected and appointed Board members, superintendent, employees, volunteers, attorneys and agents. District shall have the right to offset against the amount of any compensation due Provider under this Agreement any amount due District from Provider as a result of Provider's failure to pay District promptly any indemnification arising under this **Section 9** and including, without implied limitation Provider's failure to either (a) pay taxes on amounts received pursuant to this Agreement or (b) comply with applicable workers' compensation laws. District indemnifies and shall defend and hold harmless Proposer, its officers, employees, attorneys and agents from any and all Claims to the extent caused by the (i) any breach by District of this Agreement or (ii) any grossly negligent acts or omissions, or willful misconduct of District, or its subcontractors, officers, employees, agents or representatives arising out of or in connection with this Agreement. District will have no obligation to indemnify, defend and hold harmless to the extent that Claims have been caused by Proposer. The indemnification obligations of this **Section 9** shall survive the expiration or termination of this Agreement.

10. **Delivery of Notices.** All notices permitted or required under this Agreement shall be given in writing to the other party at the party's address below, or at such other address as the party may provide in writing for this purpose:

PROPOSER:

DISTRICT:

Fontana Unified School District
Attn: Shamica R. Nance
Sr. Director of Purchasing, Warehouse
& Mail Services
9680 Citrus Avenue
Fontana, CA 92335

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

11. District's Right to Employ Other Providers. District reserves the right to employ other service providers in connection with the Services.
12. Representations and Warranties of Provider. Provider hereby represents and warrants to District as follows:
 - 12.1. Proposer is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized. Proposer is presently qualified to do business as a foreign corporation or other business entity in the State of California. Proposer has the requisite power and authority to carry on its business as presently conducted, to execute and deliver this Agreement and to perform its obligations pursuant to this Agreement.
 - 12.2. All corporate (or other entity) action on the part of Provider necessary for the authorization, execution and delivery of this Agreement by Provider and the performance of Provider's obligations under this Agreement has been taken. This Agreement, when executed and delivered by Provider, shall constitute a valid and binding obligation of Provider, enforceable in accordance with its terms, except as may be limited by applicable laws.
 - 12.3. Proposer has not employed or retained any company or person, other than a bona fide employee working solely for Provider, to solicit or secure this Agreement. Further, Provider has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Provider, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, District shall have the right to rescind and terminate this Agreement without liability.
13. Conflicts of Interest. Proposer shall not engage in any activity that conflicts with, or has the appearance of conflicting with, the District. Notwithstanding any other provision contained herein, District shall have the right to immediately terminate this Agreement in the event it is determined by District's Designee or the Superintendent of the District that a real or apparent conflict of interest exists that cannot be resolved. Provider agrees to timely furnish to District, upon request, a valid copy of the most recently adopted partnership agreement or bylaws of the corporation and also a complete and accurate list of the members of Provider's governing board of directors, or trustees, or partners, as applicable, and to timely update said information as changes in such governance occur. Provider shall avoid any actual or potential conflict of interest on behalf of itself or its employees providing Services hereunder, including, but not limited to, employment with District.

14. Termination.

14.1. Either party will have the right to terminate this Agreement if the other party breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of same. Additionally, either party may terminate this Agreement effective upon notice of same if: (i) the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or (ii) the other party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing.

14.2. This Agreement may be terminated at any time by mutual agreement in writing between the parties.

14.3. District reserves the right to immediately terminate or otherwise suspend this Agreement without notice if the Governing Board of the District determines that funding for the Services is insufficient.

14.4. This Agreement may be terminated by District for any reason by giving thirty (30) days' written notice to Provider. Additionally, this Agreement may be terminated by District effective upon written notice to Provider if the performance of the Services by Provider is rendered impossible or substantially impracticable, or is otherwise suspended, due to force majeure as set forth in **Section 20** of this Agreement.

14.5. Upon the effective date of termination of this Agreement: (i) Provider may immediately cease providing Services hereunder; (ii) any and all payment obligations of District for Services performed under this Agreement as of the date of termination will become due immediately, net thirty (30) days; and (iii) within thirty (30) days of such termination, Provider shall refund to District any advance deposits made by District and the pro-rata amount of any prepaid fees attributable to the unexpired period of the Agreement or that are otherwise for Services not yet performed.

15. Continued Funding. Proposer understands, acknowledges and agrees that this Agreement may involve Services to be performed in different fiscal years. While it is the intent of District to utilize Provider continuously throughout the Term irrespective of fiscal years, Provider and District acknowledge that all Services in fiscal years subsequent ("Subsequent Fiscal Year") to the fiscal year of Agreement execution are contingent upon availability of continued funding. If any portion(s) of District's financial budget affecting the Subsequent Fiscal Year does not appropriate sufficient funds for the Services to be performed in such fiscal year and/or related programs, or if grant funds related to the Services and/or related programs are not available for any reason whatsoever, this Agreement shall be of no further force and effect. In this event, District shall have no liability to pay any funds to Provider under this Agreement for Services to be performed in

the Subsequent Fiscal Year and Provider shall not be obligated to perform any Services in the Subsequent Fiscal Year. In such instances, particularly when partial funding remains available, District shall have the option to either terminate this Agreement with no liability occurring to District, or District may offer an amendment to this Agreement to reflect the reduced availability of funds.

16. Non-Discrimination. In the performance of the Services hereunder, Provider represents and warrants that Provider and Provider's Subcontractors, officers, employees, agents and representatives will not engage in discrimination on any basis or in any manner designated as unlawful under the following:

- (i) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d et seq., which prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance;
- (ii) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 et seq., which prohibits discrimination on the basis of sex in any education program or activity receiving federal financial assistance;
- (iii) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap in any program or activity receiving federal financial funding;
- (iv) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq., which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance; and
- (v) All regulations, guidelines, and standards lawfully adopted under the above statutes by the United States Department of Education.

17. Prevailing Wages. If the Services are being performed as part of an applicable "public works" or "maintenance" project, Provider shall keep fully informed of and in compliance with the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("**Prevailing Wage Laws**"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects as defined by the Prevailing Wage Laws. If the Services are being performed as part of an applicable "public works" or "maintenance" project, and if the total compensation is One Thousand Dollars (\$1,000) or more, Provider shall fully comply with the Prevailing Wage Laws. The applicable prevailing rates of per diem wages may be obtained from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations. In the alternative, copies of the prevailing rates of per diem shall be on file at the District office. Provider shall make available to interested parties upon request copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform the Services, and shall post copies at the Provider's principal place of business and at the project site. Provider indemnifies and shall defend, with counsel chosen by District, and hold District, its Board members, superintendent, employees, volunteers, attorneys and

agents free and harmless from any and all claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

18. Compliance with Laws. Provider shall keep fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the provision of the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Provider shall be liable for all violations of such laws and regulations in connection with providing the Services. If Provider performs any work knowing it to be contrary to such laws, rules and regulations, Provider shall be solely responsible for all costs arising therefrom. Provider shall defend, indemnify and hold free and harmless District, its Board members, superintendent, employees, volunteers, attorneys and agents, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

PROPOSER agrees to comply with Education Code Section 8483.4, herein and incorporated, *SEE EXHIBIT "D" ATTACHED.*

19. Licensing. Provider shall, during the Term of this Agreement, obtain and maintain all licenses, certifications, permits and approvals of whatever nature that are legally required to provide the Services. Provider shall obtain a business license from the community where Provider's business is located.
20. Force Majeure. In the event that performance on the part of either party hereto is unavoidably delayed or suspended as a result of circumstances beyond said party's reasonable control (the effects of which could not be prevented, mitigated or overcome by said party through the exercise of reasonable care and foresight, including the expenditure of reasonable sums), not including changes in market conditions, and not as a result of the negligent or willful acts or omissions of said party, then neither of the parties shall incur any liability to the other party as a result of such delay or suspension. Circumstances deemed to be beyond the control of a party hereunder shall include, but not be limited to, natural phenomena (acts of God) such as fires, floods, earthquakes, or severe storms; acts of war; terrorist acts or other acts of public enemies; insurrection; civil disturbance; labor strikes; government action (including action of a government authority resulting in a moratorium on the activities relating to this Agreement); national, state or local emergency; and epidemics or quarantine restrictions. The party invoking force majeure shall give prompt notice to the other party.
21. Governing Law; Venue. This Agreement shall be governed by the laws of the State of California without regard to principles of conflict of laws. Venue for any lawsuit or claim arising out of or related to this Agreement shall be the County of San Bernardino. This Agreement shall not be governed by the Uniform Commercial Code. To the extent that there is to be delivery or performance of services under this Agreement, such services shall not be deemed "goods" within the definition of the Uniform Commercial Code.
22. SB 88 Compliance. Provider shall comply with all requirements of California Education Code Article 5 (commencing with Section 39875), as amended by Senate Bill 88 (Chapter 380, Statutes of 2023), including but not limited to:

22.1. Ensuring that all drivers providing pupil transportation under this Agreement:

- (i) Have passed a criminal background check; Possess a satisfactory driving record;
- (ii) Have submitted and cleared a tuberculosis risk assessment;
- (iii) Have not demonstrated irrational behavior;
- (iv) Have passed a medical examination; and
- (v) Have completed all training required by law.

22.2. Ensuring that all vehicles used to transport pupils:

- (i) Are inspected every 12 months or every 50,000 miles, whichever comes first, at a facility licensed by the Bureau of Automotive Repair;
- (ii) Pass a 19-point vehicle inspection;
- (iii) Are equipped with a first aid kit and a fire extinguisher.

22.3. Providing a written attestation to the District at the time of contract execution and annually thereafter, certifying that:

- (i) Provider has no violations of applicable laws;
- (ii) Provider will maintain compliance with all applicable laws for the duration of the Agreement;
- (iii) All drivers meet the qualifications set forth in SB 88; and
- (iv) Provider maintains all required documentation and reports.

22.4. Acknowledging that third parties may report to the District any failure by Provider to comply with the requirements of SB 88, and that such failure may be grounds for immediate termination of this Agreement.

23. Integration. This Agreement and the Exhibits contain the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings, or agreements. Neither of the parties has relied upon any oral or written representation or oral or written information given to the party by any representative of the other party.

24. Severability. If one or more of the provisions of this Agreement are hereafter declared invalid or unenforceable by judicial, legislative or administrative authority of competent jurisdiction, then the parties hereto agree that the invalidity or unenforceability of any of the provisions shall not in any way affect the validity or enforceability of any other provisions of this Agreement; provided that the Agreement so modified preserves the basic intent of the parties.

25. Modification. No change or modification of the terms or provisions of this Agreement shall be deemed valid unless set forth in writing and signed by both parties. If any actual or physical deletions or changes appear on the face of the Agreement, such deletions or

changes shall be void and of no force or effect.

26. **Construction of Agreement.** This Agreement will be liberally construed to effectuate the intention of the parties with respect to the transaction described herein. In determining the meaning of, or resolving any ambiguity with respect to, any word, phrase or provision of this Agreement, neither this Agreement nor any uncertainty or ambiguity herein will be construed or resolved against either party (including the party primarily responsible for drafting and preparation of this Agreement), under any rule of construction or otherwise, it being expressly understood and agreed that the parties have participated equally or have had equal opportunity to participate in the drafting hereof.
27. **Survival.** **Sections 6, 7, 8, 9, 12 and 18** hereof, as well as any provisions of this Agreement that expressly extend or by their nature should extend beyond termination or expiration of this Agreement, shall survive and continue in full force and effect after any termination or expiration of this Agreement.
28. **Waiver.** No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel, or otherwise.
29. **Headings.** The headings of sections of this Agreement have been inserted for convenience of reference only and shall not affect the interpretation of any of the provisions of this Agreement.
30. **Attorneys' Fees.** In the event of any action or proceeding (including, without implied limitation, any bankruptcy proceeding) to enforce or construe any of the provisions of this Agreement, the prevailing party in any such action or proceeding shall be entitled to attorneys' fees and costs.
31. **Further Assurances.** Each of the parties hereto shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent and agreements of the parties hereto.
32. **Assignment.** Provider shall not assign this Agreement or any interests therein without the prior written approval of the District. Any such attempt to assign or sublet this Agreement without District approval shall be invalid.
33. **No Third-Party Benefit.** It is expressly understood and agreed that this Agreement is entered into solely for the mutual benefit of the parties hereto and that no benefits, rights, duties, or obligations are intended or created by this Agreement as to third parties not a signatory hereto.
34. **Public Record.** Provider understands and acknowledges and agrees that under the California Public Records Act (CPRA), this Agreement is a public record subject to disclosure under the CPRA, and District shall have no obligation to provide written notification to Provider prior to disclosure thereof pursuant to a CPRA public records

request or otherwise.

35. Authority. Provider has all requisite power and authority to conduct its business and to execute, deliver and perform the Agreement. Each party warrants that the persons who have signed this Agreement have the legal power, right and authority to make this Agreement and bind each respective party.
36. Public Health Mandates and Orders – District Policies Compliance. Provider covenants and agrees to comply, directly and as to all employees, staff, contractors or others providing services under this agreement, with all California issued Public Health Mandates as to testing, vaccinations and other public health requirements, as well as to related District policies as to school site and property access for reasons of the health and safety of students, staff and others.
37. Animals on Campus. Animals are not allowed on any school campus unless approved, in writing, by the District.
38. False Claims Act. Provider warrants and represents that neither Provider nor any person who is an officer of, in a managing position with, or has an ownership interest in Provider has been determined by a court or tribunal of competent jurisdiction to have violated the False Claims Act, 31 U.S.C., Section 3729 et seq. and the California False Claims Act, Government Code Section 12650 et seq.
39. Drug Free Workplace Certification. Provider shall apprise its officials and employees of the Drug- Free Workplace Act of 1990 (Govt. Code Section 8350 et seq.) (hereinafter, the “**Drug-Free Workplace Act**”) which requires that every person or organization awarded a contract or grant for the procurement of property or services from any State agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Drug-Free Workplace Act provides that each contract or grant awarded by a state agency may be subject to suspension of payments or termination of the contract or grant, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred. Provider shall comply with the requirements publication and notification requirements of Government Code Section 8355 as to all employees performing services and tasks under this Agreement on District property or from District facilities.
40. Employment with Public Agency. Provider, if an employee of another public agency, agrees that Provider will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.
41. Time is of the Essence. Time is of the essence for each and every provision of this Agreement.
42. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

43. Education Code Section 17604. In accordance with California Education Code Section 17604, this Agreement is not valid or an enforceable obligation against the District until approved or ratified by motion of the Governing Board of the District duly passed and adopted.

44. APPROVED SIGNATURE. THIS AGREEMENT IS NOT VALID OR AN ENFORCEABLE OBLIGATION AGAINST THE DISTRICT UNTIL SIGNED BY THE SUPERINTENDENT OR THE SUPERINTENDENT'S APPROVED DESIGNEE NAMED BELOW.

Please check one of the following:

YES / NO

I am a retiree who falls under CalSTRS

I am a retiree who falls under CalPERS

I am an active employee who falls under CalSTRS

I am an active employee who falls under CalPERS

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

PROVIDER

FONTANA UNIFIED SCHOOL DISTRICT
a public agency of the State of California

Shamica R. Nance
Senior Director of Purchasing
Warehouse and Mail Services

Leslie Barnes, Ed.D.
Associate Superintendent
Business Services

Approved by Board: _____

Approved as to Form:

MUNDELL, ODLUM & HAWS, LLP
General Counsel

EXHIBIT “A”
DESCRIPTION OF SERVICES

SAMPLE

EXHIBIT “B”

FEES

For Services rendered by Provider under this Agreement, District shall pay Provider the following (the “**Fees**”):

ITEM	PRICING
Base Fare	
Per Mile Fee (based on estimated distance)	
Minimum Trip Fee	
Primary CareDriver Plus (PCD+)	
Regulatory Fees	
Toll Fee	
No Show or Late Cancel	
Wait Time Fees	
Gas Price Adjustment	

EXHIBIT “C”

ADDITIONAL SERVICES

The following additional services (“**Additional Services**”), may be made available in markets where they are offered by Provider upon request of District. Additional Services may be arranged with Wheelchair Accessible Vehicles, Rider Assistants or Para-Professionals from partner Providers (such Providers are referred to as “**CarePartners**”) for Riders with highly specialized requirements. Fees for Additional Services are offered per service and are in addition to the Fees listed above:

ITEM	PRICING	DESCRIPTION OF SERVICES
Mini-Van		Facilitation of transportation for Riders provided by Drivers whose vehicles are designed to transport up to seven passengers in two or three rows (“ Mini-Vans ”).
Wheelchair Accessible Vehicle		Facilitation of transportation for Riders provided by Drivers whose vehicles are capable of transporting motorized wheelchairs (“ Wheelchair Accessible Vehicles ” or “ WAV ”).
Rider Assistant		Facilitation of transportation for Riders provided by Drivers who are accompanied by another adult in the vehicle (a “ Rider Assistant ”).
Para-Professional		Facilitation of transportation for Riders provided by Drivers who are accompanied by a trained paraprofessional (“ Para-Professional ”).
Safe Ride InSight™		Facilitation of transportation for Riders provided by Drivers whose vehicles are equipped with a camera capable of recording audio and/or video footage of the interior and/or exterior of the vehicle during a ride (“ Safe Ride InSight ”).
Forward-Facing Carseat*		Facilitation of transportation for Riders provided by Drivers whose vehicles are equipped with a forward-facing carseat.
Seatbelt Buckle Guard*		Facilitation of transportation for Riders provided by Drivers whose vehicles are equipped with a seatbelt buckle-guard.
Safety Vest and/or Car Harness*		Facilitation of transportation for Riders provided by Drivers whose vehicles are equipped with a safety vest.

**Forward-Facing Carseat, Seatbelt Buckle Guard, Safety Vest and/or Car Harness are collectively referred to as (“Equipment”). Provider is responsible for ensuring that each such request is consistent with applicable state, local, or federal guidelines; including, but not limited to, restrictions on height, weight, and/or age for the usage of any Equipment.*

RouteWise AITM (Strategic Routing Services)		
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SAMPLE



State of California

EDUCATION CODE

Section 8483.4

8483.4. (a) The administrator of every program established pursuant to this article shall establish minimum qualifications for each staff position that, at a minimum, ensure that all staff members who directly supervise pupils meet the minimum qualifications for an instructional aide, pursuant to the policies of the school district. Selection of the program site supervisors shall be subject to the approval of the schoolsite principal. The administrator shall also ensure that the program maintains a pupil-to-staff member ratio of no more than 20 to 1. All program staff and volunteers shall be subject to the health screening and fingerprint clearance requirements in current law and district policy for school personnel and volunteers in the school district.

(b) When a local educational agency contracts with a third party to operate a program pursuant to this article, the local educational agency shall require the third party to notify the local educational agency by the next working day following, and to submit a written report within seven days of, the occurrence of any health- or safety-related issues, including, but not limited to, issues involving criminal background clearances for employees, building safety, and any event specified in subdivision (c).

(c) For purposes of this section, an “event” includes any of the following:

- (1) Death of a child from any cause.
- (2) Any injury to a child that requires medical treatment.
- (3) Any unusual incident or child absence that threatens the physical or emotional health or safety of a child.
- (4) Any suspected child abuse or neglect, as defined in Section 11165.6 of the Penal Code.
- (5) Epidemic outbreaks.
- (6) Poisonings.
- (7) Fires or explosions that occur in or on the premises.
- (8) Exposure to toxic substances.
- (9) An arrest of an employee of the third party.
- (10) Any other event as specified by the local educational agency.

(d) When a local educational agency contracts with a third party, the local educational agency shall require the third party to request from parents or guardians pupil health information, such as whether a pupil has allergies or asthma, before pupil enrollment. Parents or guardians may provide this information at their discretion and

are not required to provide pupil health information in order for the pupil to receive services pursuant to this article.

(Amended by Stats. 2023, Ch. 48, Sec. 8. (SB 114) Effective July 10, 2023.)

SAMPLE