

AGR 18.235 ✓
IHH 18.324

CONTRACT FOR FURNISHING STUDENT TRANSPORTATION SERVICES

This contract ("Contract"), is entered into this ____ day of September, 2018 ("Effective Date"), between the Town of Los Gatos ("TOWN" or "Town") and Santa Barbara Transportation Corp. doing business as Student Transportation of America, a California C corporation ("Provider").

Recitals

WHEREAS, in order to reduce traffic congestion in the Town of Los Gatos, TOWN desires to obtain student transportation services for students attending targeted schools within a geographic area under the terms and conditions of this contract.

WHEREAS, Provider states and declares that it can furnish this student transportation in accordance with the terms and conditions of this Contract; and

WHEREAS, this Contract was awarded by TOWN to Provider, and Provider has provided the requisite insurance certificates and other documentation required by TOWN.

NOW, THEREFORE, the parties agree as follows:

1. General Provisions

a. Incorporation by Reference; Hierarchy of documents the following documents constitute this Contract:

- i. Contract
- ii. Request for Proposals (RFP)
- iii. Provider's Proposal and supplemental written responses dated August 21, 2018

In the event of any conflict in the various terms of these documents, the terms of this Contract shall control over the other documents, while the terms of the Request for Proposals shall control over the Provider's Proposal.

b. Compensation

Compensation for the Provider's services **shall not exceed \$328,189**, inclusive of all costs, based on the Cost Proposal in Exhibit 1, according to Basis for Provider Compensation on Section 5.

c. Contract Term

The initial term of this Contract is for two (2) years beginning on the Effective Date noted above, for service provided between January 1, 2019 and June 30, 2020.

d. Amendments to this Contract

The Contract may be amended by mutual written agreement of the parties. Amendments may be proposed by either party in writing and delivered to the address for the giving of notices provided elsewhere in this Contract.

e. Option Terms for Renewal Beyond Contract Term

The Contract is renewable by mutual agreement of the parties for a maximum of three (3) additional one-year terms. The negotiation of the terms and conditions of any option extension shall occur on or before June 15th of the preceding contract year. The Contract, as renewed, shall include all the terms and conditions of this Contract

not expressly modified during negotiations.

f. Termination

i. Termination for Cause

If the Provider fails to comply with a term or condition in this Contract, or if the Town determines that the Provider is in any other way unfit, unqualified, or unable to perform the transportation needs of the Town under this Contract, except due to circumstances described in Section I.4.D. Force Majeure, above, the Town shall notify the Provider, in writing, as to the nature of the deficiency. If the deficiency is not remedied, or arrangements satisfactory to the Town for the correction are not made within thirty (30) days from the date of the notice, the Town may terminate the Contract by providing the Provider with fifteen (15) days' notice of termination. If the deficiency is a loss of certification or a loss of insurance coverage, the Town may terminate without providing a thirty (30) day cure period.

ii. Damage Provisions

If the Town terminates this Contract for cause, the Town may secure replacement services described in this Contract from another firm or provide service itself for the remainder of the Contract's duration. If the cost of the replacement service exceeds the cost of services under the rates in the Contract, the reasonable excess cost shall be charged to and collected from the Provider.

iii. Termination or Modification of Service due to Budget Decisions

Provider understands that during the term of this contract, the Town adopts a budget annually effective July 1 of each year. Payments by the Town to Provider under this contract are subject to the annual appropriation of funds through the budget process. The Town may terminate, reduce or modify Provider's services without further obligation upon giving Provider seventy (70) day's written notice.

g. Legal Compliance

i. Provider will comply with any and all applicable federal, state, county, municipal, and local laws, statutes, ordinances, policies, regulations, and/or prohibitions currently in force or that may come into force during the term of this Contract that pertain to the provision of student transportation services to TOWN. Vehicle equipment and services covered by this Contract must comply with applicable laws, ordinances and other legal requirements, including, but not limited to the Federal and California Laws, rules and regulations governing the operation of school transportation vehicles, the pertinent provisions of the California Vehicle Code and California Education Code, the pertinent provisions of the California Code of Regulations, pertinent provisions of the California Highway Patrol and Motor Vehicles Rules and Regulations, and policies, regulations and directives of the State Board of Education and the Santa Clara County Office of Education and County Superintendent of Schools, and the Town. School bus fuel storage tanks must be DOT certified. Provider shall comply with California Education Codes 45125.1, which requires, in part, that employees having any contact with students while performing a contract with a school district, must submit or shall show evidence of current acceptance of their fingerprints in a manner authorized by the Department of Justice. Provider shall provide the Town with evidence of compliance with the California Education Code fingerprinting requirements prior to performing any services under this Contract.

ii. This obligation of compliance extends to every aspect of student transportation service provision including, but not limited to: school buses and related vehicles; school bus equipment; school bus licensing; employee training; employee certification; driver licensing; employee background checks; employee drug and alcohol testing; first aid certification; emergency preparedness; environmental compliance; fueling;

traffic and parking; and others.

- iii. Provider is responsible for having full knowledge of all such laws, statutes, ordinances, as well as any applicable policies or regulations at all times over the term of this Contract.
- iv. This contract is made in Santa Clara County and shall be constructed in accordance with the laws of the State of California. Venue for any litigation shall be Santa Clara County.

v. Nonexclusive Contract

Nothing in this Contract limits the rights of TOWN to contract separately with other vendors for transportation services of any kind, provided however, Provider shall be the exclusive vendor for the regular education school transportation services provided under this contract.

vi. Failure to Enforce a Default or Other Right

The failure by either party at any time to enforce a default or right reserved to it, or to require performance of a term, covenant, or provision by the other party at the time designated, is not a waiver of any such default or right to which the party is entitled nor shall it in any way affect the right of the party to enforce such a provision later.

vii. Severability

Should any part of this Contract be found illegal or invalid for any reason, that part alone shall be severed and such invalidity shall not affect other provisions of this Contract which can be given effect without the invalid provision, and the remainder of this Contract shall remain in full force and effect.

viii. Dispute Resolution

The parties agree to meet and confer in good faith on all matters and disputes under this Contract.

ix. Paragraph Headings

Paragraph headings are for convenience and are not to be considered as included in the Contract language.

x. Survival

All obligations arising prior to the termination of this contract and all provisions of this contract allocating liability between TOWN and Provider survive the termination of this contract.

xi. Entire Contract

The Contract includes all the documents referred to in paragraph 2.a. All agreements between the parties are included and no warranties, expressed or implied, representations, promises or statements have been made by either party unless endorsed in writing and no change or waiver of a provision shall be valid unless made in writing and signed by the parties.

h. Provider's Licensing, Insurance and Indemnity Obligations

i. Permits and Licenses

Provider shall obtain and maintain in force the licenses and permits required by law for furnishing K-12 student transportation services.

ii. Insurance Requirements

Provider shall furnish evidence of insurance covering all operations under this Contract in a form and with companies acceptable to TOWN as follows:

Liability Insurance- LIMITS OF LIABILITY (MINIMUM): \$5,000,000 combined single limit per occurrence/aggregate for automobile liability, including bodily injuries and property damage;
\$10,000,000 combined single limit per occurrence/aggregate for general liability, including personal injury;

Provider shall provide for a minimum of \$5,000,000 of this insurance with a company or companies admitted to conduct business in the State of California by the State Commissioner of Insurance. Provider may provide the excess \$5,000,000 through \$10,000,000 in coverage with a reputable insurance company through a surplus lines broker. Self-insurance is not acceptable. All insurance is subject to approval by TOWN.

Insurance shall provide coverage for passengers from the time they are delivered into the custody of Provider or the custody of Provider's employees, when being picked up at home, school, or other designated location, until Provider or Employees release them to the school or designated location;

Provider shall not begin work under this Contract until Provider has obtained at its own expense all the insurance required under this section, and until such insurance has been approved by TOWN. Approval of the insurance by TOWN does not relieve or decrease the liability of Provider under the terms of the Contract; and

Provider shall furnish to TOWN by the effective date of the Contract and by June 15th of each year thereafter in which the Contract is in force proof of the insurance coverage described above in a form and with companies acceptable to TOWN.

The Policy shall contain the following provisions:

- The Town of Los Gatos, Los Gatos Union School District and Los Gatos – Saratoga Union High School District are additional insureds for all liability arising out of the operations by or on behalf of the named insured, and protects the additional insured, their officers, agents, and employees against liability for bodily injuries, deaths or property damage or destruction arising in any respect directly or indirectly from the performance of the Contract;
- The inclusion of more than one additional insured will not operate to impair the rights of one insured against another insured and the coverage's afforded will apply as though separate policies have been issued to each insured. The inclusion of more than one additional insured does not increase the limit of liability under the policy;
- The insurance supplied by Provider is primary, but only with respect to liability arising out of the performance under this Contract. Insurance held or owned by TOWN, Los Gatos Union School District and Los Gatos – Saratoga Union High School District is not contributory.
- Coverage provided by the policy will not be reduced or canceled without sixty (60) days written notice given to TOWN by certified mail; and
- The insurance must be occurrence based, and not a claim made policy (policies). Certificates of insurance must be evidence this.

The following documentation of insurance shall be submitted to TOWN and approved before beginning work:

- Certificates of insurance showing the limits of insurance provided; and
- Signed copies of the specified endorsements for each policy

Workers Compensation Insurance- Provider shall maintain in effect during the entire life of the Contract Workers Compensation and Employer's Liability Insurance providing full statutory coverage, or shall undertake self-insurance in accordance with applicable statutory requirements of the State of California. In signing this Contract, Provider makes the following certifications, required by sections 1861 of the California Labor Code:

"I am aware of the provisions of Section 3700 of the California Labor Code which requires every employee to be insured against liability for workers' compensations or to undertake self- insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

Property Insurance -Provider shall maintain a policy, or obtain coverage through its landlord's policy, for property insurance covering the shop buildings and related personal and real property. Such insurance shall be sufficient at minimum to repair or pay the depreciated value of the damaged property.

iii. Hold Harmless/Indemnification

Provider agrees to indemnify, hold harmless and defend (with legal counsel of their choosing) TOWN, Los Gatos Union School District and Los Gatos – Saratoga Union High School District, their officers, agents, and employees from and against all claims, damages, losses and expenses, including reasonable costs and attorneys' fees arising out of or resulting from the performance of the Contract. Such indemnification obligation also includes, but is not limited to, claims of injury to Provider's employees (and their heirs) while in the course and scope of their employment under this Contract. Notwithstanding the foregoing, Provider will not be required to indemnify, hold harmless, or defend TOWN from any claims, demands, or causes of action arising from the sole gross negligence or intentional misconduct of TOWN.

2. Student Transportation Service Requirements

a. Transportation Service Provision – Programs, Types, and Volume

- Provider will furnish school transportation services to and from destinations assigned to Provider by TOWN under this Contract. Transportation services may also include, at TOWN's sole discretion, training runs, mid- and/or post-day routing between schools and specific educational programs before, during, or after the regular school day.
- TOWN reserves the right at any time during the term of this Contract to alter rider eligibility policies and other parameters that may increase or decrease the amount of service to be provided in accordance with this requirement.
- Scope of Work. The transportation services shall be provided by buses and at such times and places and in such manner as shall be specified by the Town. As the School District may change class hours and adjust starting times, the Town may increase or decrease service. Such increase or decrease may result from service demand, budgetary needs, or other factors. These service level adjustments may result in periodic increases or decreases in the number of days of the school year requiring student transportation.
- The Town reserves the right to increase or decrease the number of routes, school days, stops and other operational elements, during which the TOWN would operate student transportation service within the contract period. Should the Town increase or decrease the scope of services, then the Town will enter into negotiations with the Provider to establish a mutually agreeable daily base rate to reflect the

incremental increase or decrease in operating days.

b. Transportation Service Provision – Operating Parameters

i. Provider will furnish the required services in conjunction with the parameters established by the terms of this Contract as may be amended from time to time by mutual written agreement of the parties hereto, and pursuant to all established federal, state and local laws, rules and regulations.

ii. Route Development

The draft routes and schedules will be provided by the Town. Verification of transportation routes and schedules shall be the responsibility of the Provider and proposed changes furnished to TOWN for review not later than one (1) month prior to the commencement of service in each Contract year. TOWN shall provide written approval of the routes no later than two (2) weeks prior to the commencement of service in each Contract year. It will be the mutual responsibility of Provider and TOWN to resolve any issues and concerns with the transportation routes.

iii. Provider is to perform the routes and route packages agreed upon, except that:

- Deviations may occur based upon:
 - a. A particular day's schedule or weather;
 - b. Unforeseen traffic situations or incidents;
 - c. The bus driver or Provider's concern that following the prescribed route creates an unsafe circumstance; or
 - d. An emergency.
- Provider will immediately report to TOWN, in accordance with the designated communication plan, the following exceptions associated with performing the routes as designed:
 - a. Zero (0) riders at morning or afternoon bus stops;
 - b. Late arrival at a particular school in the morning of five (5) minutes or more; or
 - c. Late departure from a particular school in the afternoon of five (5) minutes or more.
- Provider will immediately report, in a manner acceptable to TOWN, the following exceptions associated with performing the routes as designed:
 - a. Road closure causing a route deviation;
 - b. Any route turns, turnarounds or route paths that should be altered to reduce unnecessary travel or minimize potentially unsafe circumstances;
 - c. Any bus ridership that is beyond the parameters established as acceptable by TOWN;
- Provider will make every effort to notify TOWN of route changes at least three (3) school days before the change is to occur.
- Provider will comply with route change orders from TOWN within three (3) school days of notification.

3. Provider Accountabilities & Responsibilities

- a. Safe Service
 - i. Student, constituent, and Provider employee safety is paramount and will be the highest priority consideration in the delivery of services under this Contract.
 - ii. Provider shall immediately inform TOWN of any current policies, regulations, procedures, or practices that may conflict with safety prioritization.
 - iii. Provider shall not intentionally compromise safety in order to achieve any of the requirements of this Contract.
 - iv. Provider shall not intentionally perform an unsafe act to achieve contractual or related performance criteria.
 - v. Provider will immediately perform any service necessary to address a safety concern whether or not it is specifically required by this Contract.
- b. Appearance of Provider Resources
 - i. The appearance of Provider's vehicles, facilities, work areas, and employees will meet customary and reasonable standards for the student transportation industry.
 - ii. Provider shall require all drivers wear uniform with the company's name and logo at all times when performing duties.
- c. Provider Employee Conduct
 - i. The conduct of Provider's employees will meet the customary and reasonable standards for the student transportation industry.
 - ii. Provider will be responsive to written direction provided by TOWN as to any personnel or conditions deemed to be insufficient relative to these standards.
 - iii. TOWN may, at its sole discretion and at any time over the term of this Contract, mandate a change to Provider's management personnel if TOWN determines that Provider's repeated and progressive efforts to resolve a specific and documented shortcoming identified by TOWN have been unsuccessful.
 - iv. Provider must comply with any TOWN request for the removal of an employee providing service under this Contract if such removal is deemed to be in the best interest of TOWN, and on submission of written documentation to Provider documenting the reasons for the request.
- d. School Bus Driver Requirements
 - i. General Requirements

The Provider shall provide qualified drivers for each vehicle, employed, trained and licensed in accordance with the California laws, rules and regulations governing the operation of school transportation vehicles, and experienced with the regulations and handling and supervision of students. All drivers shall be certified by the California Highway Patrol. It is the Town's intent to provide high-quality transportation services and to ensure the safety and comfort of the School District's students. Toward that end, the Provider shall uphold the following standards for personnel:

Provider shall take reasonable steps to prevent its employees from exposing any pupil to impropriety of word or conduct. Provider shall not knowingly permit its drivers to smoke on the bus, to drink any intoxicating beverage, or to be under the influence of drugs or alcohol while operating any bus. Provider shall at all times abide by applicable local, state and federal laws and regulations in its hiring practices.

The use of tobacco and the possession or use by any person of alcohol, controlled substances, illegal

drugs, firearms, knives, or other weapons on school buses is prohibited.

ii. Pre-employment Screening

The Provider shall develop and implement an employment screening program for all candidates for employment. Provider has identified its screening programs in its proposal. These screening programs shall be at least adhere to state screening requirements and California Highway Patrol screening requirements and shall be designed to assist the Provider in determining the candidate's suitability for assignment to student transportation services. All drivers shall meet Town training, safety, and operational requirements, as specified herein and/or specified in the RFP.

iii. Credentials and Related Requirements

- Licenses and Permits

Every driver employed by the Provider to provide service to the Town must have and maintain a valid Class B or other legally required California Commercial Driver's License, a valid Passenger Endorsement, a valid California School Bus Driver's Certificate, and any other applicable license or permit. Every driver shall possess all other licenses and certifications required by federal, state and local law. Upon request of Town, Provider shall provide evidence that all personnel meet these requirements.

- Health Requirements

Each school bus driver employed by the Provider to provide service to the Town shall pass physical exams per the State's licensing requirements. Provider shall establish and maintain a record-keeping system to assure that each driver meets the requirements per the Provider's employment contract. This system shall be available for review by the Town or its designee upon request.

- Background Checks

Provider shall perform criminal and driving record background checks of all personnel employed in the operation of the service, and shall provide evidence that no employee utilized in the operation of service is listed in the Child Abuse Registry or Sex Offender Registry.

iv. Training Requirements

- The Provider shall provide or arrange for all legally required and other training as is needed to ensure that qualified drivers are available to provide transportation services described in this Contract.

- Before a driver may transport students for the Town, the driver, whether permanent, temporary, or substitute, must have completed original training as specified by California Vehicle Code and other training as required by law. In addition, every driver must each year complete such in-service training as is required by the California Code of Regulations and the California Education Code in order to maintain a valid School Bus Driver's Certificate.

- At least once each year before beginning service for each school year, all drivers, whether permanent, temporary, or substitute, shall participate in a Town-approved, Provider-provided orientation program. The driver orientation shall include, but not be limited to: student management; communication with parents, schools and the general public; discipline on the school bus; defensive driving; first aid; use of all safety equipment for the school bus; plan for emergency evacuation students; use of two-way radio; orientation in the routing and scheduling system used by the Town. This orientation program may count towards the driver's mandated in-service training for the year.

- The Town reserves the right to call periodic bus driver training meetings requiring mandatory attendance of all drivers servicing students. Such meetings may not exceed three (3) hours per year

per driver, not including travel time. The Provider shall assume the costs associated with drivers' wages as a result of these meetings.

- Each driver shall have had CPR training and First Aid Training and shall hold valid First Aid Certificate and CPR Certificate issued by the American Red Cross or an organization of comparable status.
- Safety is of paramount concern to the Town. In recognition of this priority, the Provider shall plan and implement a comprehensive safety program and shall ensure the availability of a state certified School Bus Driver Instructor to conduct the program. The program shall include regularly scheduled safety meetings for drivers. The agenda of the meetings shall be available to the Town. Time spent in safety meetings may be counted toward annual in-service training requirements.
- The Provider's management staff shall evaluate all drivers on their routes for the purpose of observing their driving practices with respect to safety, mechanical operation, compliance with laws, policies and regulations, adherence to established routes and schedules, handling of students, and other factors inherent in the transportation of students. The Provider shall evaluate all drivers once every six (6) months during their first year of employment with the Provider and one (1) time per year thereafter. A copy of each evaluation report shall be made available to the Town upon request.

v. Other Requirements

- Identification Badges
Each driver shall be well-groomed, appropriately dressed in Provider uniform shirts with the company name and logo and shall wear a company identification badge with name and photo at all times while driving students for the Town.
- Time Pieces
Provider shall require each driver to have an accurate time piece while on duty to maintain established scheduled route times.
- Radios
Each driver shall have knowledge of the operation of the mobile two-way radio and all Federal Regulations covering its use.
- Messages
Each driver shall be required to check in with Provider for messages via radio each morning and afternoon as the driver begins a route.
- Unsafe Equipment
In addition to all other safety requirements, each driver shall also be responsible for notifying the Safety Program Supervisor of equipment suspected to be unsafe for transportation use. A driver shall not continue to operate a school bus if safety is compromised until the unsafe condition is sufficiently remedied.
- Policies and Procedures
Each driver shall be familiar with and shall abide by the rules, policies and procedures of student transportation as provided by the State of California and the Town.
- Temporary Removal of a Driver
If a concern arises regarding appropriateness of a driver's conduct on a route, the Provider shall, upon receipt of notice from the Town, immediately temporarily remove the driver from the duty of

conveying a student until such time as the concern is resolved to the satisfaction of the Town.

- Change of Route Assignment

The Town reserves the right to change the route assignment of a driver if the best interest of student transportation will be served, according to the Town.

- Student Transfers

A driver may not transfer a student to or from another vehicle going to or coming from school except in case of emergency or equipment breakdown, or unless the bus schedule specifically calls for such transfer.

- Lateness

A driver shall contact the dispatcher immediately upon determination that the bus will be in excess of five (5) minutes late in the pickup or delivery of students. Dispatch shall immediately notify all necessary persons, including parents, schools and the Transportation and Mobility Manager in a manner previously agreed by the Town.

vi. Discipline on the School Bus

- For the purpose of passenger safety, the bus driver shall require that bus riders comply with the Safety Rules established by the Town.

A driver who experiences a discipline problem and cannot identify an individual for citation shall file an incident report with the Provider. The Provider will report serious or persistent student misconduct to the Transportation and Mobility Manager.

vii. Drug and Alcohol Detection and Use Prevention

The Provider shall implement a comprehensive drug and alcohol detection and use prevention policy designed to be used for all employees of the Provider who will be performing services under this Contract, including both drivers and mechanics. The Policy shall be submitted to the Town and approved before Provider begins work.

e. Provider Vehicles

- i. Provider shall provide buses per the requirements in the RFP, equipped with engines meeting current California air quality standards for the Contract. Each bus must be properly certified by the California Highway Patrol, and meet all requirements of the California Code of Regulations and the California Vehicle Code.

- Provider will adhere to a minimum spare vehicle requirement of ten percent of all regular daily routes operated from the Provider's facility.
- Provider will repair and maintain all vehicles, at a minimum, in accordance with vehicle manufacturer recommendations and California regulations.
- All vehicles used in furtherance of this Contract shall be model year 2015 or newer at the start of the Contract.

- ii. Provider will submit an inventory of their vehicle fleet to be assigned to the provision of services under this section of the Contract, with content and in a format acceptable to TOWN, a minimum of 15 days prior to the commencement of services under this Contract, and at least one-month prior to each subsequent annual anniversary date of the Contract.

- iii. Provider will supply all of the vehicle equipment required for service delivery.

- iv. Provider vehicles will be equipped with seat belts as required by State statute and two-way voice communications to Provider's dispatch facility.
- v. All vehicles shall be kept in a safe, clean, and sanitary condition, and open for examination at all times by TOWN. Buses will maintain an acceptable level of physical appearance as determined by TOWN, including but not limited to, seat condition, exterior paint, and clean windows and mirrors.
- vi. Each Provider vehicle will be equipped with Automatic Vehicle Location (AVL/GPS) devices of a type and quality sufficient to interface with, and/or transfer data to TOWN. The data available to TOWN must, at a minimum, enable calculation of the Minimum Service Level Criteria of this Contract, and adequately support the Town's Performance and Staffing Management Program. If deemed necessary, Provider will conduct calculations for Minimum Service Level Criteria for TOWN.
- vii. TOWN, may call for the removal, with written cause, from service under this Contract of any bus used as part of this Contract that in their opinion does not meet the requirements of this Contract. Provider, upon written notification by TOWN, shall immediately cease to utilize the specific bus for any work, direct or indirect, that relates to this contract.
- viii. Provider shall provide and maintain only certified school buses which meet applicable regulations and laws relating to student transportation in California, including relevant requirements of the California Vehicle Code and the California Code of Regulations and applicable rules, regulations, and orders of the California Highway Patrol and the California Education Code. The Provider shall furnish to the Town certificates of compliance and copies of California Highway Patrol inspections certifying that all buses furnished under this Contract are in compliance with the Vehicle Code and the Regulations of the State Board of Education. All fuel tanks must be DOT certified.
- ix. Inspection and Maintenance of Buses

The Provider shall maintain regular and standby school buses in good and safe mechanical and operating condition. The school buses shall be maintained in accordance with all applicable regulations and laws relating to student transportation in California, including all relevant requirements of the California Vehicle Code and the California Code of Regulations, all applicable rules, regulations, and orders of the California Highway Patrol, and the California Education Code. The Provider agrees to submit the completed inspection schedule forms. Each bus shall be maintained in clean and sanitary condition and shall have good interior and exterior appearance. The Town reserves the right to access the Provider's terminal facility at any time and inspect buses to ensure that they are maintained in good, safe, clean and sanitary condition.
- f. Software, Hardware and Related Technologies
 - i. Provider will provide the software, hardware, and technical services necessary to:
 - Provide TOWN with direct electronic access, via electronic file transfer or direct data system access, to Provider's AVL/GPS data.
 - Ensure all buses are outfitted with functioning video recording cameras.
 - View required data from digital video recording cameras and store data up to seven (7) days.
 - ii. If providing direct data system access to Provider systems, TOWN's access to data will be restricted so as not to interfere with the integrity of the data system or with Provider's operations, and can be limited to ensure the privacy of Provider information unrelated to this Contract.
- g. Pre-service Route Verification

- i. Provider will perform one dry run, defined as operating each bus at the scheduled times on a regular school day but without students on board, for each assigned route and route package not less than ten (10) days preceding the first day of school in each school year falling within the term of this Contract.
 - ii. Provider shall obtain approval of the date and time of the dry run from the TOWN. This process will be coordinated with TOWN who may monitor the process without restriction. TOWN and Provider will meet within seven (7) day following completion of each dry run to assess the outcome of the dryrun.
 - iii. Provider shall not be separately compensated for the dry run.
 - iv. If TOWN deems, at its sole discretion, that an additional dry run is necessary, TOWN may require one additional partial or full dry run to be performed for any route or route package. In that event, TOWN will be responsible for compensating Provider at the rate(s) included in Exhibit 1.
- h. Other Provider Responsibilities
- i. Provider will be responsible for providing all services related to the provision of Transportation Service not otherwise noted in, and not specifically reserved for TOWN by this Contract. No additional compensation shall be provided for these services. These services include, but shall not belimited to:
 - Coordination of student behavior management on school buses with school officials;
 - State and TOWN-mandated data collection, reporting of accident investigations;and
 - Customer service activities to TOWN, school officials, parents and guardians. This shall include providing information to parents about bus schedules and stop times, tracking lost items, accepting and resolving bus transportation complaints, concerns and compliments. Provider's main telephone line may be published on Town's website and communications to encourage its use for these purposes.
 - Provider shall submit to Town a monthly performance report that will include the number of bus riders each day by route, the on-time performance of each route, the number of bus accidents, a summary of service complaints received and their resolution and any other information as agreed upon by Town and Provider.
 - Provider's staff will perform an in-the-field safety review of all proposed bus stops and bus routes at least one month prior to the start of service each year. Provider will notify Town of any concerns regarding the location of any of the proposed bus stops, the roads travelled to get to each bus stop on the route or the timing of the bus stops. At the request of the Town, Provider will drive each bus route with Town's designated representative before the start of service each year to review the bus stops and discuss any concerns related to them.
 - i. Cooperation with TOWN
 - i. Provider will work cooperatively with TOWN to ensure safe, effective, and efficient Transportation Services throughout the term of this Contract.
 - ii. If other services or issues arise that are previously unaddressed by TOWN, Provider will make a good faith effort to address or resolve such until the matter can be referred to TOWN.
 - j. Strike by School District or Town Employees

In the event of a strike or work stoppage by any employee(s) of the Town of Los Gatos or the School Districts, the Provider shall continue to fully perform all duties as set forth in this Contract.

k. Implementation of Service

The Provider, within thirty (30) days after the Effective Date above, shall furnish the Town with a time line schedule detailing the following:

- i. Provision of Equipment;
- ii. Provision of Facilities;
- iii. Hiring of Supervisory Personnel;
- iv. Hiring and Training of Drivers and Mechanics;
- v. Driver Route Orientation; and
- vi. Provider Field Service Personnel Assignments.

This time line schedule is subject to approval by the Town.

l. Assignment of the Contract: Subcontracts

The Provider may not subcontract, sell, assign, transfer, or encumber the Contract, any right or interest in or under the Contract, or permit any sale, assignment, transfer, or encumbrance to occur by operation of law without the prior written consent of the Town, which consent shall not be unreasonably withheld or delayed. However, at its sole discretion, the Town may assign this Contract if the assignment is made to a parent, subsidiary, or related company. Any attempt to subcontract or transfer this Contract or any interest in it without such consent shall be violable by the Town and, at the Town's election, shall constitute a material default under the Contract.

A subcontract or assignment of the Contract by the Provider with the approval of the Town is subject to the terms and conditions of this Contract and to the rights of the Town contained in the Contract. No transfer or assignment of the Contract by the Provider shall release it from its obligations.

m. Provider as an Independent Contractor

The Provider is an independent contractor and not an officer, agent, or employee of the Town. Further, the Provider's employees, expressly including but not limited to drivers, are employees of the Provider and are not employees of the Town.

n. Covenant Against Contingent Fees

The Provider warrants that no person or selling Town has been employed or retained to solicit or secure this Contract on an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide established commercial or selling agencies maintained by the Provider for the purpose of securing business. For breach or violation of this warranty, the Town may terminate this contract and, in Town's sole discretion, may deduct from the Contract price or consideration, or otherwise recover, the full amount of the commission, percentage, brokerage, or contingent fee.

o. Nondiscrimination

It is the policy of the Town that in connection with all work performed under this Contract, there will be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, handicap, religious creed, sex, age or marital status. Provider agrees to comply with applicable Federal and California laws including the California Fair Employment Practice Act, beginning with Labor Code Section 1410.

4. Provider Performance

a. Contract Performance and Staffing Management Program

- i. Exhibit 2 to this Contract provides a description of the Contract Performance and Staffing Management Program. Provider will be an active participant in, and will be responsive to the requirements of this program.
- ii. The Contract Performance and Staffing Management Program is a non-punitive, joint, supportive program of contract compliance monitoring and performance measurement designed to enhance and improve transportation service delivery in a continuous improvement cycle.

b. Minimum Service Levels and Standards of Performance

- i. In addition, and as a supplement to the Contract Performance and Staffing Management Program, the Provider will be responsible for meeting or exceeding certain Minimum Service Levels and Standards of Performance as described below. If the standards below are not met, the Provider will be considered non-compliant. Provider will monitor, track, account for, and report to TOWN the data and information required to determine Provider's success in meeting or exceeding the established standards.
- ii. The Town reserves the right to collect, analyze and track data provided by the Provider or obtained from other sources.
- iii. Provider will comply with the following Minimum Service Level Standards of Performance. For the purposes of this Contract, a Bus Trip is defined as the service from the first pick up point to the last drop off point. The morning and afternoon trips are considered separate trips.
 - No more than four (4) percent of all bus trips operated by the Provider in each 4-week service period shall be delayed as a result of mechanical problems with the Provider's assigned vehicle or the Provider's inability to provide an adequate number of qualified bus drivers as defined within this Contract. A delayed trip is defined as any route component that begins operation after its scheduled time five (5) minutes or later, or that must be serviced by another means as a result of the Provider's failure to provide a qualified driver in a timely manner, or that is delayed five (5) minutes or more over the course of its scheduled trip as a result of a mechanical problem with the assigned vehicle.
 - Provider shall report every occurrence of delay as defined in the above subparagraph of this section to TOWN within fifteen (15) minutes of occurrence in a manner and format acceptable to TOWN. This is a zero-tolerance standard of performance.
- iv. Provider is responsible for recording and tracking all data and information required to calculate Provider performance relative to the Minimum Service Levels and Standards of Performance. This data will be provided to TOWN not later than the 15th of each month for service completed in the prior service month. The data and information will be submitted in a verifiable manner and format acceptable to TOWN.
- v. Upon receiving a formal written notice from TOWN, Provider shall cure a non-compliance condition within thirty (30) days of its initial occurrence; otherwise a Minimum Service Level Performance Withholding may be imposed. Provider will comply with TOWN directives to improve operations and outcomes that fall below the established standards.

c. Force Majeure

The Provider will be excused from performance during the time and to the extent that it is prevented from obtaining or performing the service by natural disaster, acts of God, acts of war, fire, flood, riot, terrorism, civil disturbance, loss of transportation facilities, oil or fuel shortage or embargo, commandeering of materials,

equipment, products, plants or facilities by the federal or state government, labor dispute, strike or lockout. Satisfactory evidence must be presented to the Town demonstrating that the non- performance was not due to the fault or negligence of the Provider.

d. Minimum Service Level Performance Withholding

- i. TOWN may impose a Minimum Service Level Performance Withholding factor for non-compliance with the Minimum Service Levels and Minimum Standards of Performance, as follows:
 - TOWN may withhold payment of up to one (1) percent of the Provider's next regular monthly Transportation Services invoice for any single occurrence of non-compliance within a 4-week service period.
 - TOWN may withhold payment of up to three (3) percent of Provider's next regular monthly Transportation Services invoice should non-compliance continue for two consecutive 4-week service periods.
- ii. The number of withholding instances is unlimited, and may be repeated for each instance of non-compliance with the Minimum Service Levels and Minimum Standards of Performance requirements.
- iii. The withheld amount may be paid in full to the Provider if the non-compliance factor resulting in the Performance Withholding instance is cured to the satisfaction of TOWN following the deferral decision.
- iv. Grace Periods: the TOWN may allow a grace period of up to two (2) calendar weeks starting from the first service day of this Contract and grace periods of up to one (1) calendar week each at the beginning of each school semester, during which time performance withholding is not imposed.
- v. If the non-compliance factor is not cured to the satisfaction of TOWN following the deferral decision, TOWN may retain the withholding without obligation to pay the Provider the withheld amounts.
- vi. TOWN will notify the Provider in formal letter delivered via a traceable method to the address of record for the Provider contained in this Contract if a decision to retain a Performance Withholding is reached.

e. Liquidated Damages

- i. In the event that standards of service defined in this agreement are continually deemed unsatisfactory, TOWN's board may choose to implement the Liquidated Damages contingency outlined in this section. If the Liquidated Damages contingency is initiated, section 4d Minimum Service Level Performance Withholding of this contract, will be null and void.
- ii. It is agreed by the Provider and TOWN that if the Provider fails to deliver services under this Contract, TOWN is damaged. Due to the nature of the services rendered, it is impractical and extremely difficult to fix the actual damage to the Town. When deficiencies occur TOWN and the Provider agree that a schedule of liquidated damages may, at TOWN's discretion, be imposed upon the Provider as a remedy for Inconveniences. The Provider will be notified in writing within 20 days of such deficiencies by TOWN. Notification shall identify the type of infraction along with information that clearly details the date, time, location, route number, school, driver (if known), and vehicle number. Billing for such infractions are to occur within 60 days of its assessment. Failure to either timely notify or bill the Provider shall relieve the Provider of its obligations to pay liquidated damages for the particular event.
- iii. The following schedule details the liquidated damage charges that may be assessed for the failure to perform the services as expected by TOWN. All damage charges are assessed based on each occurrence, calculated as a percentage of the daily rate for each route.

(1)	Late Bus 15 min.	Each bus trip which is fifteen (15) minutes late or more to or from home or school shall be assessed liquidated damages of 50% of the daily rate.	50% of daily rate
(2)	Late Bus 30 min.	Each bus trip which is thirty (30) minutes late or more to or from home or school shall be assessed liquidated damages of 100% of the daily rate.	100% of daily rate per run
(3)	Failure to furnish vehicle and driver (missed trip)	If the Provider fails to furnish a vehicle and driver for any trip, liquidated damages shall be assessed at 150% of the daily rate. The assessment of damages does not relieve the Contractor of its obligation to provide sufficient buses and drivers including spares or substitutes, or perform such service.	150% of daily rate
(4)	Failure to Seek Approval to Drive	Managers, dispatchers and field representatives shall not drive school buses except in emergency or as approved by the Transportation and Mobility Manager. Failure to seek approval shall result in liquidated damages of 50% of the daily rate.	50% of daily rate
(5)	Missed Bus Stop	If a driver misses a bus stop and fails to pick up or drop off a student, liquidated damages shall be assessed in the amount of 25% of the daily rate.	25% of daily rate
(6)	Failure to complete a run due to vehicle or fuel problems	If the Provider fails to complete a trip after starting due to vehicle malfunction or running out of fuel, and a backup vehicle is not made available to complete the trip within 30 minutes of scheduled time, liquidated damages shall be assessed in the amount of 150% of the daily rate.	150% of daily rate
(7)	Failure to Notify – Late Buses	Failure of the Contractor to provide the Transportation and Mobility Manager immediately, or within a reasonable time as dictated by the nature of the occurrence or incident, complete and accurate information relating to early or late buses shall be assessed 25% of the daily rate.	25% of daily rate
(8)	Failure to Notify Schools of Late Buses	Failure of the Provider to notify the applicable schools of a late trip immediately or within a reasonable time as dictated by the nature of the occurrence or incident shall result in liquidated damages of 25% of the daily rate.	25% of daily rate
(9)	Failure to Notify of a Bus Accident	Failure of the Provider to notify the Transportation and Mobility Manager as soon as possible and in no event later than one hour after becomes informed of a school bus accident or an incident in which a child may have sustained injury shall be assessed liquidated damages in the amount of 100% of the daily rate.	100% of daily rate

(10)	Failure to Provide Equipment	Failure to provide the appropriate equipment required for each bus, including but not limited to, two-way radios, fire extinguishers, etc., shall result in the assessment of liquidated damages in the amount of 25% of the daily rate and continuing at this rate for so long as the Provider fails to provide such equipment.	25% of daily rate
(11)	Operating a Bus in an Unsafe or Illegal Manner	If a driver operates a school bus in an illegal manner, including but not limited to operating an overloaded bus, boarding and deboarding passengers at an unsafe location, creating a traffic hazard, liquidated damages shall be assessed in the amount of 100% of the daily rate.	100% of daily rate

Example: If a morning trip is late for 30 minutes or more, the Provider will be charged 100% of the daily rate for that route. If the afternoon trip is also late for 30 minutes or more, the Provider will be charged 100% of the daily rate for that route. The cumulative damages for these two occurrences will be 200% of the daily rate for that route.

Payment for damages will be deducted from the Provider's next invoice. In the event that there are unknown or extenuating circumstances, the Provider shall have the right of appeal. Appeals are to be made in writing within ten (10) school days and sent to TOWN for review. The Town Council shall have the sole right to review the appeal and will have the option to maintain, reduce, or eliminate the proposed penalty. The Town Council will be required to rule on any appeal within 45 days of receiving a written notice of appeal from Provider.

f. Provider Fiscal Efficiency

- i. Provider will make an ongoing good-faith effort to identify opportunities to improve the efficiency and effectiveness of the bus routes and route packages on a quarterly basis. Where feasible, Provider will identify opportunities to modify, pair, combine, or repackage bus routes with the objective to perform transportation services in the most efficient and effective manner possible. If identified, such opportunities will be communicated to TOWN not later than one (1) week following the identification. At a minimum, Provider will submit a written report to TOWN, to accompany each regular invoice submission, summarizing the opportunities identified in the period covered by the invoice or, if no opportunities were identified, making an affirmative statement attesting to this fact.
- ii. Provider will immediately notify TOWN, in a manner deemed acceptable by TOWN, of any new programs or services that are requested of Provider by school officials or representatives, including any school building or program bell time changes. Provider shall not fulfill such requests until and if authorized by TOWN.

5. Basis for Provider Compensation

a. Pricing

- i. Contract pricing shall be on a cost per bus per day basis. The pricing form included as Exhibit 1 shall govern the calculation of Provider compensation.

b. Dates for Student Transportation Service

- i. From the Effective Date of executed contract, the Provider shall mobilize, coordinate and undertake all activities, including but not limited to, those specified herein in order to be able to provide student transportation services as specified herein, commencing on January 7, 2019. During the term of the Contract, student transportation services are required during the following periods:
- ii. School Calendar Year - The school calendar year covers the months of August through June, inclusive. During the school calendar year, the total number of buses contracted for are estimated to be required for each of the one hundred eighty (180) school days as defined by the individual School District calendars and verified by the Town; and
- iii. Unscheduled Closing of Schools
 - The Town is not obligated to accept or pay for services agreed to be furnished by the Provider on those days when, by direction of the School District, classes served under this Contract are closed to ensure the health and safety of the students or for any other lawful reason. The decision as to the need for closing at the start of the day or for early dismissal during the day shall be made by the Superintendent of the School District.
 - The Town agrees to notify the Provider no later than 5:30 a.m. on such days of school closures and as early as possible on such days of early dismissals. The Town agrees to provide partial payment for student transportation service for days when Provider is notified of school closures after 5:30 a.m. in the amount of 50% of the daily rate per bus for a complete cancellation, and in a prorated amount for partial service.

6. Invoicing and Compensation Adjustments

a. Invoicing

- i. Provider shall submit an invoice to TOWN no later than the 5th business day following the month in which services have been provided. The invoice shall be based upon the actual number of days of service within that calendar month. Payment shall be made to Provider within thirty (30) after receipt of a valid invoice. The form of the invoice shall be approved by the Transportation and Mobility Manager. A "daily bus report" ("DBR") shall be submitted for each separate bus/driver combination and shall be available to the Transportation and Mobility Manager for review. A DBR is a driver's report of mileage, departure and arrival times, number of students transported, names of school sites serviced, and the beginning and end times for each trip made. Monthly invoices shall summarize home-to-school DBRs for each route during each day of the invoice period. Summaries shall be submitted to the Transportation and Mobility Manager monthly.

b. Fuel Cost

- i. Provider shall be responsible for the acquisition of all fuel necessary for service. The cost of fuel shall be incorporated into the daily rate for services provided included in the RFP.

c. Town Provided Parking for Provider Vehicles

- i. Town may elect to provide parking on Town property for a certain number of Provider's vehicles to be used in the provision of services under this Contract. Provider shall utilize the space provided for parking only and will not perform vehicle maintenance or any other activities on Town property. In the event Town parking is provided, Town shall be entitled to a lower price for services as outlined in Provider's proposal. The Parties will execute a Contract Amendment with a separate property lease agreement prior to any Provider vehicles being parked on Town property.

d. Ancillary Services and Costs

- i. Provider's price proposal includes all ordinary and extraordinary costs of operation, and the Town is not responsible for any additional costs. Provider will bear all costs associated with performing services not identified in this Contract or in the Exhibits.
- ii. Provider will bear all penalties, fines, damages, levies, taxes, etc. that may arise from performing transportation services.

The Town shall pay the Provider for services provided on a monthly basis. Payment shall be made within thirty (30) calendar days following receipt of a properly documented invoice. Payment may be adjusted by an incentive or liquidated damage reduction as provided in the Contract and the Town's document damage reports. Notwithstanding the foregoing, in no event shall any payment owed by the Town which is not being disputed in good faith, be delinquent for more than sixty (60) days. In the event of any delinquency beyond sixty (60) days, Provider may give the Town written notice of the delinquency.

7. Notices

All notices to be given by the parties shall be in writing and served by depositing same in the United States Post Office, postage prepaid and registered to the address(es) shown below or such other persons, addresses or telephone numbers as may be designated in writing by the parties from time to time.

Notices to the Town shall be sent to:

Ying Smith, Transportation and Mobility Manager
Town of Los Gatos
Department of Parks & Public Works
41 Miles Avenue, Los Gatos CA 95030

8. Provider's Records and Reporting Requirements

a. Operating Records

The Provider shall maintain daily records indicating route numbers, bus numbers, driver names, the number of students transported to each site, and the number of miles and hours driven. These records shall be kept for a minimum of three (3) years. A copy of these records shall be submitted to the Transportation and Mobility Manager on a weekly basis.

b. Personnel Records

The Provider shall maintain records that include documentation of all drivers, management personnel, and support staff in compliance with legal requirements and standards and requirements set forth in the Contract. Operator shall provide records of operator experience, training and performance, if required by Town.

c. Fleet Records

The Provider shall maintain preventive maintenance policies, records, and schedules, all bus maintenance records, and copies of all California Highway Patrol, and California Department of Transportation Vehicle Inspection reports for buses servicing this Contract. The Provider shall make these records available for review by the Town upon request.

d. Reports to be Submitted to the Town

The Provider shall submit the following reports or studies to the Town upon request and on an occurrence basis:

i. Accident Reports

Every school bus accident or incident involving a school bus collision shall be verbally reported immediately to the Transportation and Mobility Manager and the California Highway Patrol. A written report shall be submitted to the Transportation and Mobility Manager as soon as possible, but in no event later than three (3) working days after the accident.

The school bus accident report shall be clear and provide at a minimum the following:

- Number of students on board at the time of the accident and the names of each;
- Whether injuries occurred;
- The date and time of the accident;
- The route number, driver's name, location of accident, involvement of other vehicles, and nature and extent of property damage;
- The Provider's assessment of liability.
- Reports completed by the Provider's management and by the driver; and
- Reports obtained from the California Highway Patrol or from any other law enforcement.

ii. Route Driver Assignments

- A list, continually updated, of routes and names of drivers assigned to those routes. In addition, the Provider shall provide a daily report of all routes covered by substitute drivers.

iii. Student Citations

- A copy of each student bus citation must be provided to the Transportation and Mobility Manager. ~~and to school personnel.~~

iv. Summary of Late or Missed Trips

- Weekly written reports on each late or missed trip, with cause of problem and corrective action taken.

v. Notification of Hazards

- Notification of a hazard or obstacle observed by Provider's personnel along routes.

vi. Complaints

- Weekly written reports on the disposition of all complaints regarding the service provided by the Provider, whether received in writing, over the phone, or listed on the liquidated damage report. The Provider shall investigate these reports and shall provide a written reply to the complainant with a copy to the Town, within 10 school days. Each reply shall describe any corrective action in response to the complaint.

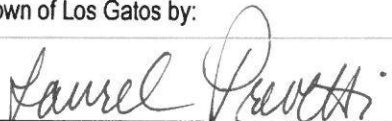
vii. Ridership

- Weekly written reports on student ridership levels for each run for each day of the week.

viii. Other reports or studies as requested by the Town.

IN WITNESS WHEREOF, the Town and Service Provider have executed this Agreement.

Town of Los Gatos by:



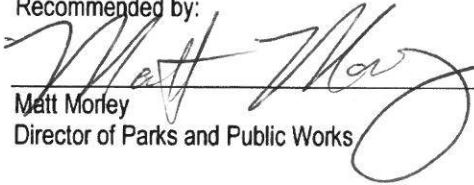
Laurel Prevetti, Town Manager

Service Provider, by:



10/3/18

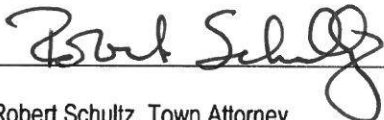
Recommended by:



Matt Morley
Director of Parks and Public Works

SR VP of Operations
Title

Approved as to Form:



Robert Schultz, Town Attorney

**EXHIBIT 1
Cost Proposal**

Proposer shall provide a cost proposal in the tables below:

Table 1 – Price Quote, buses parked at vendor’s facility
Refer to Attachment B for route and schedule descriptions

	Route #	2018-19	2019-20	2020-21	2021-22	2022-23
Large bus		\$566.90	\$583.91	\$601.43	\$619.47	\$644.25
Standard bus		\$539.90	\$556.10	\$572.78	\$589.96	\$613.56
<i>Add more row if necessary</i>						

Note:

Large bus: 80-90 seats, standard bus: 60-70 seats

Table 3 – Price Quote for Dry Runs
Refer to Attachment B for route and schedule descriptions

	Route #	2018-19	2019-20	2020-21	2021-22	2022-23
All Groups		\$539.90	\$556.10	\$572.78	\$589.96	\$613.56
<i>Add more row if necessary</i>						

Table 2 – Price Quote, buses parked Town’s facility (optional)
Refer to Attachment B for route and schedule descriptions

	Route #	2018-19	2019-20	2020-21	2021-22	2022-23
Large bus		\$545.90	\$562.28	\$579.15	\$596.52	\$620.38
Standard bus		\$518.90	\$534.47	\$550.50	\$567.02	\$589.70
<i>Add more row if necessary</i>						

**The mobile phone app for parents of bus riders, SafeStop, is included in the above pricing.

**On-board camera systems can be provided at an additional cost of \$2.75 per bus per day.

**The pricing quoted above includes 2.75 hours of live time, per bus, per day. Any excess hours will be billed at \$20.00 per quarter hour or part thereof.