

## STAFF REPORT TO CITY COUNCIL

**DATE:** JUNE 8, 2022

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** NATHAN HAMBURGER, CITY MANAGER

**BY:** ROCKY SHEPPARD, MANAGEMENT ANALYST

**SUBJECT:** REQUEST OF APPROVAL OF AGREEMENT FOR CONTRACT SERVICES BETWEEN THE CITY OF AGOURA HILLS AND DURHAM SCHOOL SERVICES FOR THE 2022 SUMMER BEACH BUS SERVICE

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Using Proposition A Funds, the Department of Community Services has been operating the Summer Beach Bus Program since 1985. Each summer, the bus travels to Zuma Beach through Las Virgenes/Malibu Canyon from the middle of June through the middle of August. Due to the COVID-19 pandemic, the program has not operated since 2019. Traditionally, the Summer Beach Bus makes four round-trips to Zuma Beach and has three bus stops in Agoura Hills. This year, the service will be available to riders Monday through Friday, starting June 15, 2022 and ending August 21, 2022.

In previous years we have helped facilitate the California State Junior Lifeguard Program by running a specific bus for the program. We discussed continuing this program with Durham School Services, they informed us that they could not guarantee the drivers to facilitate the extra bus that is needed for the program and due to the 30% increase in the service we would not be able to stay in our budget with the Proposition A Funds allocated.

The proposed program will require \$60,000 in Los Angeles County Metropolitan Transportation Authority (LACMTA) Proposition A Funds and is being recommended in the Fiscal Year 2022/23 Budget. The Summer Beach Bus Program will continue to require a fare of \$2.00 each way and will be operated by Durham School Services.

The proposed agreement has been reviewed by the City Attorney and approved as to form.

### RECOMMENDATION

Staff recommends the approval of the Agreement for Contractor Services between the City of Agoura Hills and Durham School Services, L.P., for the operation of the Summer Beach Bus Program and the following recommendations for the 2022 Summer Beach Bus Program:

Staff respectfully recommends continuing a fare of \$2.00 each way. This fare is to assist in cost recovery and minimize the use of Proposition A Funds. Staff also recommends

discontinuing the summer bus pass for the California State Jr. Lifeguard Program due to the costs associated with running extra buses, as well as, lack of labor available to facilitate the program.

Attachment: Agreement with Exhibit C - 2022 Summer Beach Bus Schedule

AGREEMENT FOR CONTRACTOR SERVICES  
WITH THE CITY OF AGOURA HILLS

NAME OF CONTRACTOR: Durham School Services, L.P.

RESPONSIBLE PRINCIPAL OF CONTRACTOR: Attn: Britt Bogust

CONTRACTOR'S ADDRESS: 4029 N, Las Virgenes Rd  
Calabasas, CA 91302

CITY'S ADDRESS: City of Agoura Hills  
30001 Ladyface Court  
Agoura Hills, CA 91301  
Attn: City Manager

PREPARED BY: Rocky Sheppard

COMMENCEMENT DATE:

TERMINATION DATE:

CONSIDERATION: Contract Price  
Not to Exceed: \$60,000 /yr

<b>ADDITIONAL SERVICES</b> <i>(Describe Services, Amount, and Approval):</i>  _____  _____  _____  _____
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Date: \_\_\_\_\_ Amount: \_\_\_\_\_ Authorized By: \_\_\_\_\_  
*(Not to Exceed 10% of Contract Price)* City Manager

**AGREEMENT FOR CONTRACTOR SERVICES BETWEEN  
THE CITY OF AGOURA HILLS AND DURHAM SCHOOL  
SERVICES, L. P.**

**THIS AGREEMENT** is made and effective as of June 15, 2022, between the City of Agoura Hills, a municipal corporation ("City") and Durham School Services, L.P. ("Contractor"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

**1. TERM**

This Agreement shall commence on June 15, 2022, and shall remain and continue in effect until tasks described herein are completed, but in no event later than August 21, 2022, unless sooner terminated pursuant to the provisions of this Agreement.

**2. SERVICES**

Contractor shall perform the services and tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Contractor shall complete the tasks according to the schedule of performance, which is also set forth in Exhibit A.

**3. PERFORMANCE**

In meeting its obligations under this Agreement, Contractor shall at all times faithfully and competently perform all tasks described herein in a manner satisfactory to CITY and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions.

**4. PAYMENT**

A. The City agrees to pay Contractor monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, Payment Rates and Schedule, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. Any terms in Exhibit B other than the payment rates and schedule of payment are null and void. This amount shall not exceed Sixty Thousand Dollars and Zero Cents (\$60,000). ("Contract Price") for the initial Term of the Agreement unless additional payment is approved as provided in this Agreement.

The City Manager may approve additional work up to ten percent (10%) of the amount of the Agreement. Any additional work in excess of this amount shall be approved by the City Council.

B. Contractor shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Contractor shall be compensated for any additional services in the amounts and in the manner as agreed to by the City Council and Contractor at the time City's written authorization is given to Contractor for the performance of said services.

C. Contractor shall submit invoices monthly for actual services performed. Invoices shall be submitted between the first and fifteenth business day of each month, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of Contractor's fees, it shall give written notice to Contractor within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. For all reimbursements authorized by this Agreement, Contractor shall provide receipts on all reimbursable expenses in excess of Fifty Dollars (\$50) in such form as approved by the Director of Finance.

## **5. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE**

A. The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Contractor at least ten (10) days prior written notice. Upon receipt of said notice, the Contractor shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement.

B. In the event this Agreement is terminated pursuant to this Section, the City shall pay to Contractor the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Contractor will submit an invoice to the City pursuant to Section entitled "**PAYMENT**" herein.

## **6. DEFAULT OF CONTRACTOR**

A. The Contractor's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Contractor is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Contractor. If such failure by the Contractor to make progress in the performance of work hereunder arises out of causes beyond the Contractor's control, and without fault or negligence of the Contractor, it shall not be considered a default.

B. If the City Manager or his delegate determines that the Contractor is in default in the performance of any of the terms or conditions of this Agreement, it shall serve the Contractor with written notice of the default. The Contractor shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Contractor fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement."

C. In addition to any other termination rights set in this agreement and without prejudice to any other rights or remedies that either Party may have, either Part may terminate this Agreement immediately by delivery of written notice to the other Party

at any time if any of the following occur: (i) the other Party files a voluntary petition for bankruptcy which is not dismissed within (90) days; (ii) the other Party discontinues business. Party must provide at least 10 day's notice of either occurrence.

## **7. OWNERSHIP OF DOCUMENTS**

A. Contractor shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement. Contractor shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Contractor shall provide free access to the representatives of City or its designees at reasonable times to such books and records, shall give City the right to examine and audit said books and records, shall permit City to make transcripts therefrom as necessary, and shall allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

B. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the work, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused or otherwise disposed of by the City without the permission of the Contractor. With respect to computer files containing data generated for the work, Contractor shall make available to the City, upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

## **8. INDEMNIFICATION**

Contractor shall defend, indemnify, and hold the City, its officials, officers, employees, agents and independent contractors serving in the role of City officials, and volunteers (collectively "Indemnitees") free and harmless from any and all claims, demands, causes of action, proceedings, costs, expenses, liabilities, losses, damages or injuries, in law or equity, to property or persons, including wrongful death (collectively "Claims"), in any manner arising out of or incident to any acts or omissions of Contractor, its officials, officers, employees, agents or sub-contractors in connection with the performance of this Agreement, including without limitation the payment of all consequential damages, attorneys' fees, and other related costs and expenses, except for such Claims arising out of the sole negligence or willful misconduct of the Indemnitees. With respect to any and all such Claims, Contractor shall defend Indemnitees at Contractor's own cost, expense, and risk and shall pay and satisfy any judgment, award, or decree that may be rendered against Indemnitees. Contractor shall reimburse Indemnitees for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Contractor or Indemnitees. All duties of Contractor under this Section shall survive termination of this Agreement.

## 9. INSURANCE REQUIREMENTS

Prior to commencement of work, Contractor shall procure, provide, and maintain, at Contractor's own expense, for the duration of this Agreement, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1) Insurance Services Office Commercial General Liability form No. CG 00 01 11 85 or 88, or equivalent.

2) Insurance Services Office Business Auto Coverage form CA 00 01 06 92, or equivalent, covering Automobile Liability, code 1 (any auto). If the Contractor owns no automobiles, a non-owned auto endorsement to the General Liability policy described above is acceptable.

3) Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance. If the Contractor has no employees while performing under this Agreement, worker's compensation insurance is not required, but Contractor shall execute a declaration that it has no employees.

4) Professional Liability Insurance shall be written on a policy form providing professional liability for the Contractor's profession.

B. Minimum Limits of Insurance. Contractor shall maintain limits no less than:

1) General Liability: \$5,000,000 per occurrence for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2) Automobile Liability: Provider shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Provider arising out of or in connection with services to be performed under this Agreement, including coverage for any owned, hired, non-owned, or rented vehicles, in an amount not less than \$10,000,000 combined single limit for each accident. Minimum limit may increase depending on the vehicle's maximum number of passengers.

3) Worker's Compensation as required by the State of California; Employer's Liability: Two million dollars (\$2,000,000) per accident for bodily injury or disease.

4) Sexual abuse/molestation insurance: Provider shall procure and maintain sexual abuse/molestation liability coverage with limits of not less than

\$1,000,000 per occurrence and \$2,000,000 general aggregate. Coverage may be provided as part of commercial general liability coverage, professional liability coverage, or as a separate policy.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City Manager. At the option of the City Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Requirements Not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Vendor maintains higher limits than the minimums shown above, the Agency requires and shall be entitled to coverage for the higher limits maintained by the Vendor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Agency.

E. Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1) The City, its officers, officials, employees and volunteers are to be covered and named as additional insureds in respect to: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

2) For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the City, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

4) The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice has been



given to the City. Contractor agrees to oblige its insurance agent or broker and insurers to provide City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

F. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City. Self insurance shall not be considered to comply with these insurance requirements.

G. Verification of Coverage. **Contractor shall furnish the City with original endorsements, specifically naming the City of Agoura Hills, its officers, officials, employees and volunteers as additional insured, effecting coverage required by this clause.** The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms acceptable to the City. Insurance certificates and endorsements must be received and approved by City's Risk Manager prior to commencement of performance. Current insurance certificates and endorsements shall be kept on file with the City at all times during the term of this agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

H. Mailing Instructions. Insurance documents shall be mailed with the signed Agreement to the attention of the staff person indicated on the cover sheet of this Agreement, to the City of Agoura Hills, 30001 Ladyface Court, Agoura Hills, CA 91301. Executed Agreement(s) cannot be released nor may any work commence on a project until the signed Agreement and appropriate insurance documents are on file with the City Clerk.

## **10. INDEPENDENT CONTRACTOR**

A. Contractor is and shall at all times remain as to the City a wholly independent Contractor. The personnel performing the services and tasks under this Agreement on behalf of Contractor shall not be City employees and shall at all times be under Contractor's exclusive direction and control. Contractor and all of Contractor's personnel shall possess the qualifications, permits, and licenses required by state and local law to perform the services and tasks under this Agreement, including, without limitation, a City business license as required by the Agoura Hills Municipal Code. Contractor shall determine the means, methods, and details by which Contractor's personnel will perform the services and tasks. Contractor shall be solely responsible for the satisfactory work performance of all personnel engaged in performing the services and tasks, and compliance with the customary professional standards. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of Contractor or any of Contractor's officers, employees, or agents.

B. Contractor shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of City. Contractor and Contractor's personnel shall not supervise any of City's employees; and City's employees shall not supervise Contractor's personnel. Contractor's personnel shall not wear or display any City uniform, badge, identification number, or other information identifying such individual as a City employee; and Contractor's personnel

shall not use any City e-mail address or City telephone number in the performance of any of the services and tasks under this Agreement. Contractor shall acquire and maintain at its sole cost and expense such vehicles, equipment, and supplies as Contractor's personnel require to perform any of the services and tasks required by this Agreement. Contractor shall perform all services and tasks off of City premises at locations of Contractor's choice, except as otherwise may from time to time be necessary in order for Contractor's personnel to receive projects from City, review plans on file at City, pick up or deliver any work product related to Contractor's performance of any services and tasks under this Agreement, or as may be necessary to inspect or visit City locations and/or private property to perform the services and tasks. City may make a computer available to Contractor from time to time for Contractor's personnel to obtain information about, or to check on, the status of projects pertaining to the services and tasks performed under this Agreement. Contractor shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.

C. No employee benefits shall be available to Contractor in connection with the performance of this Agreement. Except for the fees paid to Contractor as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Contractor for performing services and tasks hereunder for City. City shall not be liable for compensation or indemnification to Contractor for injury or sickness arising out of performing services and tasks hereunder. Contractor shall be responsible for and pay all salaries, wages, benefits and other amounts due to Contractor's personnel in connection with their performance of the services and tasks under this Agreement, and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to, Social Security taxes, other retirement or pension benefits, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance. Notwithstanding any other agency, state, or federal policy, rule, regulation, statute, or ordinance to the contrary, Contractor and any of its officers, employees, agents, and subcontractors providing any of the services and tasks under this Agreement shall not become entitled to, and hereby waive any claims to, any wages, salaries, compensation, benefit, or any incident of employment by City, including, but not limited to, eligibility to enroll in, or reinstate to membership in, the California Public Employees Retirement System ("PERS") as a City employee, and entitlement to any contribution to be paid by City for employer contributions or employee contributions for PERS benefits.

D. Contractor shall indemnify and hold harmless City and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs, and expenses of any nature to the extent arising from, caused by, or relating to Contractor's personnel practices, or to the extent arising from, caused by, or relating to the violation of any of the provisions of this Section. In addition to all other remedies available under law, City shall have the right to offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this Section. This duty of indemnification is in addition to Contractor's duty to defend, indemnify, and hold harmless as set forth in any other provision of this Agreement.

## **11. PERS COMPLIANCE AND INDEMNIFICATION**

A. General Requirements. The parties acknowledge that City is a local agency member of PERS, and as such has certain pension reporting and contribution obligations to PERS on behalf of qualifying employees. Contractor agrees that, in providing its employees and any other personnel to City to perform the services and tasks under this Agreement, Contractor shall assure compliance with the Public Employees' Retirement Law, commencing at Government Code Section 20000, the regulations of PERS, and the Public Employees' Pension Reform Act of 2013, as amended. Without limitation to the foregoing, Contractor shall assure compliance with regard to personnel who have active or inactive membership in PERS and to those who are retired annuitants and in performing this Agreement shall not assign or utilize any of its personnel in a manner that will cause City to be in violation of the applicable retirement laws and regulations.

B. Indemnification. Contractor shall defend (with legal counsel approved by City, whose approval shall not be unreasonably withheld), indemnify, and hold harmless City, and its City and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from, caused by, or relating to Contractor's violation of any provisions of this Section. This duty of indemnification is in addition to Contractor's duty to defend, indemnify, and hold harmless as set forth in any other provision of this Agreement.

## **12. LEGAL RESPONSIBILITIES**

The Contractor shall keep itself informed of all local, State and Federal ordinances, laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Contractor shall at all times observe and comply with all such ordinances, laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Contractor to comply with this section.

## **13. RELEASE OF INFORMATION**

A. All information gained by Contractor in performance of this Agreement shall be considered confidential and shall not be released by Contractor without City's prior written authorization. Contractor, its officers, employees, agents or sub-contractors, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives City notice of such court order or subpoena.

B. Contractor shall promptly notify City should Contractor, its officers, employees, agents or sub-contractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding

this Agreement and the work performed there under or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Contractor and/or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

#### **14. NOTICES**

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by: (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

To City: City of Agoura Hills  
30001 Ladyface Court  
Agoura Hills, California 91301  
Attention: City Manager

To Contractor: Durham School Services  
4029 N, Las Virgenes Rd  
Calabasas, CA 91302  
Attention: Terry Walker

#### **15. ASSIGNMENT**

The Contractor shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Upon termination of this Agreement, Contractor's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City Council and the Contractor.

#### **16. LICENSES**

At all times during the term of this Agreement, Contractor shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

#### **17. GOVERNING LAW**

The City and Contractor understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district

court with geographic jurisdiction over the City of Agoura Hills. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

**18. PROHIBITED INTEREST**

No officer, or employee of the City of Agoura Hills shall have any financial interest, direct or indirect, in this Agreement, the proceeds thereof, the Contractor, or Contractor's sub-contractors for this project, during his/her tenure or for one year thereafter. The Contractor hereby warrants and represents to the City that no officer or employee of the City of Agoura Hills has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the Contractor or Contractor's sub-contractors on this project. Contractor further agrees to notify the City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement.

**19. EXHIBITS**

Exhibits A and B constitute a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, the provisions of this Agreement shall control.

**20. ENTIRE AGREEMENT**

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

**21. AMENDMENT OF AGREEMENT**

This Agreement may be amended only by a writing signed by both parties. The City Manager is authorized to sign an amendment to this Agreement on the City Council's behalf and without the City Council's prior approval to make the following non-substantive modifications to the Agreement: (a) name changes; (b) extensions of time that do not result in monetary changes; (c) non-monetary changes in the scope of work; and (d) termination of the Agreement.

**22. AUTHORITY TO EXECUTE THIS AGREEMENT**

The person or persons executing this Agreement on behalf of Contractor warrants and represents that he or she has the authority to execute this Agreement on behalf of the Contractor and has the authority to bind Contractor to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

**CITY OF AGOURA HILLS**

\_\_\_\_\_  
Deborah Klein Lopez,  
Mayor

ATTEST:

\_\_\_\_\_  
Kimberly M. Rodrigues, MMC  
City Clerk  
Date Approved by City Council: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Candice K. Lee,  
City Attorney

**CONTRACTOR**

Durham School Services  
By: Durham Holding II, L.L.C.,  
Its General Partner  
2601 Navistar Dr  
Lisle, IL 60532  
Attn: Contract Administrator  
(630) 821-5400

By: \_\_\_\_\_  
Name: Gary Waits  
Title: CEO

By: \_\_\_\_\_  
Name: ROBERT RAMSDALL  
Title: CHIEF OPERATING OFFICER

**[Signatures of Two Corporate Officers Required]**

## EXHIBIT A

### TASKS TO BE PERFORMED

***The specific elements (scope of work) of this service include:***

CONTRACTOR shall perform the services hereinafter indicated strictly in accordance with the terms and conditions of this agreement.

Section 1. Equipment and Facilities.

A. CONTRACTOR, as an independent contractor, shall at its sole cost and expense, provide one transit type bus or school bus (or a comparable vehicle approved by the CITY), with a minimum seating of 53 passenger seats to serve the route described in Exhibit C provided, however, in addition to such vehicle, CONTRACTOR shall provide from time to time a wheelchair lift-equipped vehicle to accommodate two wheelchairs to serve the route described in Exhibit C. For the purposes hereof, the phrases "bus," "buses," and "buses and bus equipment" shall refer to such wheelchair lift-equipped vehicles as well as regular buses.

In the event CITY exercises its right to increase the service hereinafter described, CONTRACTOR shall provide the necessary additional buses for said service. The minimum required seating capacity of the additional buses shall be 24 passengers. The CITY will give at least 24-hour notice to CONTRACTOR for additional service.

B. CONTRACTOR shall provide the wheelchair lift-equipped vehicle described in Section A., above, from time to time upon telephone notice from the CITY, and as directed by CITY, for round trips on the route and on the days described in Section 3, below. CONTRACTOR shall not, however, be required to provide more than one such wheelchair lift-equipped vehicle per day. CITY will give at least 24-hour notice to CONTRACTOR for a wheelchair lift-equipped vehicle for service along the route.

C. All the buses required to be utilized in this Agreement shall be safe for operation on public roads and streets. CONTRACTOR shall, at its sole cost and expense, register and license such buses and bus equipment on public roads and streets.

D. All of the said buses, bus equipment and other equipment and facilities required by the Agreement shall, during the term hereof, be maintained by CONTRACTOR in good order and repair and in a condition satisfactory to the State of California.

E. Bus interiors shall be cleaned and swept prior to placing the bus in service on each day of operation specified herein, and the exterior shall be washed monthly.

F. Advertising on the buses is prohibited unless written authorization is obtained from CITY. The terms and conditions of any such advertising shall be

subject to approval by the CITY. Proceeds of the advertisement will be remitted to CITY. CITY' S decision on these matters shall be final.

G. CONTRACTOR shall provide additional buses as necessary, in the event of a bus breakdown or overload conditions. The maximum response time shall be 45 minutes for a bus to be made available for the bus patrons to continue on to their destination.

H. CONTRACTOR shall provide and maintain appropriate fixed maintenance facilities for the servicing of the buses and bus equipment utilized under this Agreement. Such facilities shall be subject to approval by CITY.

I. CONTRACTOR shall in the course of its operations under this Agreement comply with all current and applicable Federal and State Safety Regulations. In addition, CONTRACTOR shall also comply with General Order No. 98A of the Public Utilities Commission, State of California, relating to the operation and maintenance of buses and bus equipment.

## Section 2. Plan Route Frequency and Days of Service.

Included herewith and as a part hereof is Exhibit C describing the location and extent of the route to be served. The route shall operate five days a week (Monday through Friday), Wednesday, June 15, 2022 through August 21, 2022, holidays included, at times and stops described in attached Exhibit C. If and when increased ridership calls for it, the CONTRACTOR shall provide additional round trips on the service days designated above, as directed by CITY. CITY may cancel bus trips with a one-day notice without penalty to the CITY. Bus trips canceled on the same day as scheduled for operation will be subject to a cancellation charge, except in cases of Force Majeure as defined by Section 6 of this Agreement.

## Section 3. CONTRACTOR' S Service Requirements.

A. Monitoring of Schedules and Service (CONTRACTOR). CONTRACTOR shall monitor schedules, service and report ridership to CITY on a regular basis and indicate the need to maintain, reduce or increase the frequency of operations. Ridership shall be recorded daily and submitted weekly to the CITY. The records will include the number of people boarding at each stop location for each trip on all service days.

B. Monitoring of Schedules and Services ( CITY). CITY shall have the right to have authorized CITY personnel board at no cost to CITY all buses utilized by CONTRACTOR in the performance of services herein for the purpose of monitoring the CONTRACTOR' S schedules and services.

C. Personnel. CONTRACTOR shall supply a sufficient number of properly trained, licensed and qualified persons to operate and maintain its equipment and to provide the services required hereunder. All of CONTRACTOR' S employees shall at all times while on duty in the performance of the services required herein by neatly and cleanly dressed, and shall at all times maintain a courteous



cooperative attitude in their contact with the public. CONTRACTOR shall be solely and fully liable for the negligence and/or misconduct of any of its personnel. All such personnel who are likely to be in contact with the public shall be evaluated and screened for suitability for the position and shall be trained by CONTRACTOR to give accurate information concerning the routes and schedules of operations of the bus system.

CONTRACTOR shall during the normal bus operating hours have a manned office to accept calls of emergency and informational nature as it relates to bus service. CONTRACTOR shall during normal bus operating hours have personnel carry pagers and cellular phones on bus. CITY recognizes that CONTRACTOR will have on-call staff only on Saturdays.

Upon notice from CITY concerning the conduct, demeanor or appearance of such persons in the employ of CONTRACTOR, not conforming to the above, CONTRACTOR shall forthwith take steps necessary to remove or alleviate the cause of the objection.

D. Identification. CONTRACTOR shall furnish head signs to identify the service and, if requested by CITY, furnish and mount logos signs for identification and promotional material on the exterior of the buses. All signs shall be subject to the approval of CITY.

E. On Time Performance. CONTRACTOR shall operate buses strictly according to the most current bus schedules provided by CITY and to a reasonable on-time performance standard except where service is interrupted for those reasons stated in Section 6. If service is interrupted, CONTRACTOR shall notify CITY immediately of the situation and provide an estimate of schedule disruption.

F. Contractor will following all COVID health and safety protocols as established by the County.

#### Section 4. Changes in Routes, Frequency, Stops and Equipment.

CITY may from time to time require changes to be made on the route, frequency of service, stop locations and equipment. Said changes will be requested of CONTRACTOR in writing 5 days in advance of the implementation of the change. CONTRACTOR shall after receipt of written notice take the necessary steps to institute such change in the most expedient manner possible.

#### Section 5. Fares or Charges.

Passenger fares will be described in Exhibit A. CITY will notify the CONTRACTOR in writing of any changes in the fares during the term of this contract. CONTRACTOR shall charge and collect from the persons utilizing said transportation system the fares or charges, as may be established by CITY in fare boxes of a type approved by CITY. Passengers must provide exact change CONTRACTOR does not have change for passengers.

CONTRACTOR shall not accept vouchers or tokens, from said persons in lieu of money unless authorized by CITY.

CONTRACTOR shall, upon such forms as shall be prescribed by CITY, furnish weekly to CITY a daily accounting of all revenues collected. The revenues collected each month will be deducted from the amount due to CONTRACTOR for the services provided during that month.

#### Section 6. Force Majeure.

CONTRACTOR shall not be charged, nor shall CITY demand from CONTRACTOR damages because of failure in providing the services indicated in the Agreement due to unforeseeable cause beyond the control and without the fault or negligence of CONTRACTOR. Such causes of excusable delay may include acts of federal and/ or state governments, acts of CITY, or anyone employed by them, acts of public enemy, fires, floods, snow storms, epidemic quarantine, restrictions, strikes, freight embargoes, and public road closures, but in every case the delay is excusable only for so long as, and to the extent that, the excusable delay continues.

In the event that the CONTRACTOR is unable to provide the services indicated due to any cause, it shall make a reasonable attempt at its expense, to so notify the City.

#### Section 7. Performance Bond.

CONTRACTOR shall procure, at its expense, and keep in effect at all times during the term hereof, a surety bond equivalent to 25% of the aggregate Agreement amount in favor of CITY and executed by a corporate surety authorized to conduct business as a surety in the State of California. Such bond shall be conditioned upon faithful performance by CONTRACTOR of the terms and conditions of the Agreement and shall be renewed to provide for continuing liability in the above amount notwithstanding any payment or recovery thereon. Said bond shall not be subject to cancellation except after notices to CITY by registered mail at least 45 days prior to the date of cancellation. CONTRACTOR shall submit said bond to CITY concurrently with the execution of this Agreement.

Upon failure of CONTRACTOR to keep such bond in effect at all times during the term hereof, CITY may terminate this Agreement by giving CONTRACTOR 5 days notice in advance of such termination.

Changes in services provided by CONTRACTOR, including but not limited to changes in routes, schedules and stops made pursuant to this Agreement shall in no way release CONTRACTOR or its surety herein from their obligations. Notice of such changes shall be waived by the surety.

Section 8. Taxes and Other Charges.

CONTRACTOR shall pay all taxes of whatever character that may be levied or charged upon its equipment, facilities, improvements, fixtures, or upon its operations hereunder. CONTRACTOR shall also pay all license or permit fees necessary or required by law for the conduct of its operations hereunder.

Section 9. Inspection.

CITY, or any person representing CITY, shall at all times have access and the right to inspect CONTRACTOR' S equipment and facilities utilized in the performance of this Agreement.

Section 10. Risk of Loss.

Contractor is not responsible for the loss, damage, or theft of personal property. Contractor is not responsible for the personal injury of City's or third parties to the extent of caused by the negligent or intentional acts of the City, passengers or third parties.

See Exhibit D for Charter Passenger Policy. This policy provides guidance to the Customer regarding all charter transportation passengers, including but not limited to, employees, staff, and customers of the Customer who ride the charter buses provided by the Carrier.

Section 10. Funding.

CITY's obligations under this Agreement are subject to availability of funds in its Fiscal Year 2021-2022 and 2022-2023 budget to support this service. CITY will utilize local sales tax funds obtained pursuant to Ordinance No. 16 (Proposition A) of the Los Angeles County Transportation Commission for the funded of the service described herein. CONTRACTOR agrees to be bound by applicable provisions of this Ordinance and regulations of the Los Angeles County Transportation Commission pertaining thereto.

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## EXHIBIT B

### PAYMENT RATES AND SCHEDULE

#### Rates and Compensation:

A. Payment to the CONTRACTOR for service provided on the specified route and any new routes will be based on cost computed as follows: the bus -hours of operation times the rate of \$94.58 per bus-hour. The cost will include furnishing of the buses, bus equipment, personnel and facilities as may be necessary or required by this Agreement for the operation of a public transportation systems for approximately 11.16 hours per day.

The monetary value shown above shall apply as follows:

1. To services herein described.
2. To increases in regular service up to 100% of the bus-hours noted herein, but shall be subject to negotiation for increases of more than 100%.
3. To the cancellation charge which is equivalent to 4 bus-hours.

#### B. Non -Compensation:

In the event CONTRACTOR is precluded from starting the service described herein for those excusable reasons cited in Section 6 hereinafter, CONTRACTOR shall not receive compensation under this Agreement for the period of the excusable delay. If the excusable delay occurs following the start of regularly scheduled service, on any day, CONTRACTOR shall be compensated as specified above.

#### Claims for Payment.

Claims for payment will be submitted monthly to the City of Agoura Hills (Management Analyst) by CONTRACTOR for the bus-hours operated during the previous one month period. The basis of the claim for monthly payment will be substantiated by records kept by CONTRACTOR as described under Section 7 hereinafter. All claims for payment must be presented by the fifteenth of the month to allow their payment on or about the first of the month following.

CITY shall pay its proportionate share of the total claim for payment based on the number of passes received on the bus bearing the identification of the City.

**EXHIBIT C**

**DAILY SOUTHBOUND SCHEDULE**

<b>LCMS</b>	9:00	10:45	12:55	3:05	
<b>AHS</b>	9:10	10:55	1:05	3:15	
<b>LIB</b>	9:20	11:05	1:15	3:25	
<b>ZUMA</b>	9:50	11:35	1:45	3:55	
<b>LEO</b>	-	-	-		-

**DAILY NORTHBOUND SCHEDULE**

<b>LEO</b>	-	-	-	-	-
<b>ZUMA</b>	-	11:55	2:05	4:05	5:55
<b>LIB</b>	-	12:25	2:35	4:45	6:25
<b>AHS</b>	-	12:35	2:45	4:55	6:35
<b>LCMS</b>	-	12:45	2:55	5:05	6:45

**Beach Bus**  
 Mon-Fri  
 6/15-8/19

## EXHIBIT D

### Charter Passenger Policy

#### Purpose

This policy provides guidance to the Customer regarding all charter transportation passengers, including but not limited to, employees, staff, and customers of the Customer who ride the charter buses provided by the Carrier.

#### Scope

This policy prohibits the following acts on any Carrier vehicle which is used as part of the services Carrier provides to Customer under the Agreement:

- Smoking tobacco or any other substance, or carrying a lighted or smoldering substance in any form.
- With the exception of peace officers, carrying aboard any weapon.
- Carrying aboard any flammable or explosive substance except for matches and cigarette lighters. For example, cooking stoves, propane tanks and other fuels are prohibited. Carrying aboard any package or article of a size which will block any aisle, emergency exit, or stairway of the vehicle.
- Carrying aboard any animal not housed in an enclosed carrying container. Such container cannot block or hinder travel in the aisle, emergency exit, or stairway. Service animals are allowed.
- Carrying aboard a stroller unless such item is folded and unoccupied. Strollers must remain folded while aboard the vehicle and must not block or obstruct an aisle, emergency exit, or stairway.
- Playing radios or other audio devices or musical instruments aboard unless the only sound produced by such item is emitted by a personal listening attachment (earphone) audible only to the person carrying the device producing the sound. An exception exists for peace officers, security guards, and for Carrier officials while performing their official duties.
- Littering, discarding, or depositing any trash, debris, or offensive substances in non-appropriate places.
- Spitting, urinating, or defecating.
- Damaging, writing upon, or otherwise defacing or altering property.
- Fighting or engaging in any violent, tumultuous, or threatening behavior.
- Making excessive and unnecessary noise, or using profanity.
- Obstructing the free movement of passengers.
- Interfering with the safe operation or movement of a Carrier vehicle or operator.
- Standing or otherwise occupying any space in front of the line marked on the forward end of the floor of the vehicle or otherwise conducting himself in such a manner as to obstruct the vision of the vehicle operator while the vehicle is in motion.
- Impeding the opening of, or interfering or tampering with, or otherwise obstructing the operation or use of, any window, door, or other emergency exit.
- Standing in the way of direction or impeding the vehicle from moving.
- Posting or removing any notice or advertisement unless authorized by a Carrier official.
- Throwing any litter, stone, wood, snow or other substance at, into, or from any Carrier vehicle.
- Gambling or soliciting others to engage in gambling.
- Engaging in any activity prohibited by State, County, or Municipal law.
- Entering or exiting a Carrier vehicle through the rear exit door unless directed by a Carrier official or in the event of an emergency.
- Climbing through a window or extending an arm, leg or head out the window of any Carrier vehicle.
- Hanging onto or attaching oneself to any exterior part of a Carrier vehicle while the vehicle is resting or in motion.
- Running or engaging in any horseplay.
- Refusing to leave any Carrier vehicle after having been ordered to do so by the operator of the vehicle, a security guard, peace officer, or Carrier official or supervisor.

Customer further agrees to

- Comply with all applicable laws, rules, regulations and ordinances.

#### Compliance

If a Carrier operator encounters any individual(s) violating this policy on a Carrier vehicle, the operator will ask the individual(s) to stop the activity or leave the premises. If the individual(s) persist in their conduct, the Carrier will notify a peace officer who will take the appropriate action. Compliance with this policy is required of each passenger. Failure to comply with this policy may result in immediate removal up to suspension of charter transportation privileges.