

## TRANSPORTATION SERVICES AGREEMENT

*This agreement is not a construction contract within the meaning of Civil Code section 2783, and is not an agreement for the provision of construction services within the meaning of Public Contract Code section 20651. Do not use for Public Works, Repairs or Maintenance to a Building.*

This Agreement entered into as of the District’s execution date (“Effective Date”), by and between the Foothill-De Anza Community College District, a public educational agency (hereinafter referred to as “District”) and \_\_\_\_\_, (hereinafter referred to as “Contractor”) Each of District and Contractor are sometimes hereinafter referred to as a “Party” and collectively as the “Parties.” By signing this Agreement, the Parties acknowledge their acceptance of all the terms and conditions in this Agreement and any Exhibits attached hereto (collectively the “Agreement”).

### RECITALS

WHEREAS, pursuant to Foothill-De Anza Community College District Board Policy 3140 and Board of Trustees Resolutions, specified District employees have the duty to engage Contractors, including, Independent Contractors, to perform sundry services for the District, with or without the furnishing of material; and

WHEREAS, Contractor warrants and represents to District that Contractor has the experience, expertise, licensure, and resources to successfully and effectively perform the agreed-upon services and will provide these services to the District in compliance with all applicable laws and regulations

WHEREAS, Government Code Section 8546.7 provides that the contracting parties for any contract involving expenditure of public funds in excess of \$10,000 shall be subject to examination and audit by the State Auditor for a period of three (3) years after final payment under the contract; and

WHEREAS, the public interest, convenience, necessity and general welfare will be served by this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth below, the Parties agree as follows:

#### 1. AGREEMENT DOCUMENTS.

The documents forming the entire Agreement between District and Contractor shall consist of the District Standard Instructions & Conditions (SIC’s) and this Agreement (pages 1-5) including:  
Exhibit A – Services (page 6)  
Exhibit B – Insurance Requirements (page 7)

In the event of any discrepancies or inconsistencies between the provisions of the SIC’s, this Agreement and the Exhibits, the provisions of this Agreement will prevail.

#### 2. PAYMENTS.

In consideration of the payments hereinafter set forth, Contractor shall perform services for District in accordance with the terms, conditions and specifications set forth herein and in Exhibit A attached hereto and by this reference made a part hereof. Contractor shall perform all the services described in Exhibit A for the sum of Not-to-Exceed: \$ \_\_\_\_\_

In consideration of the services rendered in accordance with all terms, conditions and specifications set forth herein and in Exhibit A, District shall make payment to Contractor in the manner specified in Exhibit A.3. The District retains the right to increase or decrease the Services, deliverables, or amount of work as it deems appropriate and at its sole discretion.

**3. TERM AND TERMINATION.**

- a. Initial Term. This Agreement shall be in effect from \_\_\_\_\_ (start date) through \_\_\_\_\_ (end date). The District may terminate this contract at any time for any reason by providing 30 days' notice to Contractor. Termination to be effective on the date specified in the notice. In the event of termination under this section, Contractor shall be paid for all work provided to the date of termination.
- b. Option to Extend. This Agreement may be renewed for additional time periods as long as the original Agreement Term plus the renewal periods does not exceed five years, provided that both Parties agree in writing and insurance coverage continues pursuant to the requirements in Exhibit B.

**4. RELATIONSHIP OF THE PARTIES.**

It is understood that this is an Agreement by and between the District and Contractor(s) and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of an Independent Contractor.

**5. NON-ASSIGNABILITY AND SUBSTITUTION.**

Contractor shall not assign this Agreement or any portion thereof to a third party without the prior written consent of District, and any attempted assignment without such prior written consent in violation of this section automatically shall terminate this Agreement. If particular people are identified in Exhibit A as working on this Agreement, the Contractor will not assign others to work in their place without written permission from the District representative. Any substitution shall be with a person of commensurate experience and knowledge.

**6. HOLD HARMLESS AND INDEMNIFICATION.**

- a. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the District, its officers, agents, employees and servants from all claims, suits or actions of every name, kind and description ("claims"), brought for, or on account of (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, or (C) taxes owing by reason of any failure to withhold and/or pay to the government income and/or employment taxes from earnings under this Agreement as made necessary by Section 530 of the Revenue Act of 1978, where the claim results from the act or omission of Contractor including but not limited to the concurrent active or passive negligence of the Contractor or of the District, its officers, agents, employees or servants, resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this indemnity obligation shall not apply to injuries or damage for which the District has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.
- b. The duty of the Contractor to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778.4 of the California Civil Code.
- c. Contractor's duty to defend shall be triggered by notice to Contractor that District has been served with a summons or complaint, which alleges facts falling within the scope of Contractor's indemnity obligations.

**7. LIMITATION OF LIABILITY.**

The District’s financial obligations under this Agreement are limited to the payment of the compensation provided in this Agreement and Exhibit A. Notwithstanding any other provision of this Agreement, in no event, shall the District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the Services performed

**8. INSURANCE.**

Contractor agrees to have and maintain the policies set forth in Exhibit B, entitled “Insurance Requirements,” which is attached hereto and incorporated herein. Contractor agrees to provide District with a copy of said policies, certificates and/or endorsements before work commences under this Agreement.

**9. NON-DISCRIMINATION.**

No person shall, on the grounds of race, color, national or ethnic origin, religious affiliation or non-affiliation, gender, marital status, sexual orientation, age, physical or mental disability, or political affiliation, be excluded from participation in, be denied the benefits, or be subjected to discrimination under this Agreement. Contractor shall insure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management relations, for all employees under this Agreement. Contractor’s personnel policies shall be made available to District upon request.

**10. CONFIDENTIALITY.**

In performing its duties hereunder, the Contractor may from time to time gain incidental access to confidential information and records including student record information as defined by 20 U.S. Code Section 1232g and the Family Education Rights and Privacy Act (FERPA). The Parties agree that such incidental access is not a provision or conveyance or disclosure to Contractor of student record information in violation of section 1232g or of any similar state law. Contractor agrees that if in the performance of its duties it does obtain such access it shall promptly notify the District, refrain from any removal, use or disclosure to any third person of such information and records and shall take any and all necessary affirmative steps to maintain the confidentiality, and avoid such removal, use or disclosure, whether intentional or inadvertent, of such records and information.

**11. FOREE MAJEURE.**

- a. General. Neither party hereto shall be deemed to be in default of any provision of this Agreement, or for any failure in performance, resulting from acts or events beyond the reasonable control of such party. For purposes of this Agreement, such “force majeure” acts or events shall include, but may not be limited to, acts of God, civil or military authority, civil disturbance, martial disturbance, strikes, war, federally or locally declared public health emergencies or natural disasters including pandemics, plagues, famines, droughts, fires, floods, loss of utility such as electricity or water, other catastrophes, or other “force majeure” events beyond the parties’ reasonable control.
- b. Notification. Either party shall notify the other in writing as soon as first party knows, or should reasonably know, that a force majeure event has occurred. Provided, District’s notification regarding whether a force majeure event has occurred shall be final and binding on the parties.
- c. Losses. Contractor is not entitled to damages, compensation, or reimbursement from District for losses resulting from any “force majeure” event.

**12. HEALTH AND SAFETY REQUIREMENTS.**

Contractor shall be subject to all District requirements regarding health and safety protocols and must abide by Federal, State, Local government and District’s procedures and policies while on District premises.

**13. CHANGES AND ALTERATIONS.**

This Agreement shall constitute the entire agreement between the parties respecting the matters covered herein, and supersede any prior or contemporaneous written or oral promises or representations regarding these matters. This Agreement may not be modified or amended except by writing signed by the parties. No changes, alterations, change orders or increases in Contractor compensation, or other variations of any kind, shall occur without the written consent of appropriate authorized District personnel acting within their signatory authority. Contractor acknowledges that other District personnel are without authorization to either order extra and/or changed work, increase compensation, or waive contract requirements, and that Contractor proceeds with any extra work ordered by such unauthorized persons at its own risk, and shall not receive payment therefore.

**14. MEDIATION, ARBITRATION, PREVAILING PARTY ATTORNEY’S FEES.**

The parties agree that if any dispute or controversy arises between them in any way arising out of, related to, or connected with this Agreement or its subject matter, they will participate in good faith in Mediation and agree to equally share all Mediator fees. If the Parties are unable to resolve the dispute or controversy through Mediation, the Parties agree pursuant to Code of Civil Procedure section 1280 et seq. to submit the pending dispute or controversy to final and binding Arbitration to be held in Santa Clara County, California, with the arbitrator to be supplied by JAMS. By agreeing to this binding Arbitration provision, the Parties understand that they are waiving certain rights and protections which may otherwise be available if a claim were determined by litigation in court, including, without limitation, the right to seek or obtain certain types of damages precluded by this arbitration provision, the right to a jury trial, certain rights of appeal, the right bring a claim as a class member in any purported class or representative proceeding; and a right to invoke certain rules of procedure and evidence. The non-prevailing party in such arbitration shall be responsible for the arbitrator’s fee but in all other respects each side shall bear its own costs and attorneys and other fees. The provisions of this section will apply during the term of this Agreement and survive after the termination or expiration of this Agreement.

**15. GOVERNING LAW; VENUE.**

The rights and obligations of the parties hereunder shall be governed by the laws of the State of California. Venue in any action to enforce or declare rights hereunder shall be in the Superior Court of the County of Santa Clara, and any such action to be stayed by the Court pending contractual Mediation/Arbitration.

**16. NOTICE.**

All Notices required or permitted to be given under this Agreement by either party to the other, shall be in writing and given, served, and received, if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, or sent by overnight delivery services, or facsimile transmissions, addressed as follows:

For Contractor:  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_  
PSG/VCC #: \_\_\_\_\_

For District:  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

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In Witness Hereof, the Parties have entered into the Agreement on the day and year set forth beneath the respective names below.

<b>FOR CONTRACTOR:</b>	<b>FOR DISTRICT:</b>
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:

This Agreement is not valid until signed by both Parties above. Board approval is required prior to commencement of services if total cost exceeds the applicable bid threshold for goods and services as reflected on the following Purchasing website link: <http://purchasing.fhda.edu/bid-threshold/index.html>

<b>FOR CAMPUS USE ONLY:</b>	
Originator: _____	Date: _____
FOAP: I _____ F _____ O _____ A _____ P _____	
Campus Finance/Fiscal Services Authorization:	
Name: _____	Signature : _____
Title: _____	Date: _____

## EXHIBIT A - SERVICES

**1. Contacts for rendering of services.**

For Contractor:	For District/Department:
Primary Contact Name: _____	Primary Contact Name: _____
Primary Contact Email: _____	Primary Contact Email: _____
Primary Contact Phone: _____	Primary Contact Phone: _____

**2. Trip Information.** Detailed description of transportation services delivered to District by Contractor:  
(reference and attach proposal/quote or additional pages, if necessary)

Trip# \_\_\_ of \_\_\_ Trip Description: \_\_\_\_\_  
Bus Quantity: \_\_\_ Passenger Total: \_\_\_ Departure Date: \_\_\_\_\_ Return Date: \_\_\_\_\_  
Destination Location: \_\_\_\_\_

Trip# \_\_\_ of \_\_\_ Trip Description: \_\_\_\_\_  
Bus Quantity: \_\_\_ Passenger Total: \_\_\_ Departure Date: \_\_\_\_\_ Return Date: \_\_\_\_\_  
Destination Location: \_\_\_\_\_

Trip# \_\_\_ of \_\_\_ Trip Description: \_\_\_\_\_  
Bus Quantity: \_\_\_ Passenger Total: \_\_\_ Departure Date: \_\_\_\_\_ Return Date: \_\_\_\_\_  
Destination Location: \_\_\_\_\_

**3. Amount and Method of Payment.** Indicate lump sum payment or rate of pay; also include a list of tasks which must be completed prior to each progress payment and show the timeline for progress payments, if applicable)

\_\_\_ Single payment upon successful completion of deliverables.

\_\_\_ Multiples payments. Explain how payments will be made. (i.e., milestone payments, monthly payments, progress payments, etc.

**4. Term.** The term of this Agreement shall commence and end on the dates specified in Section 3 of the Agreement.

## EXHIBIT B – INSURANCE REQUIREMENTS

Contractor shall not commence work under this Agreement until required insurance certificate has been submitted to the requesting Project Manager. Certificates of insurance shall be issued by an insurer with an A M Best rating of A-VII or better, unless otherwise approved by District Risk Manager. Such certificate shall evidence all coverages and limits required by District in this Agreement and shall specify that insurers will give District thirty (30) days prior written notice of non-renewal or cancellation. The Description of Operations field must be completed indicating that Foothill-De Anza Community College District has been added as an additional insured. This section shall read: "The Foothill-De Anza Community College District, their employees, officers and agents, officers and agents are added as additional insureds." The Certificate Holder shall read: Foothill-De Anza Community College District, 12345 El Monte Rd. Los Altos Hills, CA 94022

Contractor shall maintain in force, throughout the term of this Agreement, insurance as follows:

1. **Commercial General Liability** insurance, with limits not less than \$1,000,000 each occurrence/\$2,000,000 aggregate for Bodily Injury and Property Damage, including coverages for contractual liability, personal injury, sexual assault & molestation, broadform property damage, independent contractors, products and completed operations;
2. **Commercial Automobile Liability** insurance, with limits not less than \$5,000,000 each occurrence and \$10,000,000 aggregate for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable;
3. **Workers' Compensation** (statutory limits) and Employers' Liability insurance with limits required by law, provided that Contractor has employees as defined by the California Labor Code;
4. Other Insurance Provisions
  - a. If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the District requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the District.
  - b. Waiver of Subrogation. Contractor agrees that in the event of loss due to any perils for which it has agreed to provide Commercial General and Automobile Liability insurance, Contractor shall look solely to its insurance carrier(s) for recovery and grants a waiver of any right to subrogation which any such insurer of Contractor may acquire against the District by virtue of payments of any loss under this insurance
  - c. If any of the required insurance is written on a claims-made coverage form, such insurance shall be maintained for a period of three years following termination of this Agreement.
  - d. General and Automobile liability policies shall include as Additional Insureds, the District, its officers, agents, employees and servants, shall be primary to any other insurance or self-insurance available to the Additional Insureds and shall apply separately to each, except the inclusion of Additional Insureds shall not operate to increase the required limits of such insurance.
  - e. Maintenance of the required insurance is a material condition of this Agreement and failure to maintain such insurance may, at the District's option, result in a declaration of material breach and suspension of Contractor's further work under this Agreement.