DISCUSS WITH LEGAL COUNSEL BEFORE SIGNING

TRANSPORTATION SERVICES AGREEMENT WITH TRANSPORTATION NETWORK COMPANY

THIS TRANSPORTATION SERVICES AGREEMENT (this "Agreement") is made this ___ day of _____, 202 __ ("Effective Date"), by and between _____, a Michigan general powers school district, whose address is ("District") and, a limited liability company/corporation, whose address is _____ (the "TNC") (individually, a "Party" and collectively, the "Parties").

RECITALS:

WHEREAS, the Revised School Code, MCL 380.11a, authorizes the District to provide for the safety and welfare of student while en route to or from school or a school-sponsored activity; and

WHEREAS, the Revised School Code, MCL 380.11a, also authorizes the District to enter into agreements with private entities as part of performing school district functions; and

WHEREAS, the District seeks to supplement student transportation with services on an as-needed basis, without fixed routes or regular intervals; and

WHEREAS, the TNC is a transportation network company, as defined by MCL 257.2102, which is licensed to do business in the State of Michigan, and engages drivers to provide prearranged rides in personal vehicles via digital network; and

WHEREAS, the TNC, for purposes of this Agreement, will not use taxicabs, limousines, or other vehicles with a manufacturer's rated seating capacity of 8 or more passengers, including the driver; and

WHEREAS, the Parties desire to enter into an arrangement in which TNC transports District students to or from school, with properly credentialed and screened drivers.

NOW, THEREFORE, in consideration of the above Recitals, which are hereby incorporated into the Agreement, and in consideration of the mutual promises made herein, the Parties agree to the following terms and conditions.

1. Purpose. The TNC will provide vehicular transportation services for District students to and from school or school-sponsored activities in a reliable, timely and efficient manner.

2. Term. The initial term of this Agreement will commence as of the Effective Date first written above and end on June 30 of the current school year, unless extended by both Parties in writing on a year-to-year basis.

3. Payment. The District will pay the TNC a base rate of $ _____ per route completed, plus (the IRS mileage rate per mile). Payment is only due for actual services rendered.

   On a monthly basis, the TNC will send an invoice to the District's superintendent or designee. The District will pay the TNC within thirty (30) days of receiving an invoice; provided, however, that in the event the District disputes the accuracy or propriety of any invoice (e.g., because the invoice is for services inadequately performed or contains a mathematical error), then payment for the disputed portion may be withheld, without interest, until such dispute is resolved. If the District fails to pay the TNC any undisputed amount, then the payment will bear interest at 7% per annum, which is the maximum rate permitted by Michigan law, MCL 438.31, which will be the TNC's sole remedy in the event of non-payment.

4. Termination. Either Party may terminate this Agreement at any time, with or without cause, by providing thirty (30) days' written notice to the other Party.

5. Background Checks. Student safety is of the utmost importance to the District. The Parties will ensure that a criminal history check through the Michigan State Police and the Federal Bureau of Investigation, in accordance with MCL 380.1230 et seq., has been conducted for all drivers ***before*** performing services for the District. Accordingly, the District, at its expense, will take all necessary steps and the TNC will coordinate and cooperate to ensure criminal background checks are initiated on all drivers before performing services.

   Further, the TNC will not assign to drive for the District any person who has been convicted of any of the following offenses: (1) any "listed offense" as defined by Section 2 of the Sex Offenders Registration Act, MCL 28.722; (2) any offense enumerated in Sections 1535a or 1539 of the Revised School Code, MCL 380.1535a, 380.1539b; (3) any felony; provided however, that with prior written approval of the District's Board of Education and Superintendent, a person who has been convicted of a felony (other than a "listed offense" as defined above) may be permitted to perform such services when, in the judgment of the District's Board of Education, that person's presence will not pose a danger to the safety or security of students or personnel; (4) any misdemeanor conviction involving sexual or physical abuse as those terms are defined in Sections 1230(10) and 1230(8) of the Revised School Code, MCL 380.1230; (5) any offense of a substantially similar enactment (to those enumerated in paragraphs A-D, above) of the United States or another State; or (6) any other offense that would, in the judgment of the District, create a potential risk to the safety and security of students serviced by the District.

6. TNC Obligations. The TNC will be responsible for the following obligations:

a. Prominently displaying a unique identifier of the TNC (e.g., placard, magnetized sign, LED sign light, car top sign), distinguishing the TNC from other vehicles.

b. Making available _____ (___) drivers 15 minutes before scheduled pick-up times and ensure arrival 15 minutes before the school day in accordance with the District's academic calendar, including extended school year program(s).

c. Verifying, before driving, that each TNC driver performing services under this Agreement meets all of the following credentials:

    i. Holds a valid driver's license issued by the State of Michigan.

    ii. Has at least one (1) year of driving experience in the United States.

    iii. Has fewer than seven (7) points on his or her driving record in the previous two (2) years.

    iv. Has completed the National Safety Council's Defensive Driver Course, or other defensive driving course approved by the Michigan Department of State, within the last two (2) years.

    v. Carries automobile insurance.

d. Training and requiring its drivers to:

    i. Perform a routine safety inspection of their vehicles before each use and ensure compliance with Section 683(1) of the Michigan Vehicle Code, MCL 257.683(1).

    ii. Ensure that all District students sit in the backseat and fasten their seat belts. A student who is 4 years of age or older but less than 8 years of age and who is less than 4 feet 9 inches in height will be properly secured in a child restraint system in accordance with the child restraint manufacturer's and vehicle manufacturer's instructions and the standards prescribed in 49 CFR 571.213.

    iii. Comply with the District's sign-in procedure, indicating the times of pick up and/or drop off at the District.

    iv. Adhere to designated pick-up and drop-off areas at the District. When a driver cannot locate a student, the driver will call the District's superintendent or designee at _____ and wait up to ten (10) minutes after the scheduled arrival time.

v. Share trip statuses and GPS locations with the District in real-time for all routes with District students.

e. Obtaining the following insurance types and amounts, which to the extent applicable will name the District as an additional insured and remain in effect for the duration of the Agreement:

i. Workers' Compensation Insurance that meets Michigan statutory requirements.

ii. Comprehensive Automobile Liability Insurance: $2,000,000 Combined Single Limit; Bodily: $1,000,000 Each Person, $1,000,000 Each Occurrence, and $2,000,000 Annual Aggregate.

iii. Broad Form Comprehensive General Liability Insurance (including – Premises, Contractual, Products & Completed Operations – Including Broad Form Extensions): Each Occurrence $2,000,000; and General Aggregate $4,000,000.

iv. Personal Injury & Advertising Injury, including Head Injuries: $2,000,000.

v. Sexual Misconduct: $2,000,000.

vi. Any other insurance coverage the District may determine appropriate in consultation with its insurance carrier.

f. Reporting to the District if, but as soon as, it has reasonable cause to suspect child "abuse" or "neglect" of a District student, as those terms are defined by Michigan's Child Protection Law, MCL 722.622.

g. Assuming responsibility under applicable law for obligations that are not expressly set forth in this Agreement.

7. District Obligations. The District will be responsible for the following obligations:

a. Sharing a copy of the District's academic calendar with the TNC, including extended school year program(s).

b. Obtaining written permission and waivers of liability from the student's parent/guardian before organizing transportation for that student with the TNC.

c. Complying with its transportation obligations under the Individuals with Disabilities Education Act with respect to special education students. 34 CFR 300.34(c)(16). The TNC is not responsible for providing the necessary accommodations, supervision, or transportation supports for special education students.

d. Complying with Section 1321 of the Revised School Code, MCL 380.1321, as applicable.

e. Obtaining and maintaining the following insurance types and amounts:

i. Comprehensive General Liability Insurance, covering actions, activities, and performance of obligations assigned under this Agreement; coverage to be broad form including contractual liability and not excluding sexual harassment and molestation.

ii. Umbrella Excess Liability, including Commercial General Liability.

iii. Any other insurance coverage the District may determine appropriate in consultation with its insurance carrier.

8. Limitation. Vehicles used to perform services under this Agreement must have a manufacturer's rated seating capacity of no more than 8, including the driver. MCL 259.2101 et seq. Accordingly, the maximum number of students that the TNC may transport in a single route is 7.

9. Independent Contractor Status. The terms of this Agreement will not be construed in any manner whatsoever so as to create a joint employer relationship between the District and the TNC or its drivers. The District will not control the means, manner, or method in which the services are performed. TNC drivers will not be deemed employees of the District as a result of this Agreement under any circumstance, including but not limited to, compensation, benefits, workers' compensation, unemployment compensation, minimum wage, or the withholding of income and social security taxes. And the District will not directly pay the drivers.

10. Non-Exclusivity. The TNC expressly acknowledges that the District may provide transportation services on its own or contract with other vendors for transportation services.

11. Liability. Each Party will have and retain liability to third parties for injuries sustained or damages incurred on its own premises and through the actions of its own employees or agents, any of its obligations under this Agreement, or under law, except such liability that may arise by reason of the actions or omissions of the other Party, its agents, or employees. Nothing herein will be construed as a waiver of governmental immunity.

12. Indemnification. To the fullest extent permitted by law, the TNC will indemnify and hold harmless the District and its agents from and against claims, damages, losses, and expenses, including attorneys' fees, arising out of or in any way related to the transportation services under this Agreement or the TNC's failure to perform. The TNC will not be obligated to indemnify the District or its agents for the District's sole negligence but will remain liable to the extent of its fault or the fault of a driver or other person for whom the TNC is responsible.

13. Dispute Resolution. Any dispute or controversy involving the provisions, obligations, or rights set forth in this Agreement will be submitted to binding arbitration, the decision from which will be the sole and exclusive remedy for disputes between the Parties under this Agreement. Such arbitration will be conducted in accordance with the rules of the American Arbitration Association. The arbitrator's fee will be shared equally between the Parties. All Parties may have legal representation, but will be individually responsible for their respective legal expenses. A judgment on the arbitrator's award may be entered in any court of competent jurisdiction. The Parties expressly agree that this arbitration agreement precludes them from filing claims against the other in court and effectively waives any right to a jury trial.

14. Non-Assignment. This Agreement will not be assigned or subcontracted be either Party.

15. Non-Discrimination. The Parties covenant not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status. Breach of this covenant may be regarded as a material breach of the contract. This provision is required by MCL 37.2209.

16. Waiver. Failure by either Party, at any time, to require performance by the other Party, or to claim a breach of any provision of this Agreement, will not be construed as a waiver of any subsequent breach, will not affect the validity and operation of this Agreement, and will not prejudice either Party with regard to subsequent action to enforce the terms of this Agreement.

17. Severability. If any provision of this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions of this Agreement will not be affected, impaired, or prejudiced thereby, unless the provision(s) removed materially impact the basic intent of this Agreement.

18. Legal Compliance. Each party will comply with the federal, state, and local laws and regulations applicable in the District's jurisdiction.

19. Governing Law. This Agreement and the rights and obligations of the parties hereunder will be governed by and construed in accordance with the laws of the State of Michigan.

20. Counterparts. This Agreement may be executed in one or more counterparts, including facsimile and electronic signatures, each of which will be deemed to be an original, but all of which constitute one and the same agreement.

21. Entire Agreement. This Agreement sets forth the entire understanding between the parties with respect to the subject matter of this Agreement and supersedes all previous oral or written agreements and understandings on the subject matter between the parties. No provision of this Agreement may be modified except in writing executed by both Parties.

This Agreement has been executed by the duly authorized officers of the Parties as of the date first above written.

_____, a Michigan general powers school district

By: _____
_____

Its: Superintendent

_____, a limited liability company/corporation

By: _____
_____

Its: _____