

FACT Transportation Agreement for Services

Background

CONTRACTOR: _____ (NAME)
PROJECT: RideFACT San Diego County

This Transportation Agreement for Services (“Agreement”) is made and entered into on February 15, 2023 at Oceanside, CA by and between FACT, a nonprofit and the CTSA for San Diego County (hereafter “FACT”) and _____ (hereinafter “CONTRACTOR”).

Recitals

A. FACT desires to contract for transportation services which benefit the residents of all cities in San Diego County; and

B. The CONTRACTOR desires to provide FACT and the residents of San Diego County said transportation services and represents and warrants as a condition hereto that it is qualified by reason of experience, organization, preparation, staffing, and facilities to provide such services;

NOW, THEREFORE, FACT and CONTRACTOR mutually agree as follows:

Terms and Conditions

1. **AGREEMENT.** This Agreement consists of this document and attachments: Noted below.
2. **SCOPE OF SERVICES.** The CONTRACTOR is to perform all the services set forth in this Agreement.
3. **COMMENCEMENT OF SERVICES.** Said services of CONTRACTOR are to commence on the date of this Agreement, or by February 15, 2023.
4. **TERM OF THIS AGREEMENT.** This Agreement shall be effective for a period through February 15, 2024 and shall automatically renew under the same terms and conditions for another equivalent period of time unless modified or terminated earlier by either party as provided for herein.
5. **CONTRACT ADMINISTRATION.** The CONTRACTOR shall coordinate, manage and control all necessary program activities which shall include, but not be limited to: operating approved vehicles; vehicle maintenance and operating personnel; providing driver and other personnel training; administrative procedures, performance, statistics, and financial records; scheduling, dispatching, and providing client trips; FTA NTD data collection and reporting if appropriate; and program audits and developing methods to maximize service efficiency.
6. **FACT’S LEAD REPRESENTATIVE.** Unless otherwise designated in writing, FACT’s Executive Director or designee shall serve as FACT’s representative for the administration of the project (“Representative”). All activities performed by the CONTRACTOR shall be coordinated with this person.
7. **THE CONTRACTOR’S PROJECT MANAGER.** CONTRACTOR shall designate a Project Manager for the applicable services throughout the term of the Agreement. The Project Manager shall be in charge of the project for the CONTRACTOR on all matters relating to this Agreement and any agreement or approval made by him/her shall be binding on the CONTRACTOR.
8. **PERSONNEL.** The CONTRACTOR represents and warrants that it has or will secure at its own expense all personnel required to perform the services under this Agreement. All of the services required under this Agreement will be performed by the CONTRACTOR or under its direct supervision, and all personnel engaged in the work shall be qualified to perform such services. The CONTRACTOR reserves the right to determine the assignment of its

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own workers for the performance of the CONTRACTOR's services under this Agreement, however FACT shall have the right for reasonable cause to obtain removal from the project of any personnel furnished by the CONTRACTOR.

8.1. Performance. The CONTRACTOR shall be solely responsible for the satisfactory work performance of all its workers as described by this Agreement and/or any reasonable performance standard established by FACT. All personnel used by CONTRACTOR to perform services under this Agreement shall be employees, agents, or independent contractors of CONTRACTOR only, and not FACT. The CONTRACTOR shall be solely responsible at its own expense for payment of all worker wages and benefits and compliance with all tax, insurance, and labor laws applicable to the services rendered by and compensation paid to CONTRACTOR under the Agreement.

8.2. Changes. CONTRACTOR shall promptly notify FACT in writing of all changes in ownership and management.

9. RESPONSIBILITIES OF THE CONTRACTOR. The CONTRACTOR shall be responsible for management of the Transportation Services according to specified operating procedures. FACT may establish additional rules that are reasonable for operation of this service after consultation with the CONTRACTOR.

10. RESPONSIBILITIES OF FACT. FACT shall provide all relevant documentation in its possession to the CONTRACTOR upon request in order to minimize duplication of efforts. FACT's staff shall work with the CONTRACTOR as necessary to facilitate performance of the services.

11. TERMINATION. This Agreement may be terminated by the parties for convenience or for cause with notice as provided below.

11.1. Termination for Convenience. FACT may terminate this Agreement without cause and in its sole discretion at any time by giving the CONTRACTOR thirty (30) business days written notice (as provided herein) of such termination. The CONTRACTOR may terminate this Agreement without cause and in its sole discretion at any time by giving FACT thirty (30) business days written notice (as provided herein) of such termination. The FACT Representative is hereby empowered to give said notice subject to ratification by FACT. In the event of such termination, the CONTRACTOR shall cease services as of the date of termination and shall be compensated for services performed to FACT's satisfaction up to the date of termination.

11.2. Termination for Cause. All terms, provisions, and specifications of this Agreement are material and binding, and failure to perform any material portion of the work described herein shall be considered a breach of this Agreement. Should the Agreement be breached in any manner by CONTRACTOR, FACT may, at its option, cause an immediate suspension of trips and/or terminate the Agreement not less than thirty (30) days after written notice (as provided herein) is given to the CONTRACTOR to remedy the violation within the time stated in such notice or within any other time period agreed to by the parties.

12. CHANGES IN THE LEVEL OF SERVICE. FACT may adjust the level of service at its discretion. CONTRACTOR shall not make operational modifications that affect the level of service, including, but not limit to, hours or operation, schedules, vehicles, and routes without the prior written approval of FACT. FACT shall give CONTRACTOR thirty (30) days written notice (as provided herein) of modifications that FACT determines are major and may provide CONTRACTOR with less notice if FACT determines modifications are minor.

13. RELIGIOUS AND POLITICAL ACTIVITIES. CONTRACTOR agrees that funds under this program will be used exclusively for performance of the work required under the Agreement, and that no funds made available under the agreement shall be used to promote religious or political activities.

14. MARKETING. FACT shall be responsible for expenses related to marketing, public relations, and advertising of the transportation services.

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15. INDEMNIFICATION. CONTRACTOR undertakes and agrees to indemnify, defend, and hold harmless FACT, its officers, directors, shareholders, members, agents, representatives, contractors, employees, affiliates, successors, and assigns from and against any and all claims, actions, causes of action, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, expenses, and costs (including, but not limited to, reasonable attorney's fees) of any nature whatsoever arising in any manner from, by reason of, incident to, or in connection with the performance of this Agreement on the part of CONTRACTOR or subcontractor of any tier, including for (a) any breach or violation of any covenant or other obligation or duty of CONTRACTOR under this Agreement or under applicable law, (b) any third party claims for civil liability and/or criminal conduct such as assault, battery, fraud, conversion, death or injury to any person (including CONTRACTOR's workers and agents), or damage or destruction of any property of either party hereto or of third parties, and/or (c) any breach of any representation or warranty contained in this Agreement, in each case whether or not caused by the negligence or other conduct of FACT and regardless of merit. The foregoing shall survive the expiration or termination of this Agreement.

16. INSURANCE. Without limiting CONTRACTOR's indemnification of FACT, the CONTRACTOR shall provide and maintain at its own expense during the term of this Agreement a program of insurance satisfactory to FACT covering its operations thereunder. When such coverage is provided by commercial insurance, such insurance shall be secured through a carrier satisfactory to FACT, and certificates evidencing such insurance, along with significant endorsements, shall be delivered to FACT no later than five (5) days after execution of this Agreement. CONTRACTOR shall give FACT at least thirty (30) days written notice of any modification or cancellation of any policy of insurance. If requested by FACT, CONTRACTOR shall also add FACT as an additional insured to any such policy of insurance through an appropriate additional insured endorsement or otherwise.

16.1 Failure to Procure Insurance. Failure on the part of the CONTRACTOR to procure or maintain required insurance shall constitute a material breach of contract under which FACT may, among other applicable remedies for breach of contract, terminate this Agreement or take other action vis-à-vis CONTRACTOR.

17. COMPENSATION AND METHOD OF PAYMENT. Subject to the terms and conditions of this Agreement, Compensation shall be as follows:

17.1 Compensation. For the satisfactory performance of the services called for in this Agreement, FACT shall pay CONTRACTOR as per the rates set forth in Appendix "A" - Rate Sheet. CONTRACTOR shall be paid only for full performance of those services described in this Agreement and payments may be adjusted by FACT for unsatisfactory performance of those services.

17.2 Invoice Payment Terms. Payment of invoice will be due NET30 from the date when a completed and accurate invoice was submitted.

18. PROGRAM EVALUATION AND REVIEW. CONTRACTOR shall make available for inspection its operational, financial, and all other records pertaining to the performance of this Agreement to authorized FACT personnel to inspect and monitor its facilities and program operations, including the interview of CONTRACTOR staff and program participants as required by FACT. During such reviews, the confidentiality of those persons using the services of the CONTRACTOR shall be respected. CONTRACTOR agrees to submit all data to FACT that is necessary to complete reports that may be required by FACT.

19. MONITORING AND EVALUATION. To ensure proper performance of this Agreement, FACT shall monitor, evaluate, and provide guidance to the CONTRACTOR in the satisfactory performance of this Agreement. To this end, there shall be Performance Standards and Liquidated Damages as set forth below.

19.1 Performance Standards. Performance Standards will be enforced monthly, beginning 30 days after the start of service by CONTRACTOR.

19.2 On Time Performance. On time performance by CONTRACTOR is required. If any vehicle provided by CONTRACTOR under this Agreement: (a) arrives **15 minutes** past the schedule pick-up time, then the trip is

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late"; (c) arrives **46-60 minutes** past the scheduled pick-up time, then the trip is considered "**Excessively late**"; or (d) arrives **after 60 minutes** past the scheduled pick-up time, then it is considered a "**Missed**" trip.

19.3 Customer Service. Because customer service is critical hereto, any complaints should be responded to by CONTRACTOR within two (2) days of receipt. A complaint which has not been addressed within two (2) business days will be deemed an "**Unresolved complaint**".

19.4. Liquidated Damages. For purposes of this Agreement, the parties hereto agree that under the circumstances existing at the time this Agreement was made the sums established below represent a reasonable estimate of FACT's damages for unsatisfactory performance by CONTRACTOR and otherwise agree that it is anticipated that proof of actual damages would be costly and/or inconvenient and that there would be difficulties associated with such proof rendering said sums reasonable.

19.5 Untimely Performance. Because on time performance by CONTRACTOR is required: (a) If the wait time for any trip has been verified to **exceed 60 minutes** past the scheduled pick-up time (and therefore a "**Missed**" trip), then the liquidated damages shall be **\$25 per incident**; and (b) If a trip was **Missed**, FACT will additionally invoice the CONTRACTOR the actual cost of providing that trip through another provider. FACT will not pay a wait time fee for riders unless agreed to in written terms with the vendor.

19.6 Failure to Report Accident and/or Injury. CONTRACTOR is required to report accidents and incidents involving FACT trips immediately or as soon as possible after the incident to FACT. **At a minimum, any such incident should be reported on the same date it occurred. Each instance of a failure to so report an incident by CONTRACTOR shall result in an automatic and non-negotiable fee of \$500 in addition to any other contract related FACT remedies.** An "accident" or "incident" for this purpose is defined as an accident involving (i) a provider vehicle that needs to be towed as a result of an accident, and/or (ii) an injury to a driver, FACT passenger, and/or other vehicle occupant requiring an ambulance, emergency room, or hospital visit. Any injury before or during the boarding process and disembarkation or during travel must be reported.

19.7 Rider Assistance. Riders who are fragile or otherwise unable to get to the provider vehicle without assistance from the driver may not be suitable for curb-to-curb RideFACT service. Providers must inform FACT about riders who meet this description within 24 hours of the pick-up.

19.8 Refusal to Serve Specific Riders. Brokerage providers may not decline to service specific riders due to behavioral issues or conduct without FACT's written concurrence. Any incidents of verbally or physically abusive behavior by a rider towards drivers or others must be documented and provided to FACT as early as possible in order to assist FACT in determining if the rider is in violation of the FACT Code of Conduct.

19.9 Unresolved Complaint. Given that customer service is very important in building ridership and support for this service, any **Unresolved complaint** shall result in the CONTRACTOR paying a **\$25 charge**.

20. PROJECT OPERATIONAL RECORDS AND DOCUMENTATION AND AUDITING RIGHTS. In order to document this project, CONTRACTOR shall keep and maintain all project records as requested by FACT. CONTRACTOR shall permit authorized representatives of FACT to examine all data and records related to the project upon request by FACT or according to the scheduled reporting periods. All project records prepared by CONTRACTOR shall be owned by FACT and be made available to FACT at no additional charge.

20.1 Monthly Invoice. On the 15th day of each month, CONTRACTOR shall submit to FACT a Monthly Invoice documenting the amount of services provided in the previous month. The Monthly Invoice shall itemize trips provided, miles traveled, passengers serviced, On-Time Performance, Missed and Late Trips, and Fare Revenue. Comments and complaints and resolutions shall be documented, and available if requested by FACT.

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20.2 Operations Report. CONTRACTOR daily operations reports are required to be maintained and are relevant back up information to the monthly summary provided in the Monthly Invoice. The content and form of the operator reports shall be mutually agreed upon by FACT and CONTRACTOR.

20.3 Audits. CONTRACTOR shall be subject to audit and CONTRACTOR's program shall be audited in accordance with FACT policy and funding source guidelines. FACT or its authorized representatives shall, at all times, have access for the purpose of audit or inspection to any and all books, documents, papers, records, property (including vehicles), and premises of CONTRACTOR. Also, CONTRACTOR's staff will cooperate fully with authorized auditors when they conduct audits and examinations of CONTRACTOR's program.

20.4 Records Retention and Location. CONTRACTOR shall make available for inspection and audit to FACT representatives, upon request, at any time during the term of the Agreement and during a period of three (3) years thereafter, all of its books and records relating to the operation of each project or business activity which is funded under this Agreement. All such books and records shall be maintained by CONTRACTOR at a location within San Diego County.

21. ASSIGNMENT AND SUBCONTRACTING. The parties hereto recognize that a substantial inducement to FACT for entering into this Agreement is the professional reputation, experience, and competence of CONTRACTOR. Thus, assignments of any or all rights, duties, or obligations of the CONTRACTOR under this Agreement shall be permitted only in the sole and exclusive discretion of FACT and only with the express written consent of FACT. In that event, CONTRACTOR shall be and remain fully responsible to FACT for all acts or omissions of any subcontractor. Nothing in this Agreement shall create any contractual relationship between FACT and any subcontractor nor shall it create any obligation on the part of FACT to pay or to see to the payment of monies due to any subcontractor other than as is otherwise required by law.

22. COMPLIANCE WITH LAWS, CODES, ORDINANCES, AND REGULATIONS. CONTRACTOR shall be bound by and use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations, including, but not limited to, Equal Employment Opportunity, Disadvantaged Business Enterprise, Labor Protection, the Federal Transportation Administration, Drug Testing requirements, and other laws and regulations applicable to contracts utilizing federal funds. In connection with this project, CONTRACTOR shall not discriminate on the grounds of race, color, or national origin.

22.1 Non-Discrimination And Equal Employment Opportunity. CONTRACTOR represents and agrees that it does not and will not discriminate against any employee or applicant for employment because of race, religion, color, medical condition, sex, sexual orientation and/or gender identity, national origin, political affiliation or opinion, or pregnancy or pregnancy-related condition.

22.2 Taxes. CONTRACTOR agrees to pay all required taxes on amounts paid to CONTRACTOR under this Agreement, and to indemnify and hold FACT harmless from any and all taxes, assessments, penalties, and interest asserted against FACT by reason of the independent contractor relationship created by this Agreement.

22.3. Licenses. CONTRACTOR represents and warrants to FACT that it has all licenses, permits, qualifications, insurance, and approvals of whatsoever nature which are legally required of CONTRACTOR to practice its profession. CONTRACTOR further represents and warrants to FACT that the CONTRACTOR shall, at its sole cost and expense, keep in effect, maintain, or obtain at all times during the term of this Agreement any licenses, permits, insurance, and approvals which are legally required of CONTRACTOR to practice its profession.

23. CONFLICT OF INTEREST. CONTRACTOR confirms that it has no financial, contractual, or other interest or obligation that conflicts with or is harmful to performance of its obligations under this Agreement. CONTRACTOR shall not during the term of this Agreement knowingly obtain such an interest or incur such an obligation, nor shall it employ or subcontract with any person for performance of this Agreement who has such incompatible interest or

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obligation. To this end, and to the maximum extent allowed by applicable law, CONTRACTOR shall not directly and irreconcilably engage in other business activities that conflict with the purpose of this Agreement, including, but not limited to, bidding, contracting or performing services for another with whom FACT has a pre-existing or existing relationship that would otherwise be within the scope of this Agreement, or for which CONTRACTOR reasonably knows that FACT may be likely to bid, contract, or provide services in the future. CONTRACTOR also acknowledges that they will not use any FACT assets to bid, contract or perform services that would conflict with the purpose of this Agreement.

24. INDEPENDENT CONTRACTOR. CONTRACTOR is and shall at all times be and remain as to FACT a wholly independent CONTRACTOR and this Agreement does not create an employer-employee, partnership, joint venture, or any other agency relationship between the parties other than establishing that FACT and CONTRACTOR are independent entities contracting for the services specified in this Agreement. Neither FACT nor any of its agents shall have control over the conduct of CONTRACTOR or any of CONTRACTOR's employees or agents, except as herein set forth. CONTRACTOR shall not at any time or in any manner represent that it or any of its agents or employees are in any manner agents or employees of FACT. CONTRACTOR shall have no power to incur any debt, obligation, or liability on behalf of FACT or otherwise act on behalf of FACT as an agent.

25. NOTICE. All Notices permitted or required under this Agreement shall be in writing and shall be deemed made when delivered in person, via electronic mail, or by regular mail to the respective parties at the following addresses, or at such other addresses as the parties may provide in writing for this purpose.

Notices, reports, and statements to FACT shall be delivered to the FACT Representative as follows:

FACT
516 Civic Center Drive
Oceanside, CA 92054
760-754-1252
Attention: Arun Prem, Executive Director
email: aprem@factsd.org

Notices to CONTRACTOR shall be delivered to the following address:

Attention: _____
email: _____

26. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

27. ENTIRE AGREEMENT; MODIFICATION. This Agreement supersedes any and all other agreements, either oral or written, between the parties, and contains all of the covenants and agreements between the parties. Any modification hereto shall be in writing and signed by the parties.

28. ATTORNEY'S FEES. In any action brought to declare the rights granted herein or to enforce any of the terms of this Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees in an amount determined by the court.

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29. **WAIVER.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach or default of the same or any other provision under this Agreement. Payment of any invoice by FACT shall not constitute a waiver of FACT's right to obtain correction or replacement of any defective or noncompliant work product.

30. **EXECUTION.** This Agreement shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto.

31. **SEVERABILITY.** In the event that a court of competent jurisdiction finds any term, clause, or provision of this Agreement is held to be illegal, invalid, or unenforceable under the present or future laws effective during the term of this Agreement, the provision is fully severable; this Agreement is construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part of this agreement; and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision; and there will be added automatically as a part of this Agreement a provision as similar in terms to the illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

32. **AUTHORITY TO ENTER AGREEMENT.** CONTRACTOR has all requisite power and authority to conduct its business and to execute, deliver, and perform this Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

Signatures

IN WITNESS WHEREOF, the parties hereto, having read, understood, and assented, evidence their Agreement to the foregoing terms by their signatures below. This Agreement has been executed by FACT on _____.

| | |
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| <p>CONTRACTOR:</p> <p>_____ (Company Name)</p> <p>By: _____ (Signatory Name)</p> <p>Its: _____ (Title)</p> <p>_____ (Date)</p> | <p>FACT, Full Access & Coordinated Transportation:</p> <p>_____</p> <p>Arun Prem, Executive Director</p> <p>ATTEST:</p> <p>_____</p> |
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Appendices/Riders/Attachments to this Agreement are as follows:

- ___ Appendix "A"—Rate Sheet
- ___ Scope of Work 2021
- ___ Riders/Attachments (Specify:)