

MEMORANDUM OF UNDERSTANDING (MOU)

No. XXXX-X

BETWEEN

FULL ACCESS AND COORDINATED TRANSPORTATION INC. (FACT)

AND

VENDOR

ARTICLE 1. PURPOSE AND PREAMBLE

- a. This Memorandum of Understanding (“MOU”) is entered into by and between Full Access and Coordinated Transportation Inc. (herein referred to as “FACT”) and VENDOR Inc. (herein referred to as “VENDOR”) and its successors and assignees, herein collectively referred to as the “PARTIES”
- b. The PARTIES desire to implement stand by vehicles to provide on demand curb-to-curb, door-to-door and dial-a-ride service for passengers referred by FACT, including ambulatory and wheelchair accessible rides throughout San Diego County.
- c. FACT desires VENDOR to provide specialized transportation for passengers with disabilities traveling within San Diego County. Vehicles are subject to all applicable local, state, and federal regulations, including but not limited to standards outlined in FACT’s Brokerage Agreement.

ARTICLE 2. TERMS AND CONDITIONS

VENDOR shall operate 3 standby vehicles in support of FACT services. Accessible standby vehicles and drivers dedicated to FACT services will be stationed in specific locations ready to provide on demand trip requests within 60 minutes of the trip request.

FACT reserves the right to amend this agreement, including but not limited to standby dates, times, locations, rates, number of vehicles, etc. subject to the needs and demands of the service.

- a. Anything to the contrary herein notwithstanding, if there are any additional procedures or requirements under any program, contract, or subcontract that FACT is obligated to follow then, with respect to this MOU, and/or the Brokerage Agreement, VENDOR will after adequate review, negotiate in good faith any additional cost involved in meeting the additional provisions. VENDOR will be equally obligated to follow the additional procedures or requirements as though the same were originally included within the terms, conditions, and/or provisions of this MOU. FACT also reserves the right to require any additional certifications of vehicles by VENDOR on an as needed basis.

ARTICLE 3. SERVICE DESCRIPTION

- a. PRIORITIZING TRIPS - VENDOR shall prioritize all trip requests received from FACT
- b. SERVICE AREA AND PARAMETERS:

- 1. VENDOR will keep the vehicles strictly within the County of San Diego boundaries at all times.
- 2. If requested, provide **one-way trips per vehicle per day, for up to 7 days a week, at a minimum, 5:00am-10:00pm** for FACT's disabled clients. To this end, FACT retains discretion after the effective date of this MOU to add clients of specific agencies and contracted programs or services, and/or decrease/increase the level of services provided by VENDOR. In accordance with Article 8, denials of FACT trip requests by VENDOR shall constitute a breach of this MOU, resulting in termination of this MOU at FACT's election, or automatically as provided therein. If a vehicle is out of service for any reason for any duration, the VENDOR will perform the trips using another vehicle(s) that meets all of the regulatory and contract requirements.

- 3. Vendor will:

- 3.1 **Provide transportation services during agreed upon days and hours**
- 3.2 **Accept reservations between agreed upon hours on specified days, on demand and with advanced notice**
- 3.3 A Personal Care Attendant (PCA) and or service animal will be accommodated as requested
- 3.4 Provide all vehicle usage and trip data to FACT in the prescribed timeline and format
- 3.5 FACT will assign the trips on demand and a day before, and VENDOR will confirm requests via software portal and/or app within an hour of the time the request was received.
- 3.6 Provide curb-to-curb service, and if requested by FACT, provide door-to-door or door-through-door service

- 4. In the event that FACT and VENDOR are planning to bid on the same transportation service contracts, VENDOR agrees to not propose or use vehicles in this MOU for the provision of contracted services.

- c. VENDOR must be a FACT approved brokerage transportation provider in good standing throughout the term of this MOU and be bound as a Contractor under the FACT Brokerage Transportation Agreement. Any other provision herein notwithstanding, the cancellation or termination of VENDOR's Brokerage contract with FACT for any reason or no reason will result in automatic termination of this MOU.

- d. The vehicle(s) must be maintained in good satisfactory operational standing as per manufacturer's specifications, industry standards, brokerage contract, and any applicable regulations.
 - 1. Notify FACT immediately in the event a vehicle is out of service. Identify each vehicle(s) by VIN, and include dates out of service, estimate or actual date put back into service, and reason taken out of service.
 - 2. Change in Operation and/or Location of Vehicles/Equipment – No changes will be made to operation and/or physical location without prior written authorization from FACT. Vehicles will be stationed at specified locations (appendix).
- e. Each driver employed or contracted by the VENDOR to drive the accessible vehicle must meet the requirements of FACT's brokerage agreement with VENDOR.
- f. All vehicle drivers must speak and write English with adequate clarity for passengers to communicate their needs and instructions to the driver.

ARTICLE 4. INVOICING

A daily fee of **\$950.00** per standby vehicle per day and/or an on demand same day transportation rate with a response time of less than 1 hour that will be paid monthly NET30 of verified invoice at the rates below:

Ambulatory trip rate - \$30.00 + \$4.00 per mile

Wheelchair trip rate - \$35.00 + \$4.00 per mile

Any fare collected as a result of trips dispatched by FACT under this MOU will be forwarded to FACT via a mutually agreed upon reporting process.

- 1. Group trips:
 - A. Same origin and same destination will count as one (1) trip for the purpose of invoicing. For statistical purposes, each passenger boarding or alighting the vehicle will be counted as one (1) trip.
 - B. Different address and/or different destination will be counted as one (1) passenger trip per boarding or alighting.

ARTICLE 5. REPORTING AND AUDITING

- a. VENDOR must maintain a record of all customers and trips, and submit a copy of the records to FACT monthly, unless a particular program requires more frequent data transmittal in which case the program requirements will prevail and be binding on VENDOR. This record will

include the rider information, pick-up and drop-off locations and times, mileage, revenue hours¹, service hours², status of each trip, and fare.

- b. VENDOR agrees to submit all data that is necessary to complete reports that may be required by FACT, in accordance with timelines prescribed by FACT.

Record Retention and Access

- c. VENDOR agrees to provide FACT, SANDAG, the PUC, or any of their authorized representatives access to any books, documents, papers, and records of the VENDOR which are directly pertinent to this MOU for the purposes of making audits, examinations, excerpts, and transcriptions.
- d. VENDOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- e. VENDOR agrees to maintain all accounting records, books, records, accounts, and reports required under this MOU for a period of not less than three (3) years after the date of termination or expiration of this MOU, except in the event of litigation or settlement of claims arising from the performance of this MOU, in which case VENDOR agrees to maintain same until FACT, SANDAG, the PUC or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto. Reference 49 C.F.R 18.39(i)(11).

ARTICLE 6. INSURANCE

- a. VENDOR shall submit annually a copy of the "Certificate of Liability Insurance" issued by an insurance carrier. FACT, its officers, employees, and agents shall be named as additional insured. The certificate must identify each vehicle used to provide services under this agreement by VIN, and include coverage limits as required by General Order 115.2
<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M169/K870/169870310.pdf>
as well as FACT's Brokerage Agreement.
- b. VENDOR shall maintain a liability policy for its specialized transportation services with FACT named as co-insured. Such a policy will be maintained at a minimum level of

¹ Hours that vehicle is carrying passengers for transportation service

² Hours that vehicle is operated, measured as when it is scheduled to or actually travels from the time it pulls out of the garage to go into service to the time it pulls in and terminates operations.

\$1,500,000 as determined by the USDOT/FMCSA financial responsibility for vehicles with seating capacity of 15 or fewer passengers.

- c. VENDOR shall maintain insurances on all active vehicles throughout the period of operations.
- d. This insurance policy shall stipulate that VENDOR shall provide 100% of the replacement cost of the vehicle based on the year, make, model, and mileage of the vehicle to be replaced.
- e. FACT will not be responsible for any premiums or assessments on the policy.
- f. VENDOR name and identification numbers shall be visibly displayed on the vehicle.
- g. VENDOR shall notify FACT in writing at least thirty (30) days in advance of any reduction in any insurance policy required under this MOU.
- h. Failure on the part of the VENDOR to procure or maintain required insurance shall constitute a material breach of contract under which FACT may terminate this MOU as set forth in Article 10 herein.

ARTICLE 7. MUTUAL INDEMNIFICATION

FACT and VENDOR agree to indemnify, defend and hold the other party, its officers, directors, agents, employees, and other related parties harmless from and against any and all liabilities, damages, losses, expenses, claims, demands, suits, fines, or judgments (including reasonable attorney's fees, costs, and expenses, incidental thereto), which may be suffered by, accrued against, charged to, or recoverable from any indemnity, by reason of any claim arising out of or relating to any act or error or omission, or misconduct of FACT or VENDOR, their officers, directors, agents, employees or subcontractors.

ARTICLE 8. PERFORMANCE STANDARDS AND LIQUIDATED DAMAGES

To ensure proper performance of this MOU, FACT will monitor, evaluate, and provide guidance to the VENDOR in the performance of this MOU.

- a. Performance Standards will be enforced monthly, beginning immediately upon start of service.
 - 1. On time performance: If the vehicle arrives 15 minutes past the schedule pick-up time, the trip is considered to be "Late". If the vehicle is 16-30 minutes past the pick-

up time, it is considered "Very late". A vehicle arriving 30+ minutes past the scheduled pick-up time, is considered a "**Missed**" trip.

2. Customer Service: Complaints should be promptly reported to FACT and responded to within 7 days of receipt. A complaint which has not been addressed within 7 days will be deemed an "**Unresolved complaint**".
3. Accident, Incident, or Injury Reporting: Any accident or incident occurring within the vehicle or in relation to any trip scheduled on the vehicle shall be reported as soon as possible following the occurrence and, if applicable, shall be responded to as required under USDOT regulations for Post-accident testing (§ 382.303) and FTA regulations 49 CFR Parts 40 and 655. VENDOR and responsible driver/s must submit to any and all required **drug and alcohol tests** [see Article 17(e)]. Refusal to submit to a test is equivalent to a positive result.

b. Liquidated Damages

1. On time performance:

- A. If the wait time for any trip has been verified to exceed 30 minutes past the scheduled pick up time, it will be considered a missed trip. The liquidated damages shall be **\$62** per incident billed to the VENDOR.
- B. If a trip was **Missed or Declined** within the service parameters in Article 3, the liquidated damages shall be **\$62** per one way trip billed to the VENDOR.
- C. A pattern of missed trips or trip denials (a total of 5 or more one-way trips missed and/or denied during any calendar month) will be considered a breach of this agreement. A pattern of denials that continues for 2 consecutive calendar months will result in automatic termination of this MOU.

2. Failure to report:

For each incident of serious service-related accident and/or injury requiring an emergency room visit not reported to FACT immediately, VENDOR will be subject to a **\$500** penalty.

ARTICLE 9. MAINTENANCE

a. Maintenance and Inspection

Vehicle Inspection. Prior to pull-out driver will fill out provided Preventative Maintenance Inspection (PMI) sheet at the beginning of each shift. The list will include but not be limited to inspection of WC Lift/ Ramp, Headlights, Daytime Running Lights,

Taillights, Brake lights, Back up alarm, Visually inspect tires, check for leaks, AC/Heater, Seatbelts and operability of communication system(s).

Safety and mechanical inspections shall be completed every six (6) months by a garage registered with the State of California Bureau of Automotive Repair approved by FACT and shall be documented with an approved written estimate and invoice in accordance with all applicable state laws. Warranty, safety, and mechanical inspections and repairs may be done simultaneously if completed within 30 days of their due dates. VENDOR shall make available for inspection its operational, financial, personnel, and all other records pertaining to the performance of this MOU to authorized FACT, SANDAG, or PUC personnel to inspect and monitor its facilities and program operations for the purpose of confirming the existence, condition, and proper maintenance of the PROJECT equipment, including the interview of VENDOR staff and program participants as required by FACT. During such reviews, the confidentiality of those persons using the services of the VENDOR shall be respected.

No alterations (e.g., mechanical changes, painting) may be made to the PROJECT equipment in its as-received condition without first receiving written approval from FACT.

- b. Warranty - Any warranty service(s) required by the manufacturer shall be completed by the VENDOR, at the VENDOR's expense, prior to the due date.
- c. The VENDOR is responsible for any and all expenses arising from the possession and use of the vehicle(s) as per the MOU. These expenses include but are not limited to all operating expenses, preventive and ongoing maintenance and repairs, registration, fueling, and insurance.

ARTICLE 10. CANCELLATION of MOU

If the VENDOR fails to maintain the Vehicle(s) in a safe and reasonable condition, FACT retains the right to remove vehicle(s) from the list in Article 2 of this MOU. FACT may terminate the entire MOU immediately if VENDOR violates the provisions of the MOU.

FACT may suspend or terminate this MOU without notice to VENDOR if the VENDOR driver(s) fail to maintain a valid California Driver's License as prescribed in Article 17, below; fails to maintain liability insurance as prescribed in Article 6, above; and/or is convicted of reckless driving to driving under the influence, a felony, and/or a violent offense, regardless whether a felony or misdemeanor.

Should FACT terminate this MOU for any reason stated herein, FACT will have no obligation to compensate VENDOR for any services provided.

FACT and VENDOR reserve the right to terminate this agreement **for convenience** at any time with 30 calendar days notice.

ARTICLE 11. ASSIGNMENT

Neither Party shall have the right to assign its respective rights and obligations hereunder without the prior written consent of the other Party.

ARTICLE 12. NON-EXCLUSIVE MOU

This MOU is non-exclusive and FACT expressly reserves the right to contract with other entities for the same or similar services involving different vehicles than identified in this MOU.

ARTICLE 13. LAW AND VENUE

This MOU shall be governed and construed in accordance with the laws of the State of California. In the event of any legal dispute, venue and jurisdiction shall be within the County of San Diego, California.

ARTICLE 14. RESOLUTION OF DISPUTES

All controversies, claims, disputes or counterclaims arising out of, relating to, or in connection with this agreement, or any resulting transaction, whether it involves a disagreement about meaning, interpretation, application, performance, breach, termination, enforceability, or validity, and whether based on statute, tort, contract, common law, or otherwise ("Dispute"), shall be resolved by binding arbitration as set forth in this Article 14.

- a. Arbitration. At any time, any party may commence binding arbitration proceedings by providing the other party written notice of intent to arbitrate ("Notice of Arbitration"). Arbitration of the Dispute shall be conducted in accordance with the procedures set forth in Title 9 of Part III of the California Code of Civil Procedure ("C.C.P.") (Sections 1280, et seq.). The arbitration shall be conducted in the county of San Diego, California, and the proceedings shall be governed by California law. The arbitrator shall be any independent third party agreed to by the parties, but if the parties cannot agree within 30 days from the date Notice is given, the arbitrator shall be appointed by the then presiding judge of the San Diego County Superior Court from lists of nominees submitted by each party. The arbitration proceeding shall be completed within 90 days after appointment of the arbitrator, unless the parties otherwise agree. The arbitrator shall have jurisdiction over the Dispute, and the decision of the arbitrator shall be final and binding upon the parties. In accordance with C.C.P § 1283.1, the provisions of C.C.P § 1283.05 regarding depositions and discovery are expressly incorporated herein by this reference.
- b. The cost of the arbitration and the arbitrator's fees shall initially be shared equally by the parties. Each party shall be solely responsible for the payment of its own attorney's fees. Notwithstanding the foregoing, the prevailing party, as determined by the arbitrator, shall be entitled to the recovery of reasonable attorney's fees, arbitration fees, and costs. Judgment upon the arbitration award may be entered in any court having jurisdiction; or

application may be made to such court for a judicial acceptance of the award and an order of enforcement, as applicable.

- c. Negotiation or Mediation. The parties may, by mutual written agreement only, stay the commencement of the arbitration proceedings from time to time as they may mutually agree to allow for any form of negotiation or mediation of the Dispute.

ARTICLE 15. SEVERABILITY

The invalidity of any provision of this MOU as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

ARTICLE 16. RENEWAL OF MOU

The base period of this MOU will be from February 1, 2023 through February 1, 2024. At the sole discretion of FACT, this MOU may be extended for up to two optional one year periods through February 1, 2026, for a maximum term, including the base period, of three years.

ARTICLE 17. GENERAL PROVISIONS & FEDERAL REQUIREMENTS

As a third party contractor, the VENDOR is subject to all FACT, SANDAG, PUC and FTA requirements and agreement terms.

ARTICLE 18. ENTIRE MOU

This MOU constitutes the entire agreement between the PARTIES hereto concerning the subject matter hereof. The PROJECT description in this MOU may be modified by mutual written agreement between the PARTIES. Local, state, and federal law, regulation, or directives are non-negotiable and may not be modified in this MOU unless authorized by the SANDAG, its officers, employees, or agents. The Brokerage Transportation Agreement for Services between VENDOR and FACT ("Brokerage Contract") shall remain applicable and enforceable.

FULL ACCESS & COORDINATED TRANSPORTATION, INC. VENDOR AGENCY NAME

Arun Prem
Executive Director, FACT

VENDOR REPRESENTATIVE
Owner/Manager

Date: _____

Date: _____