

AGREEMENT FOR THE TRANSPORTATION OF STUDENTS

THIS AGREEMENT is made and entered into this 27th day of May 2021 (the "Effective Date"), by and between, MAKING WAVES ACADEMY, Inc., a California, Non-Profit Corporation whose principal office is located at 4123 Lakeside Dr., Richmond, CA 94806 ("Customer") and MICHAEL'S TRANSPORTATION SERVICE, INC. (MTS), a California corporation whose principal office is located at 140 Yolano Drive, Vallejo, California 94589 ("Contractor").

RECITALS

WHEREAS, Customer requires the services of Contractor to transport children, Monday through Friday, from Home to School and School to Home during the school year;

WHEREAS, Contractor desires to provide said services in a safe, consistent, and timely manner;

WHEREAS, the coronavirus disease (COVID-19) pandemic has required the closure of schools across the State of California pursuant to orders of the Governor and county Public Health Officers ("Public School Closure");

WHEREAS, a Public School Closure prevented Contractor from providing services after approximately March 13, 2020 through June 10, 2020;

WHEREAS, it is unknown whether the same or a new Public School Closure will occur during the 2021-2022 school year;

WHEREAS, Customer may be subject to limits in the operation of its school during the 2021/2022 school year in response to COVID-19, which may involve limitations on the number of children that may attend classes, the times during the day when children may attend classes, or both ("School Limitations");

WHEREAS, Contractor may be subject to increased demands in the operation of its buses during the 2021/2022 school year in response to COVID-19, which may require changes to the number of children allowed to occupy buses, the number of routes that must be provided to transport children to school, or both ("Special Services");

WHEREAS, the Centers for Disease Control ("CDC") recommend that employees who are sick self-quarantine and not report to work for a period of time after symptoms have dissipated; and

WHEREAS, the parties hereto wish to provide the terms and conditions under which Contractor will provide the services to Customer, which terms and conditions include the adoption of a Health and Safety Protocol and provision of Special Services in response to potential School Limitations imposed by COVID-19.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings herein

contained, Customer and Contractor intending to be legally bound, covenant and agree as follows:

AGREEMENT

1. Services. Contractor shall furnish, operate, and maintain for the benefit of Customer four (4) passenger bus of sufficient size to transport passengers (as suggested by the CDC guidelines due to COVID-19) due to Monday through Friday as set forth below in Section 2. Contractor shall pick up and return the passengers at pre-arranged stops and transport to / from 4123 Lakeside Dr., Richmond, CA 94806.
2. Term. This agreement (“Agreement”) shall be effective on the date first written above, and the services shall commence on or about August 16, 2021 and terminate at the conclusion of services on or about June 8, 2022. The agreement may be renewed thereafter by mutual written agreement. Sections 9, 10 and 13 shall survive the termination of this Agreement for three years.
3. Fees. Customer agrees to pay Contractor \$695.00 per bus per day for the morning and afternoon routes. Customer agrees to pay Contractor \$895.00 per day for the morning, afternoon and evening route – provided that safe overnight parking is permitted on site.

If safe overnight parking on-site is not permitted the daily home to school rates are \$795.00 per bus per day for the morning and afternoon routes; and \$995.00 per day for the morning, afternoon and evening route.

Plus \$50 COVID Cleaning Fee per bus, per month.

Fuel Surcharge. A one percent (1%) surcharge, not to exceed 2%, will be added for every 10 cents that the diesel fuel price rises above \$4.330/gallon, per the average California Diesel Fuel Price as published by the Department of Energy at http://www.eia.gov/dnav/pet/pet_pri_gnd_dcus_sca_w.htm. (*Note:* The current average CA diesel fuel price reported at the DOE site is \$4.047/gal. So, if the fuel price exceeded \$4.300/gal., there would be a (1%) additional charge per bus per day; if it exceeded \$4.400/gal., there would be an additional 1% increase (for a maximum 2% increase on daily rate.

In light of an unprecedented occurrence, and unless there is a state executive order put into effect which clearly identifies service providers such as Contractor is entitled to continue to receive payments and clearly mandates continued payments to such contractors. Performance of the parties shall be suspended during any Public School Closure, but Contractor agrees and will use its best efforts to maintain qualified drivers at the levels required to resume services per the Agreement after any Public School Closure ends. Contractor agrees that Customer is hereby fully and forever released from any further payments for any period of Public School Closure that occurred prior to the Effective Date of this Agreement.

4. Cancellation Policy. If Customer cancels a daily run more than twenty-four (24) hours in advance, there will be no fee. If Customer cancels less than twenty-four (24) hours in advance, there may be a fee of up to fifty percent (50%) of the total charge. If Customer cancels a daily run on the spot, the Customer is subject to a fee of up to one hundred percent (100%) of the total charge.
5. Driver Unavailability. In the event that a driver of one of Customer's routes reports an illness or presents with illness symptoms which warrant self-quarantine, Contractor shall use best efforts to assign another driver to the route to ensure continuous service. Contractor agrees to call the Business Manager for Customer in the event that a substitute driver is not available to provide service despite Contractor's best efforts. Customer will not be charged in the event that bus service is not provided due to driver unavailability.
6. Permits and Licenses. Contractor, its employees, agents and assigns shall secure and maintain valid permits and licenses as required by state and federal law to operate commercial vehicles used in the transportation of children. Contractor shall provide qualified driver/trainers and qualified drivers, trained and licensed in accordance with applicable laws and the rules and regulations of Customer. Contractor agrees that each driver shall:
 - (i) Possess a valid license or permit issued by California authorizing such person to operate a school bus.
 - (ii) Be certified by a duly licensed medical practitioner as medically qualified and free of medical or physical conditions, which, absent reasonable accommodation, would limit safe operation of a school bus. The physical examination shall be conducted prior to employment and periodically thereafter
 - (iii) Possess a satisfactory driving record and criminal history record (DOJ/FBI), after review of such records prior to employment and periodically thereafter to the extent permitted or available by law.
 - (iv) Prior to employment and from time-to-time thereafter, to the extent permitted by law, undergo such tests as may reveal within a reasonable degree of medical or scientific certainty, the presence or absence of drugs or controlled substances in the body and such tests as may clinically reveal alcoholism or alcohol abuse. Negative findings for such tests shall be a condition of employment.
7. Safety Program. Contractor shall provide regular and continuous formal safety instructions for all operating personnel assigned to perform services under this Agreement.
8. Insurance. During the entire term of the Agreement, Contractor shall maintain commercial automobile and general commercial liability insurance in the amount set

forth below and shall furnish certificates of insurance for each policy for liability coverage and Worker's Compensation coverage before the effective date of this Agreement. The policies shall provide, or be endorsed to provide, a thirty (30) day prior written notice of cancellation to Customer, except where cancellation is due to the non-payment of premiums, in which event ten (10) days prior written notice shall be provided to Customer. Contractor shall notify Customer promptly and shall provide appropriate certificates to Customer following the placement of new or renewed coverage.

Contractor shall maintain Commercial General Liability insurance, which shall be written on an occurrence basis with a limit of not less than five million dollars (\$5,000,000) per occurrence and not less than five million dollars (\$5,000,000) in the aggregate against claims for bodily injury, personal and advertising injury, and property damage, and shall include broad form contractual liability coverage. Coverage shall include Sexual Abuse and Molestation . The Sexual Abuse and Molestation coverage may be included under the Commercial General Liability policy or obtained under a separate policy of insurance with limits of not less than \$1,000,000 per occurrence. The Commercial General Liability and Sexual Abuse/Molestation policy(ies) shall be endorsed to name Customer, its Board of Directors, officers, agents and employees as additional insureds with respect to the operations of services and performance of Contractor under this Agreement. Contractor shall maintain Commercial Automobile Insurance with limits of not less than \$5,000,000 per accident for all owned, non-owned and hired automobiles. This policy shall be endorsed to name Customer, its Board of Directors, officers, agents and employees as additional insureds with respect to all services to be performed by Contractor under this Agreement.

Contractor shall maintain Workers Compensation Insurance as required by state law, and Contractor shall be solely responsible for any claims of its employees which may arise from the services provided under this Agreement. Contractor shall also maintain Employer's Liability coverage with limits of not less than \$1,000,000 per accident or disease. The Workers' Compensation policy shall be endorsed to contain a waiver of subrogation in favor of Customer, its Board of Directors, officers, agents and employees

With respect to Contractor's services and performance under this Agreement, Contractor's insurance shall be primary and any insurance or self-insurance maintained by Customer, its Board of Directors, officers, agents and employees shall be excess of Contractor's insurance and shall not contribute with it.

The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified herein, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Contractor hereunder.

A combination of primary and excess/umbrella policies may be used by Contractor to satisfy its obligations under this Agreement, provided that all such policies shall be endorsed to name Customer, its Board of Directors, officers, agents and employees as additional insureds for all ongoing and completed operations.

9. Independent Contractor. Michael's Transportation is an independent contractor of Customer. Neither party, nor any of its employees, consultants, contractors or agents are employees, consultants, contractors, agents or joint ventures of the other. Neither party has any authority whatsoever to bind the other party by contract or otherwise. Contractor shall not use, and shall not permit any employee or subcontractor to use, any title or reference to Customer which states or suggests that such person is a partner, officer or employee of Customer.
10. Assignments or Subcontracting. Contractor shall not assign, transfer, or subcontract any of its rights, burdens, duties or obligations under this Agreement without the prior written consent of Customer which shall not be unreasonably withheld.
11. Indemnification of Customer. Contractor shall hold harmless and indemnify Customer, its Board of Directors, officers, agents and employees from any and all claims, injuries, damages, obligations, liabilities, causes of action, judgment and costs, including reasonable attorneys' fees, arising out of or in connection with, either directly or indirectly, any act or omission of Contractor and its employees, subcontractors and/or agents in the performance of any Services under this Agreement. This indemnification includes, but is not limited to, any act or omission, neglect default, intentional conduct, reckless conduct, fraudulent conduct or criminal conduct of Contractor or of any employee, agent or subcontractor in relation to this Agreement.
12. Indemnification of Contractor. Customer shall hold harmless and indemnify Contractor, its Board of Directors, officers, contractors, agents and employees from any and all claims, injuries, damages, obligations, liabilities, causes of action, judgment and costs, including reasonable attorneys' fees, arising out of or in connection with, either directly or indirectly, any act or omission of Customer and its employees, subcontractors and/or agents in relation to this Agreement. This indemnification includes, but is not limited to, any act or omission, neglect default, intentional conduct, reckless conduct, fraudulent conduct or criminal conduct of Customer or of any employee, agent or subcontractor in relation to this Agreement.
13. Attorneys' Fees. The parties hereto agree and acknowledge that in the event that any party hereto shall institute any action or proceeding to enforce any rights granted under this Agreement, the prevailing party in such action or proceeding shall be entitled, in addition to any other relief granted by the Court or other applicable body, to such reasonable attorneys' fees and costs as may be awarded.

14. Force Majeure. The obligations of the parties to each perform its obligations as set forth hereunder, shall be suspended to the extent necessary when such performance is unavoidably delayed or prevented because of COVID-19, acts of God, extreme traffic or weather-related delays, government orders or actions, terrorist acts or any other cause beyond the control of the party from which the performance is due.
14. Notices. Any notice which any party desires or is obligated to give another, as provided herein, shall be given in writing and shall be deemed given and effective (i) when delivered personally or by facsimile, or (ii) when received if sent by overnight express or mailed by certified, registered or regular mail, postage prepaid, addressed to a party at its address first stated above, or to such other address as such party may designate by written notice in accordance with the provisions of this Section. E-mail notice may be considered written notice if receipt of such notice is confirmed by reply e-mail. Each party shall provide prompt written notice of an address change or specific mailing instructions not in conformance with the addresses above.
15. Venue. All disputes arising out of this Agreement shall be subject to the exclusive jurisdiction and venue of the California state courts in and for Solano County.
16. Entire Agreement; Modification. This Agreement constitutes the entire understanding and agreement of the parties with respect to its subject matter, and supersedes all prior and contemporaneous understandings and agreements, whether written or oral, with respect to such subject matter.
17. Severability. If any provision of this Agreement is determined by a court to be invalid, unenforceable or otherwise ineffective, that provision shall be severed from the rest of this Agreement, and the remaining provisions shall remain in effect and enforceable.
18. Waiver. Any agreement on the part of a party to any extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party. A waiver by one party of the performance of any covenant, agreement, obligation, condition, representation or warranty shall not be construed as a waiver of any other covenant, agreement, obligation, condition, representation or warranty. A waiver by any party of the performance of any act shall not constitute a waiver of the performance of any other act or an identical act required to be performed at a later time.
19. Termination and Dispute.
 - (i.) Either party may terminate this Agreement for material breach, after giving the other party thirty (30) day's written Notice to Cure.
 - (ii.) Customer reserves the absolute right without cause to cancel this Agreement at the end of any contract year upon the failure, effective at the end of any contract year, of the state legislature to provide adequate funding to allow Customer to provide transportation services to students within School. In the event Customer shall elect to terminate this Agreement due to state

legislative funding deficiencies, Customer shall give written notice to Contractor on or before May 1 prior to the end of any contract year for services to be rendered in the following contract year.

- (iii.) Either party may terminate this Agreement for convenience upon (30) days written notice to the other party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

Michael's Transportation Service, Inc.,
A California Corporation

Making Waves Academy
A California, Non-Profit Corporation

By:  _____

By: _____

Print Name: April J. Brown

Print Name: _____

Title: Chief Operating Officer

Title: _____

Date: 5/27/2021

Date: _____