



Signature Routing Form

For Superintendent's Approval/Signature

COS Initials: SK

12-18-19

Date: Tuesday, December 17, 2019

Division Head: Marissa Key, Interim (OLA)

Initials: MK

Purpose: Superintendent's Approval/Signature

Other: Click here to enter text.

Title of Document: Charter Bus Services Agreement

From (if other than Division Head): Cadesha West; Assistant Legal Officer – Contracts

Legal Review:  NO  YES

BOE Approval:  NO  YES

Notes: RFP #20-472 Charter Bus Services was awarded to American Coach Lines ( 1 of 14 vendors) at the October 7, 2019 business meeting. The Purchase of the charter bus services is paid for by the local school or department utilizing the service and will be paid from multiple charge codes.

*DEADLINE and DUE BY AREAS ARE FOR URGENT ITEMS ONLY*

Deadline: **URGENT**

Due by: 12/20/2019

Return documents to: Karen Lewis x60310

**For Superintendent's Office Use Only**

Date received: 12-18-19

Date returned: 12-19-19

Processor's Initials: SKM

**SERVICE AGREEMENT**  
**BETWEEN THE**  
**DEKALB COUNTY SCHOOL DISTRICT**  
**AND**  
**AMERICAN COACH LINES**

**Service Provider: American Coach Lines**  
**Project Name: Charter Bus Services**

**Address: 705 Lively Avenue**  
**Norcross, Georgia 30071**

**RFP No.: 20-472**

**Description: Charter Bus Services**

**THIS DISTRICT WIDE CHARTER BUS SERVICE AGREEMENT** and the below referenced documents attached as Exhibits (hereinafter the "Service Agreement") is made and entered into by and between the DeKalb County School District (hereinafter the "DCSD") whose address is 1701 Mountain Industrial Boulevard, Stone Mountain, Georgia 30083 and American Coach Lines (hereinafter the "Service Provider") whose physical address is 705 Lively Avenue Norcross, Georgia 30071. DCSD and Service Provider are referred to herein collectively as the "Parties" and individually as a "Party."

**WHEREAS**, DCSD desires to retain the services of a competent and qualified Service Provider to provide district wide charter bus services; and

**WHEREAS**, the DCSD has solicited for these services via an advertised request for proposal and has received responsive proposals thereto; and

**WHEREAS**, after review and consideration of all responsive proposals, DCSD intends to engage the Service Provider to provide district wide charter bus services; and

**WHEREAS**, the Service Provider remains agreeable to provide DCSD district wide charter bus services and represents that it is competent, qualified, capable, and prepared to do so according to the terms and conditions stated herein;

The Service Agreement consist of:

- a. This Service Agreement (Agreement for Services);
- b. Request for Proposal (RFP) No. **20-472 (Exhibit A)**;
- c. The Service Provider's Proposal to the above-numbered RFP, including pricing, and any applicable Scope of Services and any applicable Payment and Payment Terms Schedule attached except that objections or amendments by Service Provider that have not been explicitly accepted by DCSD in writing in this Service Agreement shall not be included in this Service Agreement and shall be given no weight or consideration; **(Exhibit B)**;
- d. Board Directive Signed by the Superintendent and originally dated **October 9, 2019 (Exhibit C)**; and
- e. Notice of Award dated **October 14, 2019 (Exhibit D)**.

This Service Agreement together with the aforementioned exhibits collectively forms **the Service Agreement**. All prior and contemporaneous negotiations and Service Agreements between the Parties on the matters contained in this Service Agreement are expressly merged into and superseded by this Service Agreement. DCSD shall not be bound by any additional terms and conditions, including but not limited to, terms and conditions related to any provided service or good, limitations of the Service Provider's liability or any other third party's liability, limitation of warranties, packaging, invoices, service catalog, brochure, technical data sheet, electronic disclosures, electronic Service Agreements, or other document which attempts to impose any conditions at variance with or in addition to the terms and conditions of this Service Agreement.

Any inconsistency or conflict among the specific provisions of this Service Agreement shall be resolved as follows:

- a. First, by giving preference to the specific provisions of this Service Agreement and any change orders or modifications issued after execution of this Service Agreement;
- b. Second, by giving preference to the specific provisions of the RFP attached hereto as

**Exhibit “A;”**

- c. Third, by giving preference to the specific provisions of Service Provider’s Proposal, including pricing and any applicable Scope of Services and any applicable Payment and Payment Terms Schedule attached hereto as **Exhibit “B,”** except that objections or amendments by Service Provider that have not been explicitly accepted by DCSD in writing in this shall not be included in this Service Agreement and shall be given no weight or consideration.

**NOW, THEREFORE,** in consideration of the mutual promises, covenants and Service Agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged by the Parties. DCSD and the Service Provider agree as follows:

**ARTICLE 1**

**PARTIES TO THE SERVICE AGREEMENT**

The DCSD’s address and its contact person are:

DeKalb County School District  
1780 Montreal Road  
Tucker, Georgia 30084

Attention: Daniel Drake, Interim Chief Operations Officer

Phone: 678-676-1332

Email: Daniel\_Drake@dekalbschoolsga.org

With a copy to:

DeKalb County School District  
1701 Mountain Industrial Boulevard  
Stone Mountain, Georgia 30083

Attention: Mrs. Ramona Tyson, Interim Superintendent

The Service Provider’s contact information is:

Company Name: American Coach Lines

Address: 705 Lively Avenue  
Norcross, Georgia 30071

Contact Person: Todd McElmurray

Title: Vice President

Phone: 770-449-1806

Email: ToddMcElmurray@coachusa.com

Any notice or consent required to be given by or on behalf of any Party hereto to any other Party hereto shall be in writing and shall be sent to DCSD or to the Service Provider by (a) registered or certified United States mail, return receipt requested, postage prepaid, (b) personal delivery, or (c) overnight courier service. All notices sent to the above addresses shall be binding unless said address is changed, and provided in writing to the other Party, no less than fourteen days before such notice is sent.

## ARTICLE 2

### **DURATION OF AGREEMENT**

- 2.1 **Agreement Term.** The term of this Service Agreement begins on the date executed by the last Party to execute below (hereinafter the "Effective Date"). The performance period for this Service Agreement is one (1) year from the Effective Date.
- 2.2 **Agreement Renewal.** In addition to the base period of one (1) year, there are four (4) one-year optional renewal terms (each a "Renewal Term") to be exercised at the sole discretion and approval of DCSD. Additionally, as required by O.C.G.A. § 20-2-506, this Service Agreement shall terminate absolutely and without further obligation on the part of DCSD at the close of the calendar year in which it was executed and at the close of each succeeding calendar year for which it may be renewed, but shall be automatically renewed for each subsequent calendar year during the term unless DCSD terminates this Service Agreement, by providing Service Provider with thirty (30) days advance notice of termination prior to the end of the calendar year. Renewal will depend upon the best interests of the DCSD, funding, and Service Provider's performance subject to the other termination methods available to the DCSD herein.

## ARTICLE 3

### **SCOPE OF SERVICES**

3.1 DCSD does hereby retain Service Provider to furnish those services and to perform those tasks (collectively, the "Services") as further described in (i) the DCSD's Request for Proposal 20-472, to include all attachments and addenda, attached hereto as Exhibit "A" and incorporated herein by reference; and (ii) the Service Provider's final responsive thereto, attached hereto as Exhibit "B" and incorporated into this Agreement by this reference. A complete copy of the Scope of Work section of RFP 20-472, to include the Service Provider's final responsive proposal, is attached as Exhibit "B" and made a part of this Service Agreement.

3.2 The Service Provider represents to Owner that individuals that the Service Provider shall utilize to fulfill and complete this Agreement possess expertise in the following disciplines and possess the following accreditations or other credentials, if any:

- The Service Provider will operate in compliance with all rules, regulations, and standards of the Federal Motor Carrier Safety Administration and National Highway Traffic Safety Administration;
- The Service Provider will utilize vehicles that meet or exceed the minimum Federal Motor Vehicle Safety Standards. These Federal safety standards are regulations written in terms

of minimum safety performance requirements for motor vehicles or items of motor vehicle equipment. These requirements are specified in such a manner "that the public is protected against unreasonable risk of crashes occurring as a result of the design, construction, or performance of motor vehicles and is also protected against unreasonable risk of death or injury in the event crashes do occur;"

- The Service Provider shall maintain a valid company business license. Any license submitted in response to the RFP shall be maintained by the Service Provider for the duration of this Agreement.

The Service Provider shall adhere to the following:

- All commercial carrier vehicles shall be equipped with the following: Air Conditioning, PA system, reclining seats, reading lights, accommodations for physically challenged students/staff;
- Service Provider must be licensed by the Georgia Public Service Commission;
- All drivers of Service Provider must have specialized driver training, appropriate Commercial Driver's License ("CDL") and meet all Interstate Commerce Commission driver license and certifications;
- Service Provider must have adequate equipment and the financial ability to provide the services specified in this solicitation;
- Service Provider must deliver, prior to the departure from all DCSD schools and facilities, a safety message including a brief explanation of exit locations, exit strategy, and all other procedures that should be followed in case of an accident or emergency;
- Service Provider shall list the variety and quantity of available fleet vehicles, including but not limited to full size buses (each providing minimum seating for 47-55 passengers); and mini - coaches. Full size buses shall be "suburban or intercity coach style accommodations (build on a "heavy" chassis as defined in the bus industry), with lavatory facilities, heat and air conditioning, tinted glass (preferable), overhead baggage or parcel racks, adequate headroom (a minimum of 74 inches preferable), and other features normally associated with comfortable suburban or intercity passenger service. The entry door step height should be as low as is practical to permit easy boarding by elderly and handicapped passengers. In their proposal, the Service Provider provide accommodation specification associated with other types of vehicles such as minicoaches;
- Service Provider must operate in compliance with all rules, regulations, and standards of the Federal Motor Carrier Safety Administration and National Highway Traffic Safety Administration. Please refer to Attachment G - Federal Motor Vehicle Safety Standards Form, located on page 44, of the attached Exhibit "A." Each vehicle shall be equipped to meet all applicable federal and state Highway Specifications, Interstate Commerce Commission specifications and local specifications, safety standards, emission requirements, and handicap provisions. It is preferred that each bus have a front destination sign. Service Provider shall state if their vehicles are equipped with wheelchair lifts to allow persons with wheelchairs to board;
- Each vehicle shall be maintained in good working condition, to include but not limited to properly functioning reclining seats, overhead bins that close, and operable interior lights, if applicable. Each vehicle shall not be more than six (6) years old. Overall appearance, interior and

exterior, must be clean, in good repair, and free of unpleasant odors;

- Storage of all vehicles shall exclusively be the responsibility of the Service Provider;
- All drivers of the vehicles shall have specialized driver training, appropriate COL, and meet Interstate Commerce Commission driver license certification requirements. All customer service complaints received by the Contractor shall be reported verbally to the DCSD within 24 hours and followed up by a written report within ten (10) working days;
- The Service Provider shall be responsible for paying all toll charges, licenses, fees, taxes, parking fees, violation fines, and other operating costs incurred by the Service Provider as part of this Agreement. There shall be no add-on charges of any kind;
- All vehicles shall be equipped with two-way radios, cellular telephones, or like equipment that will enable communication with the Service Provider's administrative and maintenance facility;
- The Service Provider's driver shall not smoke while performing the services provided for herein;
- Driver must have precise directions to specified locations upon arrival at DCSD, and not rely on DCSD staff; and
- No friends or family of the Service Provider's driver are to accompany the driver on any trip at any time.

#### **Vehicle Maintenance**

- The Service Provider shall be fully responsible to meet or exceed all federal, Department of Transportation ("DOT") required inspections. During the term of this Agreement, DCSD reserves the right to review current vehicle inspection and repair records;
- The Service Provider shall be responsible for providing fuel, lubricants, tools, and employee uniforms;
- All vehicles shall have operable heating and air conditioning;
- Service Provider shall explain their procedures for vehicle replacement in case of a breakdown, with the response;
- Service Provider agrees that all buses provided under this Agreement will be in top operating condition. If Service Provider provides substandard buses that cause breakdowns, delays or otherwise inconvenience the participants or put them in harm's way, then DCSD may suspend performance under this Agreement until such time as all problems have been demonstrated to have been corrected;

#### **Request for Service/Reservations**

- Individual schools or departments will contact the Service Provider to request a quote and the pricing shall be based on pricing set forth in this Agreement;
- DCSD has the right to request departure points from the Service Provider anywhere within

DeKalb County, weekdays or weekends, at no additional charge

- Notice of cancellation for a trip after reservations have been made, shall be given 24 hours before departure time at no cost to DCSD. For service where less than 24-hour notice is given, except for weather conditions, a cancellation fee (a flat hour rate) may be charged. If cancelled before leaving the terminal or cancelled on the job; and
- The DCSD has the right to revise or cancel trips due to snow emergency or other weather conditions within two (2) hours' notice, prior to the first pick-up, without financial penalty, and to revise departure and return times, trip intervals and number of trips during the time period covered by this Agreement without any additional cost to the DCSD

### **Method of Ordering**

- Purchase order(s) for bus services will be issued as required throughout the period of this Agreement, and will become an integral part of the resulting Contract. The purchase order(s) does not supersede any provision of the Contract. Blanket purchase order(s) may be issued by the using Department in place of individual purchase orders, to expedite the procurement process for contracted services.

3.3 Service Provider shall be solely responsible for the professional quality, accuracy, competence, methodology, and the coordination of all Services performed pursuant to this Agreement.

3.4 DCSD's review, approval, or acceptance of any of the Service Provider's Services shall not be construed to: (i) operate as a waiver of any rights the DCSD possesses under this Agreement; or (ii) waive or release any claim or cause of action arising out of the Service Provider's performance or nonperformance of this Agreement. The Service Provider shall always remain liable to the DCSD in accordance with applicable law for any and all damages to the DCSD caused by the Service Provider's breach of this Agreement.

## **ARTICLE 4**

### **COMPENSATION**

4.1 The Service Provider agrees that the compensation for all services under this Service Agreement shall be the specific price set forth in the attached Exhibit "A" and Exhibit "B." There shall be no add-on charges of any kind.

## **ARTICLE 5**

### **WORKING RELATIONSHIP**

5.1 The Service Provider will function in cooperation with the DCSD's designated representative, which is set forth in Article 1 of this Service Agreement. The Service Provider will consult with the DCSD's representative before finalizing recommendations or taking action at Program milestones or other key decision points. The Service Provider shall fully cooperate with the DCSD and, if applicable, the DCSD's representative or designee. Such cooperation shall include, without limitation, providing any requested information to the DCSD's representative and advising, meeting with, consulting with, and coordinating with the DCSD's representative.

5.2 The DCSD shall have the right, at its sole discretion, to demand and require the Service Provider to remove any employee or subcontractor working for the Service Provider on the Program and to replace the employee or subcontractor without cost or liability to the DCSD.

5.3 For purposes of safety and otherwise, the Service Provider, at all times, shall ensure its ability to thoroughly and clearly communicate, in any and all necessary languages, with the DCSD representative and with the Service Provider's employees, agents, representatives, and subcontractors. The Service Provider agrees to employ one or more supervisory-level personnel capable of thoroughly and clearly communicating, in any and all necessary languages, with the DCSD's representative and with the Service Provider's employees, agents, representatives, and subcontractors, and that such supervisory-level and language-capable personnel shall be stationed at and assigned to the location(s) or site(s) where, and at all times when, any and all work or services under this Service Agreement shall be performed.

5.4 The Service Provider shall ensure that any and all electronic devices, computers, software, hardware, equipment and other similar and related items that are utilized by the Service Provider, or any entity or person under the Service Provider's supervision or control, do not harm, or allow harm, to the DCSD's computers, systems, networks, and technology. The Service Provider shall take any and all measures possible to protect the DCSD's computers, systems, networks, and technology from viruses and other malicious codes.

## **ARTICLE 6**

### **INVOICING AND AGREEMENT PRICE**

6.1 **Invoices.** The Service Provider shall submit invoices, to DCSD, for services rendered pursuant to the attached Exhibit "A" and Exhibit "B." Invoices will be paid by DCSD within thirty (30) days after receipt of the invoice from the Service Provider. All invoices shall be submitted by Service Provider shall be submitted to: Ms. Carla Smith, Purchasing Manager III, DeKalb County School District, 1701 Mountain Industrial Boulevard, Stone Mountain, Georgia, 30083.

6.2 **Agreement Price.** DCSD shall pay, and the Service Provider shall accept, as full and complete payment for the Contractor's timely performance of its obligations hereunder the fixed prices set forth in the attached Exhibit "A" and Exhibit "B," which shall not be modified except where evidence acceptable to DCSD of changed market conditions and indices is produced. Any such proposed price escalation /de-escalation must be presented in writing with substantiating proof to DCSD, for approval, a minimum of ninety (90) days prior to taking effect.

## **ARTICLE 7**

### **CANCELLATION OR TERMINATION BY DCSD**

7.1 DCSD reserves the right to cancel or terminate this Service Agreement at any time for any reason, with notice in writing to the Service Provider. In the event of cancellation or termination, the DCSD shall pay to the Service Provider all compensation earned for actual services rendered. Any cancellation or termination by DCSD shall be effective within thirty (30) business days of the receipt of such cancellation or termination to Service Provider by DCSD.

7.2 Upon termination of this Service Agreement, the Service Provider shall:

- 7.2.1 Cease work under the Service Agreement and take all necessary or appropriate steps to limit disbursements and minimize costs
- 7.2.2 Immediately cease using and return to the DCSD, any personal property or materials, whether tangible or intangible, provided by the DCSD to the Service Provider
- 7.2.3 Cooperate in good faith with the DCSD and its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor(s); and
- 7.2.4 Immediately return to the DCSD any payments made by the DCSD for Services that were not delivered or rendered by the Service Provider.

## ARTICLE 8

### INDEPENDENT CONTRACTOR

8.1 The Service Provider and its employees shall perform as an independent contractor and not an employee or representative of the DCSD. The Service Provider retains sole and exclusive liability for all contributions, taxes or payments required to be made on account of the Service Provider's employees under federal or state income tax laws, unemployment and workers' compensation acts, social security acts, and all other legislation requiring employer contributions or withholdings.

8.2 The Service Provider shall maintain strict discipline among all personnel employed at DCSD, nor shall any person employed on any Program site have in his or her possession any drugs, alcohol or firearms. Unprofessional conduct, including but not limited to horseplay, wrestling, and fighting, shall not be permitted or allowed. No employee, subcontractor or representative of the Service Provider shall use any tobacco product while at any Program site, on any property owned by DCSD or at any function or event sponsored by or held on behalf of DCSD.

8.3 The Service Provider agrees that the Service Provider is not an employee of DCSD for purposes of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18001, et seq. ("ACA"), or for any other purpose. The Service Provider agrees that the Service Provider will be responsible for reporting requirements under the ACA and certifies that the Service Provider has their own individual health plan coverage. The Service Provider agrees that the Service Provider shall make the necessary federal, state, and local filings and returns as required by law at the appropriate times, including, but not limited to, federal, state, and local income tax (including estimates), filings and returns required by the Self-Employment Contribution Act, and any other filing or return, required by federal, state, or local government. With respect to ACA compliance obligations, Service Provider acknowledges and agrees that:

- Service Provider is responsible for filing Form 1094-C and Form 1095-C with respect to all assigned workers assigned to DCSD;
- Service Provider is responsible for compliance with Internal Revenue Code Section 4980H with respect to assigned workers;

- If requested by DCSD in connection with any governmental audit or inquiry, Service Provider will cooperate in furnishing DCSD with detailed information on assigned workers as reasonably needed for DCSD to respond to such audit or inquiry, and at no additional charge;
- Service Provider will offer health plan coverage to assigned workers (and their dependents) that complies with the ACA's minimum value and affordability requirements and, during the term of their staffing Service Agreement; and
- In addition to any existing indemnification obligations set forth in Article 20, herein, Service Provider agrees to reimburse DCSD for any penalty or tax imposed against DCSD with respect to any assigned worker, and to indemnify and hold harmless DCSD against all liabilities, penalties and fees that may be imposed upon DCSD, under Internal Revenue Code Section 4980H(a) or (b); *provided* that DCSD will provide prompt notice to Service Provider of its receipt of any notice of assessment of penalty or taxes under Code Section 4980H and Service Provider will cooperate fully with DCSD in contesting such assessment and accepting responsibility for its assigned workers.

## ARTICLE 9

### RESPONSIBILITY FOR SERVICES

9.1 In the performance of this Service Agreement, the Service Provider warrants that it shall consistently render its best efforts and shall exercise that degree of skill and care which others would exercise in like circumstances and that its Services will be performed without errors or omissions. Service Provider shall be responsible for the accuracy of its Services and any error and/or omission made by the Service Provider in any work under this Service Agreement. Services performed by the Service Provider shall be subject to review and acceptance in stages as required by the DCSD. Acceptance shall not relieve the Service Provider of its professional obligation to correct, at Service Provider's own expense, any errors in the S.

9.2 If Services performed by the Service Provider fail to meet the standards set forth in Paragraph 9.1, the DCSD may elect to have the Service Provider re-perform, or cause to be re-performed, at no cost to the DCSD any of the Services which fail to meet said standards where: (i) such failure appears during the performance of the Service Provider's Services or within one year from the date of completion of the Service Provider's Services, and (ii) the DCSD notifies Service Provider of any such failure within sixty (60) days of the time that the failure becomes apparent. This Paragraph 9.2 shall not be interpreted to limit the right of the DCSD to pursue and obtain any and all other remedies against the Service Provider at law or in equity.

9.3 Service Provider warrants that any goods to be produced to or delivered to DCSD during the course and scope of work for this Program will be of merchantable quality, free from defects in materials and workmanship.

9.4 DCSD acknowledges that the Service Provider shall be entitled to rely on the accuracy and currency of information supplied by the DCSD or by any of the DCSD's contractors or consultants, or available from generally accepted reputable sources.

9.5 DCSD MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED.

#### **ARTICLE 10**

##### **OWNERSHIP OF WORK PRODUCT**

10.1 Any reports, recommendations, estimates, specifications, drawings, technical data, sketches, computer software, and all other information developed, created, procured or requested by the Service Provider in connection with its performance under this Service Agreement (the "Information") shall be the property of the DCSD. In entering into this Service Agreement, the Service Provider hereby transfers to the DCSD all right, title, and interest, including the copyright, in and to the Information.

10.2 Any reports, recommendations, estimates, specification, drawings, technical data, sketches, computer software, and all other information developed by equipment vendors or other third parties that relate to the Program shall be the property of the DCSD. This provision shall not act to transfer rights of DCSDs of standard software or specification packages for which copyright is retained by the developer.

10.3 All original technical data, evaluations, reports and other work product of the Service Provider shall be delivered to the DCSD upon the completion, cancellation or termination of Services under this Service Agreement within three (3) business days of such completion, cancellation or termination. The Service Provider may retain one (1) copy of all documents produced by the Contractor for its permanent file.

#### **ARTICLE 11**

##### **ACCOUNTING AND RECORDS**

11.1 The Service Provider shall maintain a system of accounting and record keeping for all Services. Further, the Service Provider will allow the DCSD's inspection of necessary supporting receipts and documentation for audit purposes for a period of six (6) years after completion of Services provided under this Service Agreement.

#### **ARTICLE 12**

##### **COMPLIANCE WITH LAWS**

12.1 The Service Provider shall comply with all federal, state and local laws, regulations, ordinances, and DeKalb County Board of Education policies that are in any way applicable to the performance of its Services under this Service Agreement including but not limited to laws governing health, safety, the protection or preservation of the environment, and occupational licensing.

#### **ARTICLE 13**

##### **EQUAL EMPLOYMENT OPPORTUNITY**

13.1 The Service Provider will not discriminate against any worker, employee or applicant for employment because of race, color, religion, sex, national origin, age, citizenship status, veteran status, sexual orientation or handicap. The Service Provider will take affirmative action to ensure that applicants are employed, and that workers are treated during employment, without regard to their race, color, religion, sex, national origin, age, citizenship status, veteran status, sexual orientation or handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

#### **ARTICLE 14**

##### **CONTINGENCY FEES**

14.1 The Service Provider represents that it has not employed and shall not employ any person other than its own principals and employees to solicit this Service Agreement or any contract with the DCSD, and that it has not and shall not pay any person other than its own principals and employees any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Service Agreement or any other contract with the DCSD

#### **ARTICLE 15**

##### **SUBCONTRACTORS**

15.1 Service Provider shall manage all work and Services performed under this Service Agreement. Upon the DCSD's prior written consent, the Service Provider may subcontract all or part of the Services to be provided. In such event, the rights and obligations of the Service Provider and the DCSD will not be diminished.

15.2 All of the Service Provider's Subcontractors shall be directly responsible to Service Provider and shall be under the Service Provider's direct supervision. The Service Provider shall be as fully responsible and accountable to the DCSD for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by Subcontractors in the performance of Services under this Service Agreement as the Service Provider is for the acts and omissions of persons it directly employs. Other than the DCSD being a third-party beneficiary to any Service Agreement between the Service Provider and its Subcontractors, no other contractual relationship between DCSD and any subcontractor is created by any provision contained in this Service Agreement.

15.3 If the Service Provider utilizes Subcontractor(s) with respect to this Service Agreement then the Service Provider will require Subcontractor(s) to comply with all terms and conditions of this Service Agreement including, but not limited to the insurance requirements. The Contractor shall require all Subcontractors to supply a certificate of insurance as required herein before the Subcontractor commences any work.

**ARTICLE 16**

**SUCCESSORS AND ASSIGNS**

The Service Provider shall not assign its rights hereunder, excepting its right to payment, nor shall it delegate any of its duties hereunder without the written consent of the DCSD. Subject to the provisions of the immediately preceding sentence, each Party hereto binds itself, its successors, assigns and legal representatives to the other and to the successors, assigns and legal representatives of such other Party.

**ARTICLE 17**

**INSURANCE**

17.1 The Service Provider and all Subcontractors shall maintain insurance in the types and coverage amounts shown below, which insurance shall provide coverage for Service Provider during the term of this Service Agreement. Prior to the date the Service Provider signs this Service Agreement, the Service Provider shall provide the DCSD with (i) an endorsement from the insurer naming the DeKalb County School District and The DeKalb County Board of Education as an additional insured under the liability policies and (ii) certificate(s) verifying that these insurance coverages and limits are in force. Additional certificates of insurance shall be provided whenever individual policies are renewed (or replaced) on their anniversary date and at such other times as the DCSD requests.

17.2 If the Service Provider is a joint venture involving two (2) or more entities, then each independent entity shall satisfy the limits and coverages specified below or the joint venture will be a named insured under each respective policy specified.

17.3 The insurance requirements of this Service Agreement are:

<b>Type of Insurance</b>	<b>Coverage Limits</b>
Workers Compensation	\$1,000,000
Employer's Liability	\$1,000,000 annual aggregate
Comprehensive General Liability Including Contractual Liability, Bodily Injury and Property Damage	\$2,000,000 annual aggregate \$1,000,000 per occurrence
Comprehensive Auto Liability Bodily Injury and Property Damage Covering Owned, Hired and Non-Owned Autos	\$5,000,000 annual aggregate \$1,000,000 per occurrence
Umbrella or Excess Insurance	\$2,000,000 annual aggregate \$1,000,000 per occurrence

17.4 The Service Provider waives all rights, including rights of subrogation, against the DCSD and its respective directors, officers, partners, Board Members, officials, agents, insurers, subcontractors,

consultants and employees for damages covered by any type of insurance during and after the completion of the Work.

- 17.5 Certificates of Insurance must be executed with the following provisions:
- (a) Certificates to contain policy number, policy limits, and policy expiration date of all policies issued in accordance with this Service Agreement;
  - (b) Certificates to contain the project number, location of property, name of property and operations information to which the insurance applies;
  - (c) Certificates are to be issued to:  
DeKalb County School District  
DeKalb County Board of Education  
1701 Mountain Industrial Blvd.  
Stone Mountain, GA 30083  
Attention: Risk Management Department
  - (d) Certificates shall state that the policy or policies shall not expire, be cancelled or altered without at least sixty (60) days prior written notice to the DCSD.
  - (e) Service Provider shall be responsible and have the financial wherewithal to cover any deductibles or retentions included on the certificate of insurance.

#### **ARTICLE 18**

##### **ILLEGAL IMMIGRATION REFORM AND ENFORCEMENT ACT OF 2011**

18.1 The Illegal Immigration Reform and Enforcement Act of 2011 applies to and is a requirement for all DCSD Contracts for physical performance of services (i.e. public works contracts).

18.2 Service Provider's compliance is set forth in Exhibit "B". The Service Provider warrants and represents that evidence of the Service Provider and their subcontractor(s)' compliance by completing the following forms is included in Exhibit "B" and incorporated herein as reference:

- (a) Immigration and Security Certification
- (b) Contractor Affidavit
- (c) Subcontractor Affidavit
- (d) Sub-Subcontractor Affidavit

#### **ARTICLE 19**

##### **TERMINATION FOR CAUSE**

19.1 Either Party hereto may terminate this Service Agreement upon giving seven (7) days prior written notice to the other Party in the event that such other Party substantially fails to perform its material obligations set forth herein. Any Party seeking to terminate this Service Agreement for cause shall, as a condition precedent to the termination of this Service Agreement, provide the other Party written notice specifically describing its failure to perform its material obligations and allow that Party thirty (30) days after receipt of the notice in which to cure any performance deficiency.

## **ARTICLE 20**

### **INDEMNIFICATION**

20.1 The Service Provider agrees to hold harmless and indemnify the DCSD, its Board, officers, employees and representatives (herein "Released Parties") from and against any and all liability, claims, actions, causes of action, losses, damages, demands, suits, judgments, costs and expenses arising out of bodily injury (including death) to persons, damage to property, or financial loss, including, but not limited to, any and all costs, expenses, legal fees and liabilities, incurred in and about investigation, defense or prosecution thereof, to the extent caused in whole or in part by a negligent act, error or omission of the Service Provider or any subcontractor(s), or as a result of defective Services under this Service Agreement.

20.2 The Service Provider further agrees to release, indemnify, defend and hold harmless the Released Parties from any and all claims, demands, rights, liabilities and causes of action inuring to the Service Provider from events over which the Released Parties exercise no control. The Service Provider further agrees to indemnify, defend and hold harmless the Released Parties from any and all claims, demands, rights, liabilities and causes of action arising out of DCSD's performance under this Service Agreement.

## **ARTICLE 21**

### **AGREEMENT ADMINISTRATION**

21.1 DCSD and the Service Provider have each appointed certain individuals whose names and phone numbers appear in Article 1 to be their respective representatives in the administration and performance of this Service Agreement. The DCSD's representative shall have no power or authority to change this Service Agreement, or to execute or agree to any change orders. The DCSD may change its representative or declare a designee by written notice to the Service Provider.

21.2 To be binding against the DCSD, and as a condition precedent thereto, any addition, deletion or modification to the terms of this Service Agreement must be in writing and signed by the DCSD. The Service Provider acknowledges that the DCSD does not, and will not be deemed to, waive this condition precedent under any circumstances.

21.3 Failure of the DCSD or the Service Provider to insist in any one or more instances on performance of any of the terms and conditions of this Service Agreement, or to exercise any right or privilege contained in this Service Agreement or the waiver of any breach of the terms and conditions of this Service Agreement, shall not be considered as creating or constituting a waiver of any such terms, conditions, rights or privileges, and the same shall continue and remain in force and effect.

21.4 The Service Provider and the DCSD will adhere to all applicable health and safety laws, rules and regulations including Occupational Safety and Health Administration's ("OSHA") Rules and Regulations effective at the time the work was performed.

21.5 This Service Agreement shall be governed by the laws of the State of Georgia.

**ARTICLE 22**

**PUBLIC RECORDS**

22.1 The laws of the State of Georgia, including the Georgia Open Records Act, as provided in O.C.G.A. Section 50-18-70 et seq., require procurement records and other records to be made public unless otherwise provided by law.

**ARTICLE 23**

**FORCE MAJEURE**

23.1 The Service Provider will not be responsible or liable in any way for delay or failure to perform its obligations under this Service Agreement during any period which performance is prevented or hindered by conditions reasonably beyond its control, acts of God, fire, flood, and other unusually adverse weather conditions, war, embargo, explosions, riots, laws, rules, regulations and order of any governmental authority.

**ARTICLE 24**

**CAPTIONS**

24.1 The headings in this Service Agreement are for the convenience of the Parties hereto and shall in no way affect the construction or interpretation of this Service Agreement or any part hereof.

**ARTICLE 25**

**ENTIRE SERVICE AGREEMENT**

25.1 This Service Agreement constitutes the entire and exclusive Service Agreement between the Parties with reference to the Services and supersedes any and all prior communications, discussions, negotiations, understandings, or Service Agreements. This Service Agreement may be amended only by a writing signed by both the DCSD and the Service Provider. The signature of Service Provider below, represents to DCSD that he/she is duly authorized to execute and deliver this Service Agreement on behalf of Service Provider.

**ARTICLE 26**

**MISCELLANEOUS**

26.1 Unless otherwise expressly provided to the contrary in this Service Agreement, the term "day" shall mean calendar day.

26.2 Any claim, dispute or other matter in question arising out of or related to this Service Agreement shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Service Provider's services, the Service Provider may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation. The DCSD and Service Provider shall endeavor to resolve claims, disputes and other matters in question between them by

mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other Party to this Service Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a civil action but, in such event, mediation shall proceed in advance of legal or equitable proceedings, which may be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by Service Agreement of the parties or a court order. The Parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Program is located, unless another location is mutually agreed upon. Subject to the express approval of the DeKalb County Board of Education, agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

26.3 The exclusive venue for any civil action arising out of or related to this Service Agreement shall be in the federal, superior, or state courts of DeKalb County, Georgia. If any civil action is instituted to interpret, enforce or rescind this Service Agreement, the prevailing party in such lawsuit shall be entitled to recover, in addition to any other relief awarded, its reasonable attorney fees and other fees, costs, and expenses of every kind, incurred in connection with the lawsuit.

26.4 If any provision of this Service Agreement or the application thereof to any person or circumstance shall to any extent be held invalid, then the remainder of this Service Agreement or the application of such provision to persons or circumstances, other than those as to which it is held invalid, shall not be affected thereby, and each provision of this Service Agreement shall be valid and enforced to the fullest extent permitted by law.

26.5 This Service Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same Service Agreement. A scanned or photocopy of an original signature shall be deemed an original for purposes of this Service Agreement.

26.6 Service Provider, and all personnel of Service Provider, agree to a background check. The Service Provider, and all personnel of Contractor, shall undergo the same criminal background check, within the last 365 days, as required by DCSD employees. Such background checks will be performed by DCSD at the expense of the Service Provider. Additionally, any charges against the Service Provider, or personnel, may be deemed unacceptable in DCSD's sole discretion regardless of whether dismissed, expunged, sealed, removed from the record, treated as a "first offender" or dead docketed. Upon receipt and evaluation of DCSD's background check results, DCSD may demand that the personnel named in the check result, not provide services to DCSD premises. Any failure of the Service Provider, or personnel, to obtain a criminal records background check through DCSD, as stated herein, may result in termination of any resulting contract between Service Provider and DCSD. Confirmation of background checks must be submitted in writing prior to commencement of any services to DCSD to: Ms. Carla Smith, Purchasing Manager III, DeKalb County School District, 1701 Mountain Industrial Boulevard, Stone Mountain, Georgia, 30083.

26.7 Service Provider shall obtain prior written approval from DCSD's Department of Communications before the distribution of any news, press release or any marketing materials, by Service Provider, which mentions DCSD, DeKalb County Board of Education, or any of the schools or centers within DCSD, or uses DCSD's logo or trademark. All requests for prior written approval shall be sent to: Communications Department, DeKalb County School District, 1701 Mountain Industrial Blvd., Stone Mountain, Georgia, 30083.

IN WITNESS WHEREOF, the DCSD and the Service Provider, agreeing to the above terms and conditions and intending to be legally bound and each acting through persons duly authorized, have placed their signatures on duplicate original copies of this Service Agreement.

DCSD:

DEKALB COUNTY SCHOOL DISTRICT

By:   
[Signature]

Mrs. Ramona Tyson, Interim Superintendent


1701 Mountain Industrial Blvd

Stone Mountain, GA 30083

12-18-19  
[Date of Execution]

SERVICE PROVIDER:

AMERICAN COACH LINES

By:   
[Signature]

Todd McElmurray, Vice President

705 Lively Avenue

Norcross, Georgia 30071

11/29/19  
[Date of Execution]

**EXHIBIT "A"**

**DeKalb County School District RFP No. 20-472**

**For**

**District Wide Charter Bus Services**

**EXHIBIT "B"**

**Service Provider's Proposal including pricing  
and any applicable Scope of Services  
and any applicable Payment and Payment Terms Schedule  
attached except that objections or amendments by the  
Service Provider that have not been explicitly accepted by DCSD in  
Writing In this Service Agreement and Contract shall not be included in  
the Contract Documents Or this Service Agreement and shall be given  
no weight or consideration**

**EXHIBIT "C"**

**DeKalb County Board of Education Directive**

Signed by the Superintendent and originally dated October 9, 2019.

EXHIBIT "D"

Notice of Award Letter Dated October 14, 2019

END OF EXHIBITS