

AGENDA ITEM 2D
Action Item

MEMORANDUM

DATE: June 2, 2022

TO: El Dorado County Transit Authority

FROM: Matthew Mauk, Executive Director

SUBJECT: Proposed Agreement with ALTA Regional Center for Client Transportation to Motherlode Rehabilitation Enterprises, Inc.

REQUESTED ACTION:
BY MOTION,

- 1. Approve the draft agreement between El Dorado County Transit Authority (El Dorado Transit) and ALTA California Regional Center (ACRC) for client transportation to Motherlode Rehabilitation Enterprises, Inc.**
- 2. Authorize the Executive Director to negotiate final reimbursement rates and execute all documents necessary to continue the ACRC Agreement for client transportation**

BACKGROUND

The El Dorado County Transit Authority (El Dorado Transit) provides transportation services to clients of Motherlode Rehabilitation Enterprises (M.O.R.E.) under an agreement between ALTA California Regional Center (ACRC) and El Dorado Transit. These services began in 1979 and providing this transportation continues to have far reaching benefits to the residents of El Dorado County and the City of Placerville. Clients of M.O.R.E. programs learn valuable life skills, attend adult special education classes, maintain jobs, and participate in community service. M.O.R.E. staff provides “transit training” that supports independence. This transportation also provides caregivers, parents, and siblings the opportunity to go to work or other functions without driving to Placerville each morning and afternoon. Some clients with jobs use El Dorado Transit local fixed routes or Dial-A-Ride in conjunction with contracted service.

In all but one (1) year since 1984, El Dorado Transit has budgeted funds to offset the cost of these critical transportation services. This offset is included in the annual operating budget to minimize any disruptions in service. Historically, ACRC reimbursements have ranged from 100% to 3.4% of the total operational cost of service. The current contract expires June 30, 2022.

Due to the Statewide COVID-19 restrictions, M.O.R.E. closed on March 16, 2020, and El Dorado Transit suspended scheduled service to the facility at that time. M.O.R.E. has since resumed limited client services and plans to increase onsite services as it continues to recover from the pandemic. El Dorado Transit is currently providing an average of 509 one-way trips per

month under the current contract, including daily trips to the M.O.R.E. facility in Placerville and some worksite trips.

DISCUSSION

ACRC is responsible for purchasing client transportation for the M.O.R.E. program. Without an agreement on July 1, 2022, ACRC will have two (2) possible options for M.O.R.E. client transportation. ACRC may contract with another vendor from Sacramento County or request adding clients on the El Dorado Transit Dial-A-Ride service on a daily basis.

As proposed, the attached contract with ACRC would be for a three (3) year term from July 1, 2023, through June 30, 2025. The draft agreement is based on the current reimbursement rate of \$20.49 per one-way trip for the M.O.R.E. client service but ACRC staff has indicated a willingness to discuss alternative rates. A meeting is tentatively scheduled for May 31st (after publication of this report) and El Dorado Transit staff will update the Board on the outcome of those discussions at the meeting.

With the requested action, staff recommends approval of the attached draft agreement terms with ACRC through June 30, 2025, and authorization for the Executive Director to negotiate a final reimbursement rate and execute all documentation necessary to continue El Dorado Transit's contractual relationship with ACRC to provide M.O.R.E. client transportation. If approved, El Dorado Transit staff will continue to develop M.O.R.E. client's routes for both cost and operational efficiency during the contract period.

FISCAL IMPACT

Through the 3rd quarter of FY 2021/22, the operating expenses for the MORE services were \$147,584 offset by contract reimbursements totaling \$94,008, at a per trip rate of \$20.49, resulting in an Agency subsidy amount of \$53,576 for the service. By fiscal year's end, the total Agency subsidy is projected to be less than \$71,435 or approximately 31% of the approved budget amount.

If approved, El Dorado Transit's costs and contract reimbursements are anticipated to increase throughout the upcoming FY 2022/23 as M.O.R.E. services are restored, and in-person client attendance increases. Consideration of the projected program use, reimbursements, and net costs have been included as a component of the operating budget preparation. Assuming El Dorado Transit staff's proposed reimbursement rate increase and by applying a reasonable escalator to recent expense and ridership trends, staff projects the Agency's total FY 2022/23 subsidy to be approximately \$90,640 (43% of the total cost of the service).

If approved, internal budget controls will be led by the Finance Department to maintain subsidies within the approved operating budget. Formal Board reports on the status of this program's use, expenses, and subsidy requirements will be included in the mid-year and annual Administrative Operations Reports.

AGREEMENT FOR 895 TRANSPORTATION SERVICE

BETWEEN

ALTA CALIFORNIA REGIONAL CENTER, INC.

AND

EL DORADO TRANSIT AUTHORITY-H06598

This Agreement for Transportation Service ("**Agreement**") is made by and between Alta California Regional Center, Inc., a California nonprofit public benefit corporation ("**Regional Center**"), and EL DORADO TRANSIT AUTHORITY, a Public Transportation Company located at 6565 Commerce Way, Diamond Springs, CA 95619 ("**Contractor**") under Service Code 895. The Regional Center and Contractor are sometimes individually referred to herein as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. The Regional Center has established the need for specialized transportation services for certain of its developmentally disabled clientele residing in its Service Catchment Area so that they may attend adult day programs and jobs.

B. The Regional Center, under contract with the State of California Department of Developmental Services ("**DDS**"), is mandated to make available those goods and services which are deemed by an interdisciplinary team to be necessary to an individual because of his or her developmental disability and so stated in the individual's Individual Program Plan (IPP). Such goods and services are to be funded to the extent that the Regional Center's purchase of service budget as allocated by DDS will allow.

C. In order to provide such transportation services, the Regional Center has determined that it is desirable to enter into this Agreement with Contractor and Contractor has agreed to provide the necessary transportation services in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, agreements, representations and warranties set forth below, the Parties agree as follows:

AGREEMENTS

ARTICLE 1. WORDS AND DEFINITIONS

1.01. Words. Words shall have their usual meaning unless the context or a definition clearly indicates a different meaning. Words used in their present tense include the future tense and words in the singular form include the plural form. Use of the word "shall" denotes mandatory conduct and "may" denotes permissive conduct.

1.02. Definitions. When used in this Agreement, the following terms shall have the meanings set forth below:

1.03 "Commencement Date" means the date this Agreement commences as set forth in Section 3.01.

1.04 "Community-based Day Programs" means those programs which provide services to individuals on an hourly or daily basis, but less than a twenty-four (24)-hour basis in the community rather than at a developmental center. Only the following types of services are Community-based Day Programs: activity centers, adult development centers, behavior management programs, independent living programs, infant developmental programs and social recreation programs. [Reg. §54302(a)(16)] As used in this Agreement, Community-based Day Programs excludes any infant developmental programs.

1.05 "Consumer" means an individual who has been determined by the Regional Center to meet the eligibility criteria of Welfare and Institutions Code Section 4512 and Title 17, Sections 54000, 54001 and 540101, and for whom the Regional Center has accepted responsibility. [Reg. §54302]

1.06 "Interdisciplinary (ID) Team" means the group of persons convened in accordance with the Welfare and Institutions Code Section 4646 for the purpose of preparing a Consumer's IPP. [Reg. §54302(a)(39)]

1.07 "Individual Program Plan (IPP)" or "IPP" means a written plan that is developed by a regional center Interdisciplinary (ID) Team, in accordance with the provisions of the Welfare and Institutions Code Sections 4646 and 4646.5. [Reg. §54302(a)(36)]

1.08 "Special Incident Report" means the documentation prepared by Contractor staff detailing a special incident and provided to the Regional Center. [Reg. §54302(a)(65)]

1.09 "Service Catchment Area" means the geographical area within which the Regional Center provides services specified in its contract with DDS as required by the Welfare and Institutions Code Section 4640.

1.10 "Unit of Service" means the increment of service provided to Consumers which is used to charge and invoice the Regional Center for services provided. The increment of service is specified as hours, days, transportation mileage or any other increment of service agreed to by DDS, the Regional Center and Contractor. [Reg. §54302(a)(72)]

1.11 "Services" means assistance provided and duties performed by a Contractor for a Consumer [Reg. §54302(a)(62)] and are described in Section 2.01 of this Agreement.

1.12 "Title 17" or "Reg" means Title 17, California Code of Regulations, as amended from time-to-time.

1.13 "Transportation Aide" means a person who assists and monitors Regional Center Consumers while the Consumers are receiving transportation service. [Reg. §58501(a)(10)]

1.14 "Transportation Service" means the conveyance of a Consumer including boarding and exiting the vehicle. [Reg. §58501(a)(11)]

ARTICLE 2. SERVICES

2.01. Services to Be Provided. Contractor shall provide Transportation Service to Regional Center's Consumers to and from various Community-based Day Programs and worksites located within the Regional Center's Service Catchment Area according to and in conformity with the goals of the Consumer's Individual Program Plan (IPP). In performing its obligations hereunder, Contractor shall furnish the required number of vehicles, drivers, administrative and support staff, facilities, special equipment and supplies for transportation of the Regional Center's Consumers as described in this Agreement.

2.02. Release of Consumer Information. The Regional Center shall provide, in writing, to Contractor the following Consumer information for each Consumer to be provided Transportation Service under this Agreement:

A. The name, address and telephone number of the Consumer, authorized Consumer representative and/or physician;

B. The Consumer's disabilities, medication needs, allergies and/or other conditions which may affect the Contractor's provision of transportation services; and

C. Additional Consumer information determined necessary by the Regional Center.

Contractor shall maintain and keep confidential the Consumer information received pursuant to this Section 2.02 and shall release the information only to the driver and only when necessary to protect the health and/or safety of the Consumer, driver, Transportation Aide or other passengers. [Reg. §58521]

2.03. Subcontracting. The subcontracting of any of the Services for which Contractor is vendored is not permitted except with prior written approval of the Regional Center, which approval shall be in the Regional Center's sole discretion. [Reg. §58524(c)(4)]

2.04. Transportation Aides. This Agreement does not cover compensation for Transportation Aides, and nothing in this Agreement obligates Regional Center to pay for Transportation Aides. If Transportation Aides are to be provided, the parties shall address compensation for such individuals pursuant to an amendment to this Agreement or a separate agreement.

ARTICLE 3. TERM OF AGREEMENT

3.01. Effective Dates. This Agreement is effective and shall remain in effect commencing 7/1/22 (the "Commencement Date") and ending 6/30/25.

3.02. Extension of Term. The term of this Agreement may be extended for additional periods upon mutual written agreement of the Parties at least thirty (30) days prior to

the end of any term; provided that the total term of this Agreement, including all extensions, shall not exceed five (5) years. [Reg. §58524(a)] Such an extension by the Regional Center will be based upon an annual review of Contractor's performance during the previous year, including satisfactory review ratings.

ARTICLE 4. VEHICLE REQUIREMENTS

4.01. Vehicle Requirements. Contractor shall supply a sufficient fleet of vehicles to run all routes as regularly scheduled. Back-up vehicles shall be mechanically maintained and available at all times.

Contractor and the Regional Center shall mutually establish a list of vehicle requirements at the beginning of the term of this Agreement. The list will specify the capacity and special equipment requirements of the vehicles. Once such requirements are established, they will remain in effect for the term of the Agreement unless amended in writing by the Parties. Contractor shall provide to the Regional Center prior to the Commencement Date, a list of vehicles to be utilized in fulfilling this Agreement. This list shall include, at a minimum, the make, model, year, vehicle identification number and capacity for each vehicle. In addition, Contractor shall meet the following requirements:

A. Mechanical Condition. All vehicles and equipment, including wheelchair lifts, used by Contractor to provide Transportation Service for Consumers, shall be in good mechanical and safe operating condition.

B. Appearance. All vehicles used by Contractor shall be clean and sanitary and shall have a good exterior and interior appearance.

C. Communications. Two-way communications equipment shall be installed and maintained in working order on all in-service vehicles utilized in the provision of services.

D. Air Conditioning. All vehicles shall be equipped with operational air conditioning adequate to maintain a maximum temperature throughout the vehicle's interior of no higher than fifteen (15) degrees less than the outside temperature for days that reach eighty-five (85) degrees or above, measured while the vehicle is en route.

E. Mileage; Age. No individual vehicle assigned to routes shall exceed 750,000 miles of usage, or shall be more than 15 years old. Further, if a vehicle which is 7 years or older has more than three of the same type of mechanical breakdowns in any 90-day period, Contractor shall promptly replace such vehicle.

4.02. Special Vehicle Requirements.

A. Mandated Changes; Modifications. If, during the period of this Agreement, any installation or modification of equipment is required due to a change in the law, applicable rules or regulations, such modifications or installation shall be made by Contractor without need of notification from the Regional Center, and the costs of such installations and/or modifications shall be borne by Contractor.

B. Seat Belts. In all vehicles required by law or regulation to have installed seat belts, Contractor's drivers shall require passengers to use the seat belts in accordance with law and regulation. Shoulder harnesses are optional unless required by law. Any other passenger restraint device must have the written approval of the Regional Center prior to its utilization.

C. Wheelchair Vehicles. Contractor shall provide and assign wheelchair accessible vehicles, with appropriate tie-downs, as required to transport the Regional Center's Consumers.

4.03. Vehicle Records. Contractor shall maintain records for each vehicle, including back-up vehicles, utilized in the performance of the Services under this Agreement. These records shall be made available to the Regional Center upon request. These records shall include, but not be limited to, the vehicle registration numbers, schedule of preventive maintenance and all maintenance records.

4.04. Regional Center Inspections. The Regional Center shall have the right to inspect vehicles used by Contractor in performance of the Services under this Agreement at any time. Vehicles which are deemed by the Regional Center to be unfit for providing the required Services shall be replaced by Contractor with another vehicle in proper condition, of the appropriate size, type, and capacity, at no cost to the Regional Center.

4.05. Contractor Inspections. When required by law, Contractor shall submit all vehicles to an annual inspection by the California Highway Patrol, Motor Carrier Division. Copies of such inspection shall be immediately forwarded to the Regional Center.

ARTICLE 5. STANDARDS FOR DRIVERS AND TRANSPORTATION AIDES

5.01. Driver and Aide Requirements. Contractor shall ensure that each driver of a vehicle and Transportation Aide (if any) providing services under this Agreement meet the following requirements:

A. Age; Competency. Each driver and Transportation Aide shall be:

1. At least eighteen (18) years of age; and
2. Trained and competent in the use of wheelchairs, hydraulic lifts, ramps and other equipment used for transporting, boarding and exiting Consumers from the vehicle. If a driver is not driving a lift-equipped vehicle or transporting a Consumer who uses a wheelchair, the driver is not required to be trained or competent in the use of wheelchairs, hydraulic lifts or ramps.

B. License. Each driver shall have and maintain a valid California driver's license pursuant to California Vehicle Code Section 12500, and if applicable, a valid special driver certificate pursuant to Vehicle Code Section 12523.6. A Class B license with Passenger endorsement shall be obtained if required by law.

C. Vehicle Code Violations. No driver shall have been convicted of driving under the influence of alcoholic beverage or any drug or a combination of the two (2) pursuant to Vehicle Code Sections 23152 and 23153 within five (5) years immediately preceding and during employment, or reckless driving, pursuant to Vehicle Code Sections 23103 and 23104, or speed contest pursuant to Vehicle Code Sections 23109 within three (3) years immediately preceding and during employment.

D. Identification. Each driver shall be required to wear Contractor-provided identification or identifying apparel at all times while providing Services under this Agreement.

5.02. Training. Contractor shall establish and maintain an ongoing driver training and evaluation program which may include, but is not necessarily limited to the following:

- A. Defensive driving practices;
- B. Passenger assistance techniques;
- C. Emergency procedures;
- D. Reporting suspected adult/elder abuse;
- E. Background in developmental disabilities;
- F. Managing problem behavior of passengers; and
- G. Sensitivity training.

At Contractor's request, the Regional Center will assist in locating training resources for the above.

5.03. Safety and Special Instruction. Contractor shall establish and maintain a safety program for all drivers employed by the Contractor. Such safety program will be published yearly and a copy will be made available to the Regional Center during site visits or upon request.

5.04. Pre-Employment Screening. Contractor shall develop and implement a pre-employment screening program for all candidates for employment who may perform any of the Services required hereunder. The screening program shall be designed to assist Contractor in determining the candidate's suitability in connection with the performance of the Services required hereunder. Any applicant or employee whose background check reveals a history of the following crimes (as defined in California Penal Code Section 11105.3) shall not be assigned to drive a vehicle providing services to Regional Center Consumers: "sex crime" (Section 11105.3(g)); "drug crime" (Section 11105.3(h)); or "crime of violence" (Section 11105.3(i)).

ARTICLE 6. SCHEDULING AND ROUTING

6.01. Scheduling and Routing. All schedules and routes for Consumers will be subject to the approval of the Regional Center [Reg. §58524(c)(2)]. Routes shall be scheduled and routed by Contractor in accordance with Consumers' attendance schedules, day program's operating hours and work schedules furnished by the Regional Center. Generally, routes should be plotted to minimize mileage so that the Consumer residing furthest from his or her destination is picked up first, with the route proceeding inward picking up Consumers as the vehicle nears its destination(s). Return trips should be plotted in reverse order.

Routes should be established so that no Consumer is on a vehicle for longer than ninety (90) minutes in each direction. If it appears that a Consumer will ride longer than ninety (90) minutes, Contractor shall request a waiver from the Regional Center. The waiver must be approved, in writing, by the Consumer's Interdisciplinary Team prior to the extended ride time.

6.02. Route Sheets. Contractor shall ensure that each driver assigned has a copy of the up-to-date route sheet or its equivalent in the driver's possession while on duty.

6.03. On Time Performance. Consumers will be picked up at their residences at their scheduled pick-up time (plus or minus fifteen (15) minutes) and delivered to destinations within fifteen (15) minutes of the particular Community-based Day Program's or job's start time. Consumers shall be retrieved from their destinations within fifteen (15) minutes of the particular day program's or job's end time and returned to their place of residence within fifteen (15) minutes of either side of the scheduled drop off.

6.04. Changes in Established Routes. Consumers shall be added to or deleted from schedules only after Contractor has received such instructions from the Regional Center's Transportation Coordinator. Contractor will notify care providers, family members or Consumers, as appropriate, of start day, pick-up time and drop-off time at least one (1) day prior to beginning Transportation Service. If a Consumer's pick-up or drop-off time will change by fifteen (15) minutes or more due to addition/deletion of other passengers, Contractor will notify the Consumer and the Consumer's care provider/family member of the change at least one (1) day prior to the change.

ARTICLE 7. OTHER TRANSPORTATION MATTERS

7.01. Accident Reports. All accidents which involve Contractor's equipment and personnel while in operation pursuant to this Agreement shall be reported to the Regional Center. Accidents involving injuries to Consumers or other persons shall be reported to the Regional Center immediately after Contractor is notified of same. Accident reports may be delivered verbally; however, a written report which includes all available and pertinent information must be provided by Contractor as soon as reasonably possible after each occurrence, but in no event later than three (3) working days after the accident. A Special Incident Report must be completed for each Consumer on board the vehicle at the time of the accident and be transmitted by facsimile to the Regional Center according to established Special Incident Report reporting procedures.

7.02. Discipline on the Vehicle. The driver is responsible for discipline on the vehicle. Contractor shall report to the Regional Center any incidents of misconduct on the vehicle and corrective action taken. Telephone notification to the Regional Center's Transportation Coordinator and/or Service Coordinator and Consumer's care provider shall occur within twenty-four (24) hours of any incident with a written Special Incident Report transmitted by facsimile to the Regional Center according to established Special Incident Report reporting procedures, and a written report to follow within seventy-two (72) hours of the incident.

7.03. Regional Center Personnel Riding on Vehicle. Contractor will allow Regional Center personnel or its agents to ride any route if there is room in the vehicle.

7.04. Refusal to Transport. Contractor may refuse to transport a Consumer only if the transportation of the Consumer poses a threat to the health and/or safety of the Consumer, driver, Transportation Aide or other passengers. Contractor shall, within one (1) working day following the refusal to transport the Consumer, notify the Regional Center's Transportation Coordinator. Further, Contractor shall, within five (5) working days following the refusal to transport a Consumer, submit a written explanation of the refusal to the Regional Center. [Reg. §58522]

7.05. Grievance Procedure. Contractor shall adopt, and periodically review, a written internal procedure to resolve Consumer grievances pursuant to Welfare and Institutions Code Section 4705. [Reg. §50608(e)] A copy of this procedure shall be available to the Regional Center and to any Consumer requesting the information

ARTICLE 8. PERFORMANCE REVIEWS

Performance reviews shall be conducted by the Regional Center during each year this Agreement is in effect. Performance reviews shall include, but may not be limited to, the following:

- A. Maintenance of satisfactory on-time performance;
- B. Satisfactory ratings on Consumer surveys and site visits conducted by the Regional Center;
- C. Satisfactory safety records; and
- D. Satisfactory ratings on audit and/or inspection(s) of vehicles, maintenance records, and facilities.

ARTICLE 9. COMPENSATION

9.01. Payment. The Regional Center shall pay Contractor within thirty (30) days for Services provided hereunder at the rates specified in **Exhibit A** of this Agreement. Properly documented invoices shall be received by the Regional Center no later than the fifth day of the month following the month in which the Services are provided and shall include all information requested, including but not limited to attendance records and route information. Attendance is required per Title 17.

9.02. Total Compensation. In accordance with Title 17, Section 50609(d) (Contract Fiscal Provisions), consideration paid by Regional Center to Contractor, as provided herein, shall be the total compensation for performance of this Agreement and its requirements, unless otherwise expressly provided herein. The maximum amount which can be paid under this Agreement shall not exceed \$438,871.00 per calendar year [**Reg. §50609(f)**], this amount is subject to services still being pre-authorized in accordance with Title 17 and the client's Individual Program Plan (IPP)/ Individual Service Plan (ISP).

9.03. Electronic Billing. Contractor shall use electronic billing under DDS's Regional Center e-Billing System Web application for all of Contractor's invoices to Regional Center under this Agreement, as set forth in Welfare and Institutions Code Section 4641.5(a)(1) through (2).

9.04. Non-Appropriation of Funds. Notwithstanding any provision in this Agreement to the contrary, in accordance with 17 CCR, Section 50609(c) (Contract Fiscal Provisions), the obligation of Regional Center to make payments under this Agreement is contingent upon Regional Center receiving and continuing to receive funds from the DDS for the purpose of making such payments. Thus, for example, if insufficient funds for any fiscal year's payments are appropriated through DDS, or Regional Center's contract with the State is not renewed, or if insufficient funds are allocated to Regional Center such that Regional Center determines that it is in its best interest to discontinue or reduce the Transportation Service, then the affected service under this Agreement shall be terminated or modified proportionately by Regional Center, upon 60 days written notice to Contractor.

9.05. Method of Determination of Units of Services and Rates.

A. The basis for the establishment of the Rate of Payment is identified and described in the cost statement, which is attached hereto as Exhibit "D". In accordance with 17 CCR, Sections 50609(a)(3)(A) and (b)(1) (Contract Fiscal Provisions), such documentation reflects the necessary fiscal and program related data and mathematical computations used to establish the Rate of Payment per Unit of Service.

B. In accordance with 17 CCR, Section 50609(b)(1)(A) (Contract Fiscal Provisions), Contractor and Regional Center attest that they have come to a full understanding and agreement as to the methods to be used in accumulating the data to be contained in Contractor's documentation concerning costs, units of service and billing. Contractor further attests that these methods are and/or will be used to accumulate any and all data contained in Contractor's documentation.

C. In accordance with 17 CCR, Section 50609(b)(1)(B) (Contract Fiscal Provisions), Contractor attests that its program and fiscal documentation utilized in its rates calculations is complete and accurate to the best of Contractor's knowledge, supported by records and source documentation, prepared with the instructions provided by Regional Center and the DDS and subject to audit. While Contractor's expenditure of resources under this Agreement may not follow exactly the pattern and breakdown proposed, Contractor assures Regional Center that the total resources expended by Contractor shall be at least equal to those for which Contractor is reimbursed.

ARTICLE 10. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

Contractor represents and warrants that:

- A. The Transportation Service to be provided under this Agreement to a Consumer is included in the Consumer's IPP; **[Reg. §58510(a)(1)]**
- B. The provision of the Transportation Service under this Agreement to a Consumer is not part of the Consumer's Community-based Day Program; and **[Reg. §58510(a)(4)]**
- C. Contractor shall not charge the Regional Center more for providing Services to the Regional Center's Consumers than Contractor charges any other person for the same services. **[Reg. §58513(b)]**

ARTICLE 11. RECORDS MAINTENANCE AND AUDIT

11.01. Records. Contractor shall maintain books, records, documents and other evidence pertaining to all income, expenses and services relating to and/or affecting the performance of this Agreement. **[Reg. §50608(b)]** Additionally, Contractor shall retain for five (5) years copies of the following records:

- A. Complete service records to support all billing/invoicing for each Consumer, including but not limited to: (1) information identifying each Consumer; (2) documentation reflecting the dates for program entrance and exit, if applicable, as authorized by the Regional Center; and (3) a record of services provided to each Consumer, including dates of service, city or county where service was provided and the number of miles driven or trips provided. All records shall be supported by source documentation **[Reg. §§50604 and 50608(c)]**:
- B. This Agreement;
- C. Special Incident Reports;
- D. The safety compliance rating issued by the California Highway Patrol pursuant to Title 13, California Code of Regulations, Section 1233;
- E. All maintenance records of vehicles used in providing transportation service to Regional Center Consumers; and
- F. For each driver:
 - 1. A valid driver's license issued by the Department of Motor Vehicles pursuant to Vehicle Code Section 12500;
 - 2. A Traffic Point Count as produced by the Department of Motor Vehicles in accordance with Vehicle Code Section 12810; and

3. A medical certificate as required by the Department of Motor Vehicles pursuant to Vehicle Code Section 12804. [Reg. §58523]

11.02. Financial Records Maintenance. Contractor will maintain financial records which consistently use a single method of accounting and which clearly reflect the nature and amounts of all costs and all income. All transactions for each month shall be entered into the financial records within thirty (30) days after the end of the month. [Reg. §50604(a)]

11.03. Monthly Records. Contractor shall provide monthly records of services provided to each Consumer, including the date, city or county where the service was provided and the number of miles driven or the number of trips provided by Contractor. Such records shall also include the information described in Title 17, Section 50604(d)(1) through (d)(3)(f), as applicable [Reg. §50608(d)]. If Units of Service provided under this Agreement are reimbursed other than a per mile, per day or per trip rate, shall also be maintained and reported as specified in this Section 11.03. Such monthly records shall be submitted to the Regional Center on a monthly basis, not later than thirty (30) days after the end of the previous month. [Reg. §58510(c)(2)]

11.04 Fiscal Audit. All Contractor's records pertaining to the services provided under this Agreement shall be open for audit by DDS, the Regional Center, and any authorized agency representative for a minimum period of five (5) years from the date of the final payment for the State of California fiscal year. Contractor agrees to utilize and be bound by Title 17, Sections 50700, *et seq.*, should Contractor elect to appeal any audit findings and/or recommendations. Contractor accepts financial liability for any audit findings and/or recommendations disclosed by audit and shall promptly repay amounts owed unless appealed and liquidation is stayed pursuant to Title 17, Section 50705. [Reg. §50610]

ARTICLE 12. TERMINATION

12.01. Termination Without Cause. Either Party may terminate this Agreement at any time and without cause by providing sixty (60) days' prior written notice to the other Party.

12.02. Termination With Cause. The following constitute grounds for termination of this Agreement and/or payment by the Regional Center with cause:

A. Contractor refuses or fails to provide the Regional Center with efficient, safe and cost-effective Services, including the furnishing of adequate equipment and properly trained personnel in quantities sufficient to provide the Transportation Service specified herein;

B. Contractor fails to comply with the requirements of this Agreement;

C. Contractor fails to comply with the terms of the purchase of service authorization; or

D. Contractor fails to comply with applicable federal and state regulations or statutes governing the service program and/or the provision of Services to Consumers. [Reg. §50611(b)(3)]

12.03. Termination of Agreement. If the Regional Center, DDS or any authorized representative determines that grounds for termination under Section 12.02 exist, the Regional Center shall convey such determination to Contractor thirty (30) days in advance of payment and/or contract termination pursuant to Welfare and Institutions Code Section 4710. The notice shall contain the provision(s) for termination of this Agreement. If Contractor terminates this Agreement, Contractor shall give the Regional Center notice of termination in writing and at least thirty (30) days prior to termination. In no event shall either Party terminate this Agreement without complying with the requirements set forth in applicable statute and regulation including, but not limited to, Welfare and Institutions Code Sections 4502, 4646, 4646.5, 4648, 4710 and 4741. **[Reg. §50611]**

12.04. Excuse of Performance. Notwithstanding Section 12.02 above, a Party shall be excused from performance hereunder during the time and to the extent that it is prevented from performing in the customary manner by acts of God, strikes, or commandeering of vehicles, materials, products, plants or facilities by the government, when satisfactory evidence thereof is presented to the other Party **[Reg. §58524(c)(5)]**. Application of this Section in the event of a strike against Contractor will be only to the extent of Contractor's reasonable utilization of management and other personnel and Contractor's good faith efforts to avert the labor action and to settle the dispute(s). The Regional Center shall not pay for Services not rendered by Contractor during any period in which the circumstance described in this Section are applicable.

ARTICLE 13. INSURANCE.

13.01. Public Liability, Property Damage and Automobile Insurance.

A. Contractor shall at all times during the term of this Agreement maintain public liability and property damage insurance (including automotive coverage), with endorsements satisfactory to Regional Center and in the amount of One Million Dollars (\$1,000,000.00) combined single limit, which shall be primary and exclusive over any and all valid and collectable insurance which may be available to Regional Center. Contractor shall obtain all necessary endorsements and additional coverages to protect Regional Center against all loss and liability arising out of Contractor's and its employees', representatives' and agents' use of all vehicles, including separate automobile insurance if applicable. Contractor shall obtain "Owned, Non-Owned and Hired Automobile Insurance" for the benefit of Regional Center, each with the limits of liability for bodily injury and property damage as set forth above. Such insurance shall apply on an "any auto" basis. Contractor shall not commence work under this Agreement until it has obtained all required insurance, and certificates of insurance have been delivered to and approved by Regional Center. All of Contractor's insurance carriers shall at all times be licensed to transact the business of insurance in the State of California, shall have a rating of A- and IX or higher in the most current edition of Best's Insurance Guide, and shall be acceptable to Regional Center. All of Contractor's policies or certificates of insurance shall include substantially the following clause:

B. This policy shall not be canceled, reduced in required limits of liability, or modified as to coverage until written notice has been given to Regional Center of such cancellation or reduction. The date of cancellation or reduction shall not be less than 30 days after such notice is given.

C. All of Contractor's insurance (including but not limited to the Owned, Non-Owned and Hired Automobile Insurance) shall contain a Named Insured Endorsement which names "Alta California Regional Center" as an additional insured. In addition, each certificate of insurance shall list Regional Center as a named additional insured, shall state the extent of insurance, the locations and operations to which insurance applies and the expiration date of the insurance.

D. Contractor shall at all times provide Regional Center with current copies of Contractor's insurance certificates. If Contractor fails to provide valid current copies of such certificates, Regional Center may terminate this Agreement as provided in Section 12, and obtain any services to be provided by Contractor hereunder from any other transportation provider.

E. Contractor shall obtain a broad form property (including contractual liability) endorsement on its liability insurance policy for the benefit of Regional Center.

13.02. Waiver of Subrogation. Contractor's insurance policies shall contain a waiver of subrogation clause for the benefit of Regional Center.

13.03. No Compensation While Uninsured or Underinsured; Remedies Available to Regional Center. If at any time during the term of this Agreement the insurance required pursuant to this Section 13 is canceled, reduced or modified, or is otherwise not in force, (1) Contractor shall not be entitled to payment for any services rendered during any such time period.

13.04. Workers' Compensation Insurance. Contractor shall obtain and maintain such workers' compensation protection as is required by this Agreement and applicable state law. Contractor shall bear the sole responsibility and liability for furnishing workers' compensation benefits to any person for injuries arising from or connected with the Services provided pursuant to this Agreement.

ARTICLE 14. INDEMNIFICATION

14.01. Contractor's Indemnity.

A. Contractor agrees to indemnify, defend, and hold harmless Regional Center, DDS the State of California and their respective officers, agent, and employees (collectively, the "**Regional Center Indemnitees**") from every claim or demand made by reason of:

(a) Any personal injury or property damage sustained by any person, or entity, caused by or resulting from any act, neglect, default, or omissions of Contractor or of any person, or entity performing any services in connection with this Agreement on behalf of Contractor; and

(b) Claims under workers' compensation laws or other employee benefit laws by Contractor's agents or employees; and

(c) Contractor's failure to fulfill its obligations under this Agreement in strict accordance with its terms, including Contractor's breach of any representations or covenants given in this Agreement; and

(d) A violation of any local, state, or federal law, regulation or code by Contractor or by any of Contractor's employees, agents, consultants, or subcontractors in connection with the conduct of their activities performed in connection with this Agreement.

B. Contractor at his own expense and risk, shall defend any action, legal proceeding, arbitration, or other mediation proceeding, that may be brought against the Regional Center Indemnitees or any of them on any such claim or demand as set forth above. Contractor shall defend such matter by counsel reasonably satisfactory to Regional Center. The Regional Center Indemnitees need not have first paid any such claim in order to be so indemnified. Contractor shall also pay and satisfy any settlement, or any judgment which may be rendered against the Regional Center Indemnitees or any of them arising from any injuries described in this Section 14.01 including, but not limited to, those claims and demands resulting from the negligence of the Regional Center Indemnitees or any of them; provided, however, Contractor shall have no duty to indemnify any particular Regional Center Indemnitee for those injuries caused to Contractor or a third party by the gross negligence of such Regional Center Indemnitee.

14.02. Regional Center's Indemnity.

A. Regional Center agrees to indemnify, defend, and hold harmless Contractor and its respective officers and employees (collectively, the "**Contractor Indemnitees**") from every claim or demand made by reason of:

(a) Any personal injury or property damage sustained by any person, or entity, caused by or resulting from any gross negligence of Regional Center or of any person, or entity performing any services in connection with this Agreement on behalf of Regional Center; and

(b) Regional Center's failure to fulfill its obligations under this Agreement in strict accordance with its terms, including Regional Center's breach of any representations or covenants given in this Agreement; and

(c) A violation of any local, state, or federal law, regulation or code by Regional Center or by any of Regional Center's employees, agents, consultants, or subcontractors in connection with the conduct of their activities performed in connection with this Agreement.

B. Regional Center at his own expense and risk, shall defend any action, legal proceeding, arbitration, or other mediation proceeding, that may be brought against Contractor Indemnitees or any of them on any such claim or demand as set forth above. Regional Center shall defend such matter by counsel reasonably satisfactory to Contractor. Contractor Indemnitees need not have first paid any such claim in order to be so indemnified. Regional Center shall also pay and satisfy any settlement, or any judgment which may be rendered against Contractor Indemnitees or any of them arising from any injuries described in this Section 14.02;

provided, however, Regional Center shall only have a duty to indemnify any particular Contractor Indemnitee for those injuries caused to Contractor or a third party by the gross negligence of Regional Center or its officers, agents, or employees.

14.03. Survival. The indemnities set forth in this Section 14 shall apply during the term of this Agreement and shall also survive the expiration, rescission, or termination of this Agreement, until such time as action against the Regional Center Indemnitees and Contractor Indemnitees on account of any matter covered by each such indemnity is barred by the applicable statute of limitations.

ARTICLE 15. COMPLIANCE WITH LAWS AND REGULATIONS

15.01. Applicable Statutes and Regulations. This Agreement is intended to conform to Title 17, California Code of Regulations, Subchapter 18, Transportation Service, and applicable provisions of federal and state statutes and regulations. This Agreement is subject to any additional restrictions or conditions enacted by the Legislature and contained in the Budget Act, or any statute enacted by the Legislature which may affect the provisions, terms or funding of this Agreement. **[Reg. §58524(c)(7)]** The terms of this Agreement shall not be construed to excuse compliance with existing statutes or regulations. **[Reg. §50607(i)]**

15.02. Program Design. In accordance with Title 17, Section 50608 (Contract Duties and Responsibilities), Contractor agrees that the level of services provided pursuant to this Agreement shall, at a minimum, be consistent with the provisions of (1) this Agreement, (2) any other program design required by Regional Center and (3) Contractor's Program Design attached hereto as Exhibit C (the "**Program Design**"). Regional Center and DDS have relied on such documents in establishing the Rate of Payment. The Program Design is a part of this Agreement; Contractor shall at all times comply with the provisions in the Program Design and the Program Design shall comply with the provisions of Title 17, Sections 50608(a)(2)(A) – (I). If any conflict exists between the terms of this Agreement and the scope of Contractor's services and obligations set forth in the Program Design, the provisions that most broadly protect the Regional Center's consumers shall control.

15.03. Contractor Compliance. Contractor shall render all Services in accordance with applicable provisions of statute and Federal and State regulations **[Reg. §50607(h)]**. Contractor shall comply with and observe all provisions and/or requirements of the California Vehicle Code, California Code of Regulations, the California Highway Patrol and any other governmental agency relative to the transportation of persons, including Consumers.

15.04. Permits and Licenses. Contractor, its employees, and agents shall secure and maintain valid permits and licenses as required by law for the execution of Services pursuant to this Agreement.

15.05. Anti-Discrimination. It is the policy of the Regional Center that in connection with all work performed under any agreements, there is no discrimination against any prospective or active employee engaged in the work because of race, religious creed, color, ethnic group identification, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, sexual preference or sexual orientation, or age, and

therefore Contractor agrees to comply with applicable federal and state laws including, but not limited to, Labor Code Section 1735. [Reg. §58524(c)(6)] In addition, Contractor agrees to require like compliance by all subcontractors.

15.06. Compliance with Civil Rights Act. Contractor shall comply with Subchapter VI of the Civil Rights Act of 1964, 42 USC Section 2000e *et seq.*, to the end that no person shall, on the grounds of race, color, religion, sex or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement, or under any project, program or activity supported by this Agreement.

15.07. Vendor Disclosure Statement. Upon the execution of this Agreement, and at all other times upon Regional Center's request, Contractor shall complete, sign and deliver to Regional Center a Vendor Disclosure Statement (DDS Form DS 1891), a copy of which can be obtained from DDS's website. Contractor shall also submit an updated signed and dated DS 1891 Form to Regional Center within thirty (30) days of any change in the information previously submitted pursuant to this Section.

15.08. HCBS Provider Agreement. Contractor represents and warrants that it has signed the State Department of Health and Human Services' Home and Community Based-Services Provider Agreement and delivered such signed document to Regional Center.

15.09. Website Link to DDS Consumer Complaint Process. This Section is applicable if Contractor has a website. In accordance with WIC Section 4704.6, Contractor shall conspicuously post on its Internet Web site a hyperlink to the DDS Internet Website page at <http://www.dds.ca.gov/Complaints/Home.cfm> and DDS's contact information at <http://www.dds.ca.gov/Contacts/Home.cfm>.

15.10. Zero Tolerance Policy. At all times during the term, Contractor shall comply with Regional Center's Zero Tolerance Policy attached as Exhibit B and made a part of this Agreement.

ARTICLE 16. INDEPENDENT CONTRACTOR

It is understood and agreed, and it is the intention of the Parties, that Contractor is an independent contractor and not the employee, officer, agent, joint venturer or partner of the Regional Center or the State of California for any purpose whatsoever [Reg. §50607(f)]. The Regional Center shall have no right to and shall not control the manner or prescribe the method by which the Services are performed by Contractor hereunder. Contractor shall be entirely and solely responsible for its acts and the acts of its agents, employees and subcontractors, if any, while engaged in the performance of Services hereunder.

ARTICLE 17. MISCELLANEOUS

17.01. Privacy Requirements; HIPAA. Contractor agrees to comply with the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) at 45 Code of Federal Regulations Part 160 and Part 164, Subparts A and E, for business associates and related implementing regulations of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to safeguard the protected health information received or created under this

Agreement. Concurrently with the execution of this Agreement, Contractor shall also execute, and comply with all of the terms and provisions in, Regional Center's form of Business Associate Agreement; such Agreement is incorporated herein by this reference.

17.02. Authority to Enter and Power to Execute Agreement. Each Party hereto represents and warrants that they have the right, power, legal capacity and lawful authority to enter into and execute this Agreement on behalf of himself, herself, or itself, as individuals or corporate representatives, and in all of their representative capacities, and to perform the duties and obligations hereunder. This Agreement must be signed, and is signed, by an authorized representative of each Party [Reg. §0607(b)].

17.03. Cooperation and Delivery of Documents. Each Party to this Agreement shall execute and deliver any and all documents, and perform any and all acts and things necessary, appropriate, convenient, and helpful to expediently effectuate or further the terms, conditions, and provisions of this Agreement.

17.04. Headings and Captions. The paragraph and section headings or captions, as well as the bracketed references to the California Code of Regulations, contained in this Agreement are for purposes of convenience and ease of reference only, and neither expand nor limit the provisions of this Agreement.

17.05. Entire Agreement; Modification; Waiver. This Agreement, including the Exhibits attached hereto, constitutes the entire agreement between the Parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representation and understandings of the Parties. The execution of any amendment or modification to this Agreement by and between Regional Center and Contractor shall be in writing and shall comply with the requirements of all applicable statutes and regulations [Reg. §50607(e)]. The Parties understand that periodic amendments to this Agreement may be necessary to conform this Agreement to current law. No waiver of any of the provisions of this Agreement will be considered or will constitute a waiver of any other provisions and no waiver will constitute a continuing waiver. No waiver will be binding unless executed in writing by the Party making the waiver.

17.06. Parties in Interest. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties to it, nor shall any provision give any third persons any right of subrogation or action over or against any Party to this Agreement.

17.08 Assignment. Assignment of this Agreement shall not be allowed [Reg. §50607(g)]. Any assignment of any term or condition under this Agreement, or any duty or obligation of Contractor under this Agreement, shall be ineffective. For purposes of this agreement, the term "Assignment" shall also include:

- (i) if Contractor is a partnership or limited liability company, the withdrawal or change, voluntary, involuntary or by operation of law, of fifty percent (50%) or more of the partners or members (as applicable), or transfer of fifty percent (50%) or more of partnership or membership interests (as applicable), within a twelve (12)-month

period, or the dissolution of the partnership or company without immediate reconstitution thereto; and

- (ii) if Contractor is a corporation (whose stock is not publicly held and not traded through an exchange or over the counter), (A) the dissolution, merger, consolidation or other reorganization of Contractor, or (B) the sale or other transfer of an aggregate of fifty percent (50%) or more of the voting shares of Contractor (other than to immediate family members by reason of gift or death), within a twelve (12)-month period, or (C) the sale, mortgage, hypothecation or pledge of an aggregate of fifty percent (50%) or more of the value of the unencumbered assets of Contractor within a twelve (12)-month period.

17.09 Attorneys' Fees. If any legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

17.10 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and will be considered to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the second day after mailing if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, and properly added to the party at its principal place of business, as follows:

“Regional Center”:

Alta California Regional Center
2241 Harvard Street, Suite 100
Sacramento CA 95815
Attn: Community Services Manager

“Contractor”:

EL DORADO TRANSIT AUTHORITY
6565 Commerce Way
Diamond Springs, CA 95619
Attn: Executive Director

Any Party may change its address by giving the other Party written notice of the new address in the manner set forth above.

17.11 Governing Law; Venue. All questions, claims and relief with respect to this Agreement, and the rights and liabilities of the Parties hereunder, shall be governed by, and construed under the laws and regulations of the State of California, without regard to its choice of law provisions. The Parties agree that the situs of execution of this Agreement for purposes of determining forum and/or venue is 2241 Harvard Street, Suite 100, Sacramento, California.

17.12 Severability. If any term, condition or provision of this Agreement is held to be null, void, voidable, or unenforceable, the Agreement shall be enforced to the fullest extent possible, and the remaining terms, conditions and provisions shall not be affected thereby, and shall retain their full force and effect, notwithstanding the null, void, voidable or unenforceable term, condition, or provision.

17.13 Cap on Contractor's Administrative Costs. Contractor agrees that it will not spend more than 15% of the funds it receives from the Regional Center under this Agreement on the Contractor's administrative costs. For purposes of this paragraph, the Contractor's administrative costs shall include all of the items listed under California Welfare and Institutions Code §4629.7(a)(1) through (15), as such provisions may be amended from time to time. Conversely, those costs the Contractor incurs that are immediately associated with the services the Contractor offers to the Regional Center's consumers are considered direct service expenditures, and are not administrative costs. To insure the Contractor complies with these requirements, the Contractor shall provide the Regional Center with access to all books, documents, papers, computerized data, source documents, consumer records, and other records pertaining to the Contractor's negotiated rates, upon the Regional Center's request. This paragraph shall remain in effect as long as Welfare and Institutions Code §4629.7(a) and any successor statute thereto remains in effect; upon the repeal of such statute, this paragraph shall be deemed deleted from this Agreement.

17.14 Median Rates and Negotiated Rates. The Contractor acknowledges that the Regional Center informed the Contractor of the applicable and correct median rates, as regulated under Welfare and Institutions Code §§4681.6(b), 4689.8(b) and 4691.9(b) (as applicable), as part of the negotiations in setting the rate of payment.

17.15 Legislative Payment Changes. Notwithstanding anything in this Agreement to the contrary, the payments to Contractor under this Agreement are subject to the any payment reduction or increase that may be implemented by the California State Legislature, as such reduction or increase may be further increased or reduced, and will remain in effect until withdrawn by the State of California.

17.16 Contractor Reviews and Audits:

17.16.1 Contractor shall, at Regional Center's request and at the Contractor's cost, cause an independent Certified Public Accountant to (1) annually audit or review Contractor's financial statements and (2) provide a copy of each annual audit results (the "**Audit Report**") or review results (the "**Review Report**") to Regional Center. To the extent expressly permitted by Welfare and Institutions Code section 4652.5, the Contractor may conduct a review and provide a Review Report to Regional Center rather than an Audit Report; otherwise, the Contractor shall conduct an audit and provide an Audit Report to Regional Center.

17.16.2 If the Contractor engages an independent Certified Public Accountant to review (but not audit) Contractor's financial statements, (1) the review shall, at minimum, comply with the provisions set forth in WIC Section 4652.5(e) and (2) the Review Report shall, at minimum, comply with the provisions set forth in WIC Section 4652.5(f).

17.16.3 Contractor shall commence the independent audit or review within 120 days after the end of Contractor's fiscal year. Contractor shall complete the audit or review within nine months after the end of Contractor's fiscal year. In accordance with WIC Section 4652.5(b), Contractor shall provide copies of the independent Audit Report or Review Report to Regional Center within 30 days after completion of the audit or review.

17.16.4 If Regional Center believes that any issues identified in the Audit Report or Review Report have an impact on services the Contractor provides to Regional Center's consumers, Regional Center will so notify the Contractor and provide the Contractor with 30 days to resolve such issues. Contractor's failure to resolve such issues to Regional Center's reasonable satisfaction within such 30-day period shall constitute a material breach of this Agreement. As a result of such breach, Regional Center may, among its other remedies, terminate this Agreement.

17.16.5 If Regional Center does not find any issues in Contractor's prior year Audit Report or Review Report, Contractor may apply, in writing, to Regional Center for a two-year exemption from the independent Audit Report or Review Report.

17.17 Counterparts; Delivery. This Agreement may be executed in counterparts, each of which shall be deemed an original and both of which shall constitute a single instrument. Signed copies of this Agreement delivered electronically, such as via a PDF attachment to an email, shall be deemed the same as originals.

Executed at Sacramento, California as of the date first written above.

REGIONAL CENTER:

ALTA CALIFORNIA REGIONAL
CENTER, INC., a California nonprofit
public benefit corporation

By: _____

Lori Banales, Executive Director

CONTRACTOR:

EL DORADO TRANSIT AUTHORITY

By: _____

Name: _____

Title: _____