

AGREEMENT FOR STUDENT TRANSPORTATION
SERVICES BETWEEN HEMET UNIFIED SCHOOL
DISTRICT AND THE MERGE RISK MANAGEMENT JPA

THIS AGREEMENT, made and entered into effective August 1, 2020, by and between the MERGE RISK MANAGEMENT JPA (hereinafter referred to as "MERGE") and the HEMET UNIFIED SCHOOL DISTRICT (hereinafter referred to as "HEMET") for the purpose of providing student bus transportation on the terms and provisions recited. This agreement supersedes all previous agreements between HEMET and MERGE.

W I T N E S S E T H

WHEREAS, HEMET and MERGE are mutually interested in and concerned with the provision of adequate student transportation services; and

WHEREAS, it is to the mutual benefit of the parties herein and in the best public interest of said parties to join together to establish this Agreement to accomplish the purpose hereinafter set forth; and

WHEREAS, the signatories hereto have determined that there is an economic and service improvement need by both agencies for HEMET to provide a complete system, including a centralized service to accomplish the purpose of this Agreement hereinafter set forth for the benefit of MERGE and HEMET; and

WHEREAS, it has been determined by such signatories that this Agreement is of value on an individual and mutual basis; and

WHEREAS, a common transportation operation can adequately serve the needs of all such signatories in an efficient and cost-effective manner for both parties.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL ADVANTAGES TO BE DERIVED THEREFROM, AND IN CONSIDERATION OF THE EXECUTION OF THIS AGREEMENT BY PUBLIC EDUCATIONAL AGENCIES, each of the parties hereto does agree as follows:

I. GENERAL STATEMENT

- A. This Agreement is entered into for the purpose of providing the services and other items reasonably necessary and appropriate for establishment, operation and maintenance of a transportation service on the terms and provisions recited. Further, this Agreement will provide a forum for discussion, study, development and implementation of recommendations of mutual interest regarding economic, effective and efficient transportation of students within MERGE member districts and HEMET.

II. SERVICES TO BE PROVIDED TO MERGE

- A. MERGE shall receive the following pupil transportation services from HEMET, unless HEMET provides notice to MERGE that it cannot provide specific service(s) to MERGE, a member of MERGE or an agency contracting through MERGE due to resource availability, with a proportionate reduction in charges for the services HEMET is unable to provide
 1. Bus transportation services for pre-determined routes and schedules for MERGE school transportation programs, including special needs curb to curb and home to school transportation
 2. Bus transportation to and from different sites for MERGE athletic/extracurricular activity trips.
 3. Late bus transportation for after school programs, as determined to be necessary by MERGE
 4. Bus transportation for community activities as authorized by law and consistent with the policies, procedures and Board action at MERGE and its member districts and all laws and regulations governing MERGE and its member districts.
 5. Routing and scheduling services and all other administrative and clerical needs regarding a school transportation system.

III. SERVICES TO BE PROVIDED BY HEMET

- A. SCOPE: HEMET shall provide to MERGE the services described in Section II (A), and shall locate, identify, procure, operate, dispatch, and maintain all transportation vehicles as may be required at such times, days and places within California, as may be specified by MERGE and in satisfaction of Section II (A) of this Agreement. HEMET agrees to provide all buses and other transportation vehicles necessary for the execution and full performance of this Agreement during its term.

In the furnishing of the pupil transportation services under this Agreement, HEMET agrees to comply with and observe all provisions of the California Education Code, California Vehicle Code, California Code of Regulations, Federal Code of Regulations and all other applicable laws, rules and regulations as prescribed by the United States Government and the State of California as well as Orders issued by the California Department of Public Health or the Los Angeles County Department of Public Health related to schools, pupil transportation and operations of HEMET in providing pupil transportation ("Orders"). This includes social distancing, masks and sanitization of buses. Should any MERGE member or agency contracting through MERGE have a more restrictive requirement in its reopening plan, HEMET will give its best effort to comply. However, should the more restrictive requirements come at an anticipated increased cost to HEMET, those costs will be passed through to the appropriate MERGE member or agency contracting through MERGE subject to sixty (60) days prior written notice, on receipt of which the appropriate MERGE member or agency contracting through MERGE may modify its reopening plan to avoid increased costs if possible and consistent with the health, safety and welfare of its students and employees. It is understood that no additional action beyond the law and Orders will take place until MERGE provides written confirmation that the additional costs are approved. If any laws or Orders require additional routes, those additional routes will be charged according to Section VI.A.3.

All services shall be performed, and all transportation vehicles provided, shall conform to the terms of this Agreement, and shall be provided to meet the needs of MERGE, its member agencies and agencies contracting through MERGE and meet the reasonable performance satisfaction of both MERGE and HEMET.

- B. PERMITS AND LICENSES: HEMET, directly or through its employees and its agents, shall secure and maintain valid permits and licenses that are required by law for the execution and performance of this Agreement through its full term. HEMET agrees to make available for inspection by MERGE, through its employees and its agents, all such permits and licenses, and provide copies on request of MERGE.
- C. INSURANCE:

Commercial General and Automobile Liability Insurance

1. HEMET shall obtain insurance for, or name MERGE and its member districts as an additional insured or covered party, and shall further furnish to MERGE a Certificate of Insurance and Endorsement, issued by an insurance carrier licensed to write general and automobile liability insurance in the State of California and have an AM Best Rating of A or higher, stating liability insurance is presently in effect of not less than \$25,000,000 per each occurrence for MERGE and its member districts as well as HEMET, and covering all transportation vehicles and services called for under this Agreement and for the full term of this Agreement.

The Certificate(s) of Insurance must provide the following requirements:

- a. Cancellation/Change language:

That the insurer will not cancel or make material changes to the insured's coverage without (30) days prior written notice to MERGE and HEMET; and

- b. Additional insured language for and naming MERGE and its member districts:

Shall apply to both General Liability and Auto Liability, said coverage will be endorsed in the policy and shall be primary and noncontributory with respect to MERGE and its member districts, its officers, agents, employees, and servants, are all included as additional insureds under the policy.

HEMET shall provide MERGE with a full and complete copy of the policy in force providing insurance as described, including all terms, conditions and endorsements, if any, in addition to the Certificate of Insurance. HEMET agrees that all insurance provided shall be in effect at all times prior to the commencement of any services by HEMET under this Agreement and at all times during the term of the Agreement. In the event insurance coverage expires at any time or times during the term of the Agreement, HEMET covenants and agrees to, and shall, immediately procure replacement insurance satisfying the above provisions, and to maintain the insurance in force during the remaining term of this Agreement, and HEMET further agrees to provide and shall provide a new Certificate of

Insurance and Endorsement making MERGE, including its individual members and agencies contracting through MERGE, Additional Insureds to:

MERGE RISK MANAGEMENT JPA
C/O EL MONTE CITY SCHOOL DISTRICT
3540 N Lexington Ave
El Monte, CA 91731

No work shall commence and no pupil transportation services shall be provided by HEMET to MERGE under this Agreement unless and until MERGE has received, reviewed and approved the policy of insurance and Certificate of Insurance to be provided by HEMET. All policy changes, new or other endorsements or term changes, and Certificates of Insurance shall be promptly provided by HEMET to MERGE for approval.

Failure to secure and provide, and to continuously maintain insurance coverage as herein provided is a material breach of this Agreement for which, in addition to such other remedies as may be available, MERGE may terminate the Agreement and HEMET's provision of pupil transportation services and transportation vehicles and proceed to do so directly without further liability or obligation to HEMET.

HEMET further covenants and agrees, and shall, comply with all terms, conditions and provisions of the policy of insurance, including notice and cooperation clauses, so as to maintain available benefits for MERGE during the term of this Agreement as to any claim or claims arising out of or in any way related to this Agreement.

c. Workers' Compensation Insurance

1. HEMET shall obtain insurance and shall further furnish to MERGE a Certificate of Insurance, issued by an insurance carrier licensed to write worker's compensation insurance in the State of California and have an AM Best Rating of A or higher, including the name of the carrier and the date of expiration of the insurance, or a certificate to self-insure, issued by the California Department of Industrial Relations to provide Statutory Limits with minimum Employers Liability limits of \$1,000,000 per occurrence/\$1,000,000 in aggregate for MERGE as well as HEMET, and covering all employees and individuals involved in transportation vehicles and services called for under this Agreement and for the full term of this Agreement.
2. HEMET shall be required to secure the payment and shall pay for all workers' compensation to its employees in accordance with the provisions of Labor Code Section 3700 and all other statutory requirements.
3. HEMET shall place into effect and maintain, comply with the terms of, and keep in force such insurance for claims for workers' compensation benefits acts and from any other claims for damage to property or personal injury including death, which may arise from pupil transportation services and operations under or transportation vehicles furnished under this Agreement, and will and shall defend, indemnify and hold harmless MERGE and its member districts, its officers, employees and agents from all legal fees, costs, payments or liability for such claims.
4. HEMET shall provide MERGE with a full and complete copy of the policy in force providing insurance as described, including all terms, conditions and endorsements, if any, in addition to the Certificate of Insurance. HEMET agrees that all insurance provided shall be in effect at all times prior to the commencement of any services by HEMET under this Agreement and at all times during the term of the Agreement. In the event insurance coverage expires at any time or times during the term of the Agreement, HEMET covenants and agrees to, and shall, immediately procure replacement insurance satisfying the above provisions, and to maintain the insurance in force during the remaining term of this Agreement, and HEMET further agrees to provide and shall provide a new Certificate of Insurance and Endorsement to:

MERGE RISK MANAGEMENT JPA
C/O EL MONTE CITY SCHOOL DISTRICT
3540 N Lexington Ave
El Monte, CA 91731

No work shall commence and no pupil transportation services shall be provided by HEMET to MERGE under this Agreement unless and until MERGE has received, reviewed and approved the policy of insurance and Certificate of Insurance to be provided by HEMET. All policy

changes, new or other endorsements or term changes, and Certificates of Insurance shall be promptly provided by HEMET to MERGE for approval by MERGE.

5. Failure to secure and provide, and to continuously maintain insurance coverage as herein provided is a material breach of this Agreement for which, in addition to such other remedies as may be available, MERGE may terminate the Agreement and HEMET's provision of pupil transportation services and transportation vehicles and proceed to do so directly without further liability or obligation to HEMET.
 6. HEMET further covenants and agrees, and shall, comply with all terms, conditions and provisions of the policy of insurance, including notice and cooperation clauses, so as to maintain available benefits for MERGE during the term of this Agreement as to any claim or claims arising out of or in any way related to this Agreement.
- D. SAFETY PROGRAM: HEMET shall provide regular and continuous formal safety instruction for all HEMET'S operating personnel assigned to this Agreement and comply with all applicable vehicle safety requirements as prescribed by local, state and federal laws, rules, regulations, policies and Orders during the term of the Agreement.
- E. ACCIDENT/INCIDENT REPORTS: All accidents and/or incidents involving equipment or personnel in any way involved in the pupil transportation services under this Agreement shall be reported by HEMET orally or by email to MERGE immediately. A full written report of the accident/incident involving injuries and/or potential injuries will be presented by HEMET to MERGE within 10 business days, and shall include (but not be limited to) all reports which are available through other regulatory and law enforcement agencies, or provided to same by HEMET. HEMET covenants and agrees, and shall, cooperate with and timely provide to MERGE such further and additional information as MERGE may require and request relative to such accidents and/or incidents.
- F. HEMET PERSONNEL: HEMET drivers shall be required to attend and complete special training sessions covering topics required by law. This will include topics requested by MERGE relating to student health, safety and protections. If such requests are in addition to legally required training and involve additional actual costs to HEMET, then MERGE agrees to pay for actual costs without markup for such trainings. This instruction shall be required prior to such assignments in addition to regular intervals during the school year.

HEMET will designate its Director of Transportation or other designee to be available during all regular working hours of school days for oversight of the services and vehicles to be provided under this Agreement and to respond to MERGE on inquiries or matters as they may arise. HEMET's Deputy Superintendent of Business Services or designee will be in charge of the total District's Transportation Department.

- G. DESIGNATION: HEMET will designate its Director of Transportation or other designee to work with and assist MERGE with transportation studies and analysis, including walk areas, routes, bell times, transportation demographics and equipment replacement schedules, and to assist, advise and coordinate on all matters within the scope of this Agreement.
- H. EQUIPMENT: All equipment, including but not limited to transportation vehicles, purchased by HEMET to provide pupil transportation services under this Agreement, shall be and remain the property of HEMET during and after the term of this Agreement unless specifically agreed upon prior to acquisition and memorialized in writing.
- I. INDEMNITY: MERGE shall defend, hold harmless, and indemnify HEMET, its governing board, officers, administrators, agents, employees, independent contractors, subcontractors, consultants, and other representatives from and against any and all liabilities, claims, demands, costs, losses, damages or expenses, including reasonable attorneys' fees and costs, and including but not limited to consequential damages, loss of use, extra expense from any cause whatsoever arising from or connected with the pupil transportation services under this Agreement that arise out of or result from the negligent, wrongful or willful acts or omission or breach of this Agreement of or by MERGE or any person acting under the direction and control of MERGE.

HEMET shall defend, hold harmless, and indemnify MERGE, MERGE members and agencies contracting through MERGE and its/their governing board, officers, administrators, agents, employees, independent contractors, subcontractors, consultants, and other representatives from and against any and all liabilities, claims, demands, costs, losses, damages or expenses, including reasonable attorneys' fees and costs, and including but not limited to consequential damages, loss of use, extra expense from any cause whatsoever arising from or connected with pupil transportation services and transportation vehicles, or other agreed performance by HEMET under this Agreement, that arise out of or result from the negligent, wrongful or willful acts or omission or breach of this Agreement of or by HEMET or any person acting under the direction and control of HEMET.

This indemnity shall survive the termination of this Agreement and/or final payment and is in addition to any other rights or remedies that HEMET/MERGE may have under California law and/or this Agreement.

IV. UNSCHEDULED SCHOOL CLOSING

- A. If schools within MERGE are closed due to health and safety of students or any other lawful reason but HEMET is still required to compensate staff assigned to MERGE routes, MERGE shall continue making timely payments to HEMET so long as MERGE members or districts contracting through MERGE attendance apportionment revenues continue during such closure. MERGE shall be obligated to pay for any cost associated with additional make-up days or special transportation, if needed.
- B. Except as otherwise provided in this Agreement, in the event of closure of schools not related to Section IV.A. above, MERGE, directly and for schools contracting through MERGE, and HEMET shall meet or otherwise confer promptly in good faith on the closure, on the absence of transportation services, as to the anticipated or known duration of the closure where feasible and on HEMET's continuing fixed costs during the closure period as well as expense reductions.. MERGE shall pay HEMET for all actual costs that continue during the closure, including but not limited to labor, rents and leases.
- C. MERGE shall also be obligated to pay for any cost associated with additional make-up days or special transportation, if needed.

V. ROUTING AND SCHEDULING

- A. Prior to the start of any pupil transportation services under this Agreement, MERGE shall cooperatively establish routes and schedules with HEMET. MERGE, including MERGE members and agencies contracting through MERGE, reserve the right to add or delete routes or other transportation services. MERGE will be responsible for the additional cost if such changes result in additional routes or time for or on existing routes.
- B. MERGE may at any time during the term of the Agreement revise routing, scheduling, or bus assignments, or other transportation services, after consulting with and notice to HEMET.
- C. All routes, schedules, and stops must be approved by MERGE. Any substantial change to routes by HEMET must be pre-approved by MERGE with reasonable and sufficient advance notice of not less than sixty (60) days to MERGE except under MERGE emergency situations or with MERGE's consent.
- D. Every effort shall be made by HEMET to maintain maximum but reasonable and acceptable vehicle and driver utilization insofar as feasibility and safety permits. Notwithstanding this provision, at all times HEMET shall be solely responsible for assuring the safety and reliability of vehicle and driver utilization for pupil transportation services provided under this Agreement.
- E. HEMET shall assist in studies of transportation services to help MERGE operate an optimum transportation system, and shall make recommendations and provide advises to MERGE on items noted by HEMET to assist MERGE in optimizing the most efficient, cost effective, safe and reliable transportation system.
- F. Before regular service begins, HEMET shall provide for one (1) full day of dry runs to familiarize assigned staff with the area, route and shall contact MERGE if any conflicts in schedules or other problems arise to reasonably address them with MERGE prior to regular service commencement.
- G. Changes or additions to routes shall be supplied to HEMET in writing by MERGE no later than 5:00 p.m. on Wednesdays. HEMET shall implement those changes by the following Monday after HEMET's receipt of written notification.
- H. Prior to any HEMET personnel being assigned to provide any pupil transportation services or ancillary services and facilities under this Agreement, said personnel shall receive orientation from HEMET on proper dealing and communication with parents, staff, pupil management, relations with the schools and the general public.
- I. Pupils are to be delivered to schools of attendance not more than fifteen (15) minutes prior to class start time, and are not to be kept waiting more than fifteen (15) minutes after dismissal time, unless otherwise extended by MERGE.
- J. HEMET and MERGE shall work in conjunction to attempt to ensure that routes do not extend over eight (8) hours per day, on a regular basis.

- K. HEMET shall utilize computerized routing to maximize route efficiencies.

VI. COMPUTATION OF CHARGES FOR SERVICES, CAPITAL COSTS, AND BUS PURCHASES.

- A. Costs for all pupil transportation for MERGE and parties contracting through MERGE and for HEMET's performance of the services called for under this Agreement shall be determined as follows:
 - 1. HEMET agrees to provide curbside transportation services to participating students residing within the MERGE boundaries and attending programs within the West San Gabriel Valley SELPA for the 2020-21 fiscal year for a predetermined, annual per-student fixed cost as described below:
 - a. Participating Students designated Non-SDOI: \$ \$8,358
 - b. Participating Students designated SDOI: \$\$10,586
 - 2. Transportation services for participating MERGE students residing in MERGE boundaries and attending programs outside of the West San Gabriel Valley SELPA, as agreed upon by HEMET and MERGE.
 - a. Out of SELPA \$10,586 per student, per year
 - 3. Any additional home to school or special education route(s) that MERGE desires, in addition to those specified in Section VI.A,1 & 2 in an effort to reduce pupil ride times, to achieve social/physical distancing, or for other purposes, shall be provided by HEMET at the following rates:
 - a. School Bus: \$94,870 per route, per year
 - b. Automobile: \$72,875 per route, per year
 - 4. Should a student requiring transportation reside or attend a program outside of the West San Gabriel Valley SELPA where HEMET is unable to attain regular cost efficiencies, rates for such services may be mutually negotiated between HEMET and MERGE.
 - 5. If the weekly U.S. average gasoline prices, as defined by the U.S. Energy Information Administration (division of the U.S. Department of Energy), for the State of California, exceeds \$4.75 per gallon, a fuel surcharge will be applied at rate of \$12.50 each day for each \$0.25 increment above \$4.75 per gallon.
 - 6. HEMET agrees to provide MERGE with service, drivers, support staff, substitutes, routing, licenses, permits, insurance, management, fuel and all maintenance to furnish the agreed pupil transportation services, to provide the transportation services, and to otherwise perform the undertakings of HEMET under the terms of this Agreement. HEMET agrees to provide all transit buses and special education buses for MERGE necessary for the purpose of, and to perform under, this Agreement.
 - 7. HEMET is not responsible for the cost of bus aides. However, HEMET shall accommodate one on one aides assigned to students who receive curbside transportation. Furthermore, HEMET will work with MERGE to reduce ride times of one on one aides as much as practical.
 - 8. MERGE, its member agencies and entities contracting through MERGE have the sole discretion and option to reduce its transportation cost by eliminating buses, by increased walk boundaries, and/or school bell time changes, or other changes as to transportation services deemed reasonable and appropriate by MERGE in its sole discretion. Any changes by MERGE that require HEMET to reduce staffing levels, transportation vehicles or make other changes shall be provided to HEMET, in writing, a minimum of 60 days in advance unless an emergency arises or the parties otherwise agree to a shorter notice period or accept notice when provided.
 - 9. Both parties agree that any and all cost savings, as determined by HEMET and confirmed by MERGE, achieved through reduction in routes due to increased walk distances and/or bell time changes, or other changes initiated by MERGE, will be passed along to MERGE as a reduction in total costs billed to MERGE under this Agreement
 - 10. Any additional home to school that MERGE desires, in addition to those specified in Section VI, (A), 1, will be negotiated between HEMET and MERGE.

- 11 HEMET will attempt to provide all home to school and special education transportation as well as all pupil transportation services in-house and specifically through HEMET personnel and HEMET owned or procured transportation vehicles. HEMET may, at its option, contract service from other agencies and/or private carriers at HEMET's expense to assure compliance with service requirements of this Agreement provided that HEMET provides written notice (such as an email) to the MERGE Executive Director and impacted District's contact. HEMET is solely responsible for the selection of other agencies and/or private carriers, for assuring permits and licenses of same for the pupil transportation services provided, to confirm acceptable condition of all transportation vehicles used, and for securing insurance and additional insured status, as well as Certificates of Insurance, from all such other agencies and/or private carriers, naming and providing to MERGE the same insurance benefits and protections as referenced in this Agreement, and for compliance with health, safety and regulatory or other requirements and Orders. Further, HEMET shall defend, indemnify and hold harmless MERGE, its governing board, officers, administrators, agents, employees, independent contractors, subcontractors, consultants, and other representatives from and against any and all liabilities, claims, demands, costs, losses, damages or expenses, including reasonable attorneys' fees and costs, and including but not limited to consequential damages, loss of use, extra expense from any cause whatsoever arising from or connected with the pupil transportation services under this Agreement that arise out of or result from HEMET's selection and engagement of such other agencies and/or private carriers to provide pupil transportation services or transportation vehicles, or others services and performance, called for under this Agreement.

B. FURTHERMORE, PROGRAM SERVICES CREDIT DUE TO MERGE:

1. 5% of per student rate for SDOI/Non-SDOI students utilizing MERGE assigned proprietary routes/services/equipment.
2. 1% of per student rate for SDOI/Non-SDOI students utilizing HEMET transportation services within the Los Angeles County.

C. FURTHERMORE, IT IS MUTUALLY AGREED BY EACH PARTY HERETO:

1. Disputes or controversies regarding discipline or proposed involving drivers, pupils, or employees of HEMET or MERGE, or contractors, hereto arising out of the performance of this Agreement, will be referred to HEMET. Should HEMET be unable to conclude the matter to the satisfaction of MERGE, the matter will be referred to as set forth in Section XIX.

D. FURTHERMORE, IT IS MUTUALLY AGREED BY EACH PARTY HERETO:

1. Current payments for services under the terms of the Agreement shall be made as follows:
 - a. HEMET shall invoice MERGE quarterly billings in advance for home to school and special education curbside service. Quarterly invoices will be based upon 25% of the annual predetermined fixed cost unless otherwise increased through additional services requested by MERGE. The quarterly invoices shall also be adjusted for any cost reductions at the option of MERGE.
 - b. Charges for "other" trips beyond the base services and facilities recited in this Agreement, including activity trips, will be calculated and invoiced by HEMET monthly. HEMET shall provide reports itemizing all trips by school sites, programs or funding lines as support for each invoice. If requested by MERGE, HEMET shall provide individual copies of the field trip tickets completed by drivers.
 - c. MERGE will assure payment within 30 days of receipt of any and all invoices absent MERGE disputes or questions regarding the invoices, which shall be promptly addressed by MERGE with HEMET and payment to occur within 30 days of resolution.

VII. CAPITAL ACQUISITION

- A. HEMET shall provide all necessary personnel, transportation vehicles, buses and equipment needed for the performance of this Agreement.
- B. HEMET shall ensure that all buses are inspected and certified by the California Highway Patrol, are in good operating and safe condition, and ready for service on the agreed upon time schedule.

VIII. SCOPE OF SERVICE AREA

- A. Regular home to school transportation shall be defined as transportation to and from school at designed centralized locations beyond certain distances, as determined by MERGE.
- B. Special education transportation shall be defined as service to and from schools that originate and terminate at the curbside of a student's residential address when transportation is designated as an auxiliary service in an Individual Education Plan (IEP) or otherwise by MERGE
- C. "Other" trips shall be defined as activity or extra-curricular trips that originate and terminate at MERGE school sites or facilities for the purposes of transporting students to events or any other destination, as deemed appropriate by MERGE.

IX. ACTIVITY TRIPS

- A. PROCEDURE: HEMET shall provide transportation for activity trips sponsored by MERGE members. All activity trip requests shall be submitted electronically a minimum of five (5) working days in advance. Trips submitted within five (5) working days shall be subject to charges outlined below and will be serviced as resources are available. HEMET shall provide activity buses to MERGE schools and sites that are compatible with the educational or other requirements of the individual sites to satisfy the requirements of the activity trip.
- B. ACTIVITY CHAPERONE: MERGE shall provide a qualified activity chaperone meeting all legal requirements that shall have the responsibility to ensure that the behavior of the group meets the driver's reasonable safety requirements. MERGE shall have complete responsibility for all activity trip arrangements and for all supervision of adult and minor field trip participants provided that HEMET shall remain responsible for the drivers, transportation vehicles and performance obligations of HEMET under this Agreement.
- C. ROUTING AND EQUIPMENT: The driver has the responsibility for the school bus. Collectively, the driver and trip chaperone may consult regarding the best route to take; however, the driver has the sole responsibility for final approval of the route to be taken and the route taken.
- D. SCHEDULING TIMES: MERGE shall set the time for departures and returns for all activity trips. HEMET is responsible for adhering to the times set and provided by MERGE.
- E. TRANSPORTATION FEE: MERGE shall pay for the driver's salary and for the bus(es) operational costs specific to the activity trip through the following fees and charges:
 - 1. Since maintenance and capital costs are built into the cost of the home to school program, HEMET will provide activity trip service at the following rates to be paid by MERGE:
 - a. Activity trips that are scheduled five (5) working days or less of the trip date shall be charged at a rate of \$94 per hour, per bus, upon availability.
 - b. Activity trips that are requested and are completed (return to site of origin) between the hours of 8:30 AM – 1:30 PM Mondays, Tuesdays, Wednesdays and Fridays and 8:30 AM – 12:30 PM Thursdays when El Monte City School District is operating on a regular school schedule shall be charged at a flat rate of \$166 per bus.
 - c. All other trips will be charged at a rate of \$73 per hour, per bus.
 - 2. Charges are calculated from the time the bus is requested to be at the pickup location for departure and conclude at the time the bus returns back to the drop off location to include 1-1/2 hours for the driver to document all statutory paperwork, bus checkout and cleaning.
 - 3. HEMET will attempt to provide normal activity trips to all MERGE sites. If excessive demand for activity trips in any single day exceeds HEMET's ability to provide necessary coverage, HEMET reserves the right to contract out trips. HEMET shall be solely responsible for identification, selection and verification of the driver and vehicle safety and suitability for use. MERGE shall be responsible for the full direct or actual cost of the contracted bus if utilized at an MERGE site.

4. In general, trips will be provided at a first come first served basis in accordance with the date the trip was requested. HEMET, however, retains the right to service any trip that fits within regularly scheduled routes regardless of request date.
5. MERGE may, in its sole discretion, contract charter buses for its sites. HEMET shall provide sites with lists of authorized SPAB charter buses and can schedule them only upon request from MERGE. MERGE will be responsible for the full cost of the charter buses pursuant to this provision.

X. FACILITIES:

- A. HEMET and MERGE mutually agree:
 1. HEMET shall use its facility located in the City of Industry and in Bellflower.
 2. HEMET shall also provide centralized support for the pupil transportation services, transportation vehicles, and related services due under this Agreement out of its facility at 1791 W. Acacia Ave, HEMET, CA 92545.
 3. HEMET will automatically forward MERGE local Transportation Department phone number to HEMET's centralized support facility to assure seamless service to MERGE. Support shall include the following:
 - a. Transportation representatives will be available during business hours from 5:00 am to 5:00 pm on normal business days.
 - b. 24 hour HEMET emergency contacts shall be available.
 - c. Centralized computerized routing services shall be provided.
 - d. Full mechanical support shall be provided.
 - e. Such other support services as HEMET and MERGE may agree in writing.

XI. TERMINATION

- A. Should a party to this Agreement fail to abide by the terms of this Agreement, originally or as later Amended, then the Agreement may be terminated by the non-breaching party on written notice in its sole discretion and effective 60 calendar days from the date the notice is received.
- B. Either HEMET or MERGE may withdraw from and terminate this Agreement without cause at the end of any fiscal year, which runs from July 1 to June 30, by notifying the District's Superintendent or designee in writing prior to December 31st of the then current fiscal year of an intention to withdraw from and terminate this Agreement.
- C. HEMET may invoke involuntary termination for failure to pay for services rendered shall be effective at the end of the fiscal year, if possible, or upon a minimum ninety (90) days written notice. In the event of involuntary termination, MERGE will be responsible for all charges for services rendered through the end of the notice period unless otherwise agreed to as between MERGE and HEMET.

XII. GOVERNANCE

- A. This Agreement shall be in full force and effect commencing August 1, 2020, subject to formal approvals by the Governing Board, execution, and compliance with all pre- performance requirements set forth.
- B. This Agreement is a fully integrated document, and reflects all the agreed terms and conditions. All prior or contemporaneous discussions or understandings are extinguished and of no force and effect unless otherwise provided in this Agreement. This Agreement may only be amended by a further signed Amendment or writing formally approved by both parties' Governing Boards and executed by authorized representatives of HEMET and MERGE.

- C. This Agreement shall be construed under the laws of the State of California, and without reference to choice of law provisions.

XIII. TERM OF THE AGREEMENT

- A. This Agreement shall become effective at 12:01 a.m. on August 1, 2020, subject to all requisite approvals and pre-services performance obligations, and terminate on July 31, 2021.
- B. In the event of a reorganization of either MERGE or HEMET, the Agreement shall be terminated unless, as of the effective date of the reorganization, an Amendment is formally approved by the Governing Boards continuing the Agreement through the successor entity.

XIV. DISPOSITION OF PROPERTY AND FUNDS

- A. In the event of a termination or expiration of this Agreement, all sums due and payable by MERGE to HEMET for services provided to MERGE shall be due and owing in 30 days, unless otherwise disputed, and any sums owed as credits or reductions by HEMET to MERGE for services provided shall be paid to MERGE in 30 days, unless otherwise disputed.
- B. In the event of a termination or expiration of this Agreement, any property interest remaining shall be the property of the party that purchased and/or leased the property with no accounting or obligation to the other party.

XV. APPROVAL, EXECUTION AND AMENDMENTS

- A. This Agreement shall be approved by the Governing Boards of MERGE and HEMET in compliance with the Ralph M. Brown Act, with MERGE and HEMET each to provide the other with a copy of a Governing Board Action or Resolution adopted by its Governing Board approving and authorizing entry into this Agreement.
- B. This Agreement may be amended at any time through signed writing, with a subsequent Amended or new written Agreement formally approved by the Governing Boards of MERGE and HEMET and signed by authorized representatives of both parties. Any such Amendment shall be effective upon the date of full execution thereof unless otherwise provided for in this Amendment.

XVI. SEVERABILITY

- A. Should any portion, term, condition, or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or be otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions, and provisions, shall not be affected thereby.

XVII. BOOKS AND RECORDS – INSPECTION RIGHTS

- A. MERGE shall have the right to request documents, and to inspect files and records of HEMET, on reasonable notice and during ordinary business hours, to confirm performance, invoicing and sums due under this Agreement. HEMET shall timely comply with requests for records inspection by MERGE.

XVIII. INTERPRETATION

- A. This Agreement reflects an amicable, voluntary instrument, negotiated at arm's length and without undue influence, pressure or coercion. It is to be interpreted without regard to the drafter of the Agreement or any particular term.
- B. All terms of this Agreement are to be given their plain and ordinary meaning, with contract rules of interpretation under California law to be applied.

XIX. DISPUTE RESOLUTION

- A. In the event of any dispute between MERGE and HEMET relating to or in any way arising out of this Agreement, including (but not limited to) interpretation and performance, MERGE and HEMET agree to attempt to resolve the

dispute within 45 days through Mediation, and if not successful to resolve the dispute pursuant to binding arbitration before JAMS, with a waiver of rights of appeal, civil jury or judge trial, or other forum, rights or proceedings, within sixty days of the appointment of an Arbitrator.

- B. Any dispute resolution before JAMS shall be pursuant to binding resolution under the then existing JAMS rules and procedures. Each side shall initially bear its own legal fees, costs, and share of the JAMS expenses and Arbitrator fees and costs. The Arbitrator shall award legal fees and costs, as well as JAMS expenses and Arbitrator fees and costs, to the prevailing party.

- C. The final Award of the Arbitrator shall be subject to confirmation before any Court in the State of California as a judgment, fully enforceable pursuant to its terms.

HEMET UNIFIED SCHOOL DISTRICT ("HEMET")

By: _____ Date: _____

Darrin Watters, Deputy Superintendent, Business Services

At its public meeting of _____, 2020, HEMET's Governing Board approved or ratified this Agreement

MERGE RISK MANAGEMENT JPA

By: _____ Date: _____

At its public meeting of _____, 2020, MERGE's Governing Board approved or ratified this Agreement