

CITY OF EL MIRAGE
TRANSIT SERVICE CONTRACT

THIS TRANSIT SERVICE AGREEMENT, (“Agreement”) is made and entered into this ___ 1st ___ day of ___ July _____, 2025, by and between the City of El Mirage, an Arizona municipal corporation (“City”), and FSL Programs dba AllThrive 365 (“Consultant”).

RECITALS

- A. The City of El Mirage is authorized and empowered by provisions of the City Code to execute contracts for transportation services by and through its City Manager;
- B. The City desires to contract for Consultant to perform/provide Dial-a-Ride services to eligible residents of El Mirage. The Dial-a-Ride service provides on-demand door-to-door shared-ride transportation (“Services”) as described in the attached scope of work (Exhibit “A”) in accordance with the terms of this Agreement;
- C. Contractor is duly qualified to perform the requested Services.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and obligations set for herein, the parties hereto agree as follows:

1.1 DESCRIPTION, ACCEPTANCE, DOCUMENTATION

Consultant shall act under the authority and approval of the Contract Administrator for the City to provide the Services required by this Contract. The Contract Administrator for the City shall be J. Crystal Dyches, City Manager, or designee. The Contract Administrator shall oversee the execution of this Contract, assist the Consultant in accessing the organization, audit billings, and approve payments. The Consultant shall channel reports and special requests through the Contract Administrator. City reserves the right to change the Contract Administrator for the City without prior approval of the Consultant.

1.2 SERVICE DESCRIPTION

Consultant shall provide the Services described in Exhibit “A.” All work will be reviewed, evaluated, approved, and monitored by the Contract Administrator to determine acceptable completion. Review and approval by the Contract Administrator shall not relieve Consultant of any liability for improper, negligent or inadequate services rendered pursuant to this Contract. Consultant shall provide all work necessary to assure the Services are completed in a timely and efficient manner consistent with service requirements, including, but not limited to, working in close interaction with, and interfacing with, City and its designated employees, and working closely with others, including other consultants or contractors retained by City.

1.3 DOCUMENTATION AND DATA

All documents, including but not limited to, data compilations, studies, and reports which are prepared in the performance of this Contract are to be, and remain the property of, the City and are to be delivered to the Contract Administrator before final payment is made to the Consultant.

2.1 FEE SCHEDULE, RECORDS, AUDIT RIGHTS

The fee Consultant shall be paid for all Services provided pursuant to the terms of this Contract, inclusive of all expenses under this Contract, shall not exceed two hundred forty thousand dollars (\$240,000.00) per year for the initial one (3) -year term.

The Contract Administrator reserves the exclusive right to determine the amount of work performed and payment due the Consultant on a monthly basis. Consultant shall maintain all books, paper documents, accounting records and other evidence pertaining to such monthly billings and shall make such materials available at all reasonable times to the Contract Administrator. Monthly billings shall be accompanied by such documentation as the Contract Administrator may require to make a determination of work performed and payment due.

Consultant's records (hard copy, as well as computer readable data) and any other supporting evidence deemed necessary by the City to substantiate charges and claims related to this Contract shall be open to inspection and subject to audit and/or reproduction by City's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of its payees pursuant to the execution of the Contract. The City's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

Consultant shall require all subconsultants, insurance agents, and material suppliers (payees) to comply with the provisions of this article by insertion of the requirements hereof in a written contract agreement between Consultant and payee. Such requirements will also apply to any and all subconsultants.

If any audit in accordance with this article discloses overcharges of any nature by the Consultant to the City in excess of one percent (1%) of the total contract billings, the actual cost of the City's audit shall be reimbursed to the City by the Consultant. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Consultant's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of City's findings to Consultant.

2.2 ADDITIONAL SERVICES; PRICE ADJUSTMENT

The total Scope of Work to be performed by Consultant in accordance with this Contract is set forth herein and in Exhibit "A." Services not included in this Contract, including Exhibit "A," will be considered Additional Services. Consultant shall not perform any Additional Services without written authorization from the City. It shall be presumed that all Services performed/provided by Consultant were included in the Contract and contemplated by Consultant as being part of the original Scope of Work and the fees set forth herein, unless such Services have been separately approved by the City, in writing, as Additional Services. Consultant shall not be paid for any Additional Services that are not authorized by the City in writing.

3.1 TERM AND EXTENSION

This Contract shall be in full force and effect only when approved and signed by City's City Manager as attested by the City Clerk.

This Contract is for an initial one (3) -year term commencing on July 1, 2025, and expiring June 30, 2028. The City may at its sole option and with the consent of the Consultant, extend the period of this Contract in two (2)- one-year extensions, for up to a total of five (5) years. The Consultant shall be notified in writing when the contract renewal has been approved within thirty (30) days of contract expiration. Rates may be renegotiated upon exercising of the second extension option. Either party has the right to cancel this contract at any time with a thirty (30) -day written notice.

3.2 TERMINATION

3.2.1 Termination for Cause

The City has the right to terminate this Contract for cause in the event Consultant materially breaches any provision of this Contract or portion of the Services and fails to remedy the breach within five (5) business days of notification of the breach, if the breach is remedial. If Consultant fails to remedy the breach or if the breach is not remedial, City may terminate this Contract for cause immediately upon written notice to Consultant. In the event the City terminates this Contract or any part of the Services as herein provided pursuant to this Section 3.2.1, the City shall notify the Consultant in writing, and immediately upon receipt of such notice, the Consultant shall discontinue all work under this Contract.

Upon termination for cause, Consultant shall immediately deliver to the City all drawings, research, data, studies, reports, estimates and any and all other documents or work product generated by the Consultant under the Contract, together with all unused material supplied by the City. Consultant shall be responsible only for such portion of the work which has been completed and accepted by the City. Use of incomplete data by the City shall be the City's sole responsibility.

In the event of termination for cause, Consultant shall only be compensated a portion of the agreed upon fee for such portion of the work that City agrees, in its sole discretion to accept. City shall have no obligation to accept any portion of Consultant's work if the contract is terminated for cause, and shall have no obligation to pay Consultant for any portion of the work, if any, not accepted by City.

If the Consultant materially fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Consultant violates any of the covenants, agreements, or stipulations of this Contract, the City may withhold from payment due to the Consultant such amounts as are necessary to protect the City's position for the purpose of set-off until such time as the exact amount of damages can be determined.

3.2.2 Termination for Convenience

The City has the right to terminate this Contract for convenience or to abandon any portion of the work for which Services have not been performed by the Consultant. In the event the City terminates this Contract or any part of the Services as herein provided pursuant to this Section 3.2.2, the City shall notify the Consultant in writing, and immediately upon receipt

of such notice, the Consultant shall discontinue all work under this Contract.

Upon such termination for convenience or abandonment, the Consultant shall immediately deliver to the City all drawings, research, data, studies, reports, estimates and any and all other documents or work product generated by the Consultant under the Contract, together with all unused material supplied by the City. Consultant shall be responsible only for such portion of the work which has been completed and accepted by the City. Use of incomplete data by the City shall be the City's sole responsibility.

The Consultant shall receive as compensation in full for Services performed to the date of such termination or abandonment, a fee for the percentage of Services actually completed and accepted by the City. This fee shall be in an amount to be mutually agreed upon by the Consultant and the City, based upon the scope of work set forth in Exhibit "A" and the payment schedule set forth in Article 2, hereof. If mutual agreement cannot be reached after reasonable negotiation, the Contract Administrator shall determine the percentage of satisfactory completion of each task set forth in the scope of work contained in Exhibit "A" and the amount of compensation Consultant is entitled to for such work and the Contract Administrator's determination in this regard shall be final. The City shall make such final payment within sixty (60) days after the Consultant has delivered the last of the partially completed items.

3.3 FUNDS APPROPRIATION

If the City Council does not appropriate funds to continue this Contract and pay for charges hereunder, the City may terminate this Contract at the end of the current fiscal period. The City agrees to give written notice, pursuant to Section 3.2, Termination, of this Contract to the Consultant at least thirty (30) days prior to the end of its current fiscal period and will pay to the Consultant all approved charges incurred through the end of such period.

The City's fiscal year begins July 1st and ends June 30th each calendar year. The City may make payment for Services rendered or costs encumbered only during a fiscal year and for a period of sixty (60) days immediately following the close of the fiscal year, under the provisions of Arizona Revised Statutes § 42-17108. Therefore, Consultant must submit billings for Services performed or costs incurred prior to the close of a fiscal year within forty-five (45) days to allow payment within this period.

4.1 ENTIRE AGREEMENT

This Contract constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the Services specified herein. This Contract may not be modified or amended except by a written document, signed by authorized representatives of each party.

4.2 ARIZONA LAW

This Contract shall be governed and interpreted according to the laws of the State of Arizona. Any action brought to interpret or enforce any provision of this Contract that cannot be administratively resolved, or otherwise related to or arising from this Contract, shall be commenced and maintained in the state or federal courts of the State of Arizona, Maricopa County, and each of the parties, to the extent permitted by law, consents to jurisdiction and venue in such courts for such purposes.

4.3 COMPLIANCE WITH LAWS

Consultant shall comply with all existing and subsequently enacted federal, state and local laws, ordinances, codes, and regulations that are, or become applicable to this Contract. If a subsequently enacted law imposes substantial additional costs on Consultant, a request for an amendment may be submitted pursuant to this Contract.

4.4 MODIFICATIONS

Any amendment, modification or variation from the terms of this Contract shall be in writing and shall be effective only after approval of all parties signing the original Contract.

4.5 ASSIGNMENT

Services covered under this Contract shall not be assigned or sublet in whole or in part without the prior written consent of the Finance Director and Contract Administrator.

4.6 SUCCESSORS AND ASSIGNS

This Contract shall extend to and be binding upon Consultant, its successors and assigns, including any individual, company, partnership or other entity with or into which Consultant shall merge, consolidate or be liquidated, or any person, corporation, partnership or other entity to which Consultant shall sell its assets.

4.7 ATTORNEY'S FEES

In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default hereof, the prevailing party may be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses determined by the court sitting without a jury or arbitration board, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment or by arbitration award.

4.8 INDEPENDENT CONTRACTOR

The Services Consultant provides under the terms of this Contract to the City are that of an Independent Contractor, not an employee or agent of the City. The City will report the value paid for these Services each year to the Internal Revenue Service (I.R.S.) using Form 1099. City shall not withhold income tax as a deduction from contractual payments. As a result of this, Consultant may be subject to I.R.S. provisions for payment of estimated income tax. Consultant is responsible for consulting the local I.R.S. office for current information on estimated tax requirements. Consultant will not be entitled to any benefits provided by City to its employees, including, but not limited to, health benefits, workers' compensation, unemployment coverage, deferred compensation, and all other typical employee benefits.

4.9 CONFLICT OF INTEREST

This Contract is subject to cancellation pursuant to A.R.S. §38-511.

4.10 NOTICES

All notices or demands required to be given pursuant to the terms of this Contract shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of Consultant: FSL Programs dba AllThrive365
Attn: Charnise Moore
1201 East Thomas Road
Phoenix Arizona 85014

In the case of City City of El Mirage
Attn: City Manager
10000 North El Mirage Road
El Mirage, Arizona 85335

With a copy to: City of El Mirage
City Attorney
10000 North El Mirage Road
El Mirage, Arizona 85335

Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

4.11 FORCE MAJEURE

Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.

4.12 TAXES

Consultant shall be solely responsible for any and all tax obligations which may result out of the Consultant's performance of this Contract. The City shall have no obligation to pay any amounts for taxes of any type incurred by the Consultant.

4.13 ADVERTISING AND PROMOTION

Consultant shall not publish, release, disclose or announce to any member of the public, press, official body, or any other third party: (1) any information concerning this Contract, the Services, or any part thereof; or (2) any documentation or the contents thereof, without the prior written consent of the City, except as required by law or judicial or regulatory process. The name of any site on which Services are performed shall not be used in any advertising or other promotional context by Consultant without the prior written consent of the City.

4.14 COUNTERPARTS

This Contract may be executed in one or more counterparts, and each originally executed duplicate

counterpart of this Contract shall be deemed to possess the full force and effect of the original.

4.15 CAPTIONS

The captions used in this Contract are solely for the convenience of the parties, do not constitute a part of this Contract and are not to be used to construe or interpret this Contract.

4.16 SUBCONSULTANTS

During the performance of the Contract, the Consultant may engage such additional subconsultants as may be required for the timely completion of this Contract. The addition of any subconsultants shall be subject to the prior approval of the City.

In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Contract rests with the Consultant.

4.17 INDEMNIFICATION

The Consultant agrees, to the fullest extent permitted by law, to indemnify and hold harmless the City, its officers, directors and employees (collectively, City) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Consultant's negligent performance of professional services under this Contract and that of its subcontractors or anyone for whom the Consultant is legally liable.

The City agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, directors, employees and subcontractors (collectively, Consultant) against all damages, liabilities or costs, including reasonable attorney's fees and defense costs, to the extent caused by the City's negligent acts in connection with the Services and the acts of its contractors, subcontractors or consultants or anyone for whom the City is legally liable.

Neither the City nor the Consultant shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence or for the negligence of others.

4.18 INSURANCE

The Consultant shall secure and maintain at all times that this Contract is in effect, insurance coverage which shall include statutory workers' compensation, comprehensive general and automobile liability, owner's and Consultant's protective liability insurance and errors and omissions professional liability. The comprehensive general and automobile liability limits shall be no less than one million dollars (\$1,000,000) combined single limit. The owner's and Consultant's protective liability limits shall be no less than one million dollars (\$1,000,000) for each occurrence and one million dollars (\$1,000,000) policy aggregate naming the City as an additional insured. The minimum amounts of coverage for Consultant's professional liability shall be one million dollars (\$1,000,000). In other than errors and omissions professional liability, City's and Consultant's protective liability and worker's compensation, the City of El Mirage shall be named as an additional insured.

All insurance coverage shall be written through a carrier licensed in Arizona, or an approved non-admitted list of carriers published by the Arizona Department of Insurance, and possessing an A.M. Best rating of at least A- or above with policies and forms satisfactory to the City.

The Consultant shall submit to the City a certificate of insurance evidencing the coverage and limits stated in the foregoing paragraph within ten (10) days of award of this Contract. City shall not issue a "Notice to Proceed" until after Consultant has submitted the certificate of insurance to City. Insurance evidenced by the certificate shall not expire or be canceled or materially changed without thirty (30) days prior written notice to the City, and a statement to that effect must appear on the face of the certificate and the certificate shall be signed by a person authorized to bind the insurer.

The insurance policies, except Workers' Compensation required by this Contract, shall name the City, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

4.19 COOPERATIVE PURCHASING

While this Contract is for the City of El Mirage, other public agencies and political subdivisions may express interest in utilizing the Contract. In addition to the City of El Mirage, and with approval of the Contractor, this Contract may be extended for use by other eligible public agencies (i.e. municipalities, school districts, nonprofit educational institutions, public health institutions, community facilities districts, and government agencies of the State). Eligible public agencies may elect to utilize the contract through cooperative purchasing (or piggybacking) on the contract and do so at their discretion. No volume is implied or guaranteed, and the Contractor must be in agreement with the cooperative transaction. The Strategic Alliance for Volume Expenditures (SAVE), a group of school districts and other public agencies, have signed an intergovernmental cooperative purchase agreement to obtain economies of scale. As a member of SAVE, the City of El Mirage will act as the lead agency. Any such usage by other participating public agencies must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective public agency. Potential participating public agencies (i.e. municipalities, school districts, nonprofit educational institutions, public health institutions, community facilities districts, and government agencies of the State) recognize potential equipment, logistical and capacity limitations by the Contractor may limit the Contractor's ability to extend use of this Contract. Any orders placed to the Contractor will be placed by the specific public agency participating in this purchase, and payment for purchases made under this Contract will be the sole responsibility of each participating public agency. The City of El Mirage shall not be responsible for any disputes arising out of transactions made by others.

4.20 FEDERAL AND STATE EMPLOYMENT IMMIGRATION LAWS

To the extent applicable under A.R.S. § 41-4401, Consultant warrants its and its subconsultants' compliance with all federal immigration laws and regulations that relate to their compliance with the E-verify requirements under A.R.S. § 23-214(A). Consultant's or its subconsultants' breach of the above-mentioned warranty shall be deemed a material breach of the Contract and may result in the termination of the Contract by the City. The City retains the legal right to randomly inspect the papers and records of Consultant and its subconsultants to ensure that the Consultant and its subconsultants are complying with the above-mentioned warranty.

The Consultant warrants to keep the papers and records open for random inspection during normal business hours by the City. The Consultant shall cooperate with the City's random inspections including granting the City entry rights to Consultant's property to perform the random inspections and waiving its right to keep such papers and records confidential. The failure of Consultant to comply with this warranty regarding the keeping of papers and records and cooperating with City's random inspections shall constitute a material breach of the Contract and the City will have the right to immediately terminate the Contract.

4.21 BOYCOTT OF ISRAEL

Consultant certifies that it is not currently engaged in and agrees for the duration of this Contract that it will not engage in a boycott of Israel as set forth in A.R.S. § 35-393 and § 35-393.01.

[Signature page follows]

CITY OF EL MIRAGE

CONSULTANT:

-By: J. Crystal Dyches
Its: City Manager

By: Charnise Moore
Print Name

By: _____
Signature

Its Chief Program Officer
Title

ATTEST:

Jill A. Boltz, City Clerk

APPROVED AS TO FORM:

Justin Pierce, City Attorney

EXHIBIT "A"

Local El Mirage Dial-A-Ride service is available from 8 a.m. to 5 p.m., Monday through Friday. The City of El Mirage (City) will require a list of contractor-observed holidays because adjusting service hours on those days may be necessary.

Terms

Services to be provided by the contractor shall include:

- A. Dial-A-Ride services, administrative and scheduling services, equipment, personnel, and management services directly or through subcontractors as outlined in the agreement. The contractor shall ensure that the subcontractor(s) are duly qualified, licensed, trained, and have adequate equipment to perform the required services.
- B. Marketing and merchandising services.
- C. Draft and secure approval for the annual operating budget, which is based on the City's fiscal year that runs from July 1 to June 30 each year.
- D. Determine, set, and amend as necessary the fare structure for services provided by the contractor.
- E. Professional staff as necessary to plan for, develop, contract for, monitor, and adjust service.
- F. Provide and manage a complaint resolution process.
- G. Establish and maintain an informal working group for El Mirage staff and other appropriate parties to coordinate and monitor service and resolve service and contractual performance issues.
- H. Monthly and annual reports on ridership, revenue collected, and applicable performance standards as agreed upon by both parties.

Invoicing

- A. Fares are established at two dollars (\$2) for each one-way trip within the El Mirage service area map, and the rider will be billed once per month. The contractor is responsible for billing the rider and will deduct fare charges from the monthly invoice to the City.

- B. The contractor will invoice the City on a monthly basis for services provided to residents accessing Dial-A-Ride service.

Progress Meetings

The parties agree to meet as needed to discuss the project's progress or address any issues. At a minimum, the parties will discuss:

- A. Ridership and trips taken.
- B. Program costs incurred.
- C. Customer satisfaction.
- D. Monitoring service and resolving service and contractual performance issues.

Marketing

The City will include information about the program on its website.

Staff

The City and the contractor will provide professional staff as necessary to plan, develop, contract, monitor, and adjust service.

Services provided hereafter, the City shall:

- A. If the City desires services in addition to the services originally approved in the schedules hereto, City shall provide adequate funding for these services.
- B. Work with the contractor to track, research, and resolve complaints. Residents filing a formal complaint about the contractor-provided services should do so directly with the contractor. However, the City acknowledges that complaints may also be directed to the City.

Additional Services

- A. An El Mirage vehicle will be used to transport El Mirage and Youngtown Seniors to the El Mirage Senior Center, located at 14010 N. El Mirage Road, El Mirage, Arizona 85335.

- B. Pick Up and Drop Off: Services to and from the El Mirage Senior Center beginning at 8 a.m. and 1 p.m., Monday through Friday. The El Mirage Senior Center Recreation Coordinator or Designee will approve riders for this purpose. Transportation hours will be adjusted to accommodate city-observed holidays or at times when Senior Center hours require temporary changes. The City will notify the contractor of such changes.

- C. Group Trips: The City will pay the contractor an agreed-upon amount for one to two monthly scheduled group trips, with pick-up and drop-off at the El Mirage Senior Center.

Driver

- a. The City will reimburse the contractor for one driver.

- b. The driver will be Passenger Assistance and Safety (PASS) trained, defensive driver trained, background checked and supervised by the contractor.

- c. The vehicle to be used is an accessible vehicle owned by the City of El Mirage. The driver will receive a gate-only access badge for the Public Works Department yard located at 10355 N. 121st Avenue, El Mirage, Arizona, 85335. The driver will be able to access the yard to pick up and drop off the vehicle between 6 a.m. and 3 p.m., Monday through Friday. The driver will also receive training from El Mirage Public Works Department fleet staff on fueling procedures for the Dysart Unified School District fuel depot to fuel the vehicle. The driver is responsible for fueling the vehicle to accommodate daily services. The contractor is not responsible for fuel costs, maintenance, or insurance costs of the vehicle, which is the property of the City.