

RESOLUTION NO. 2024 - 3333

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING AN AGREEMENT WITH CHARTERUP, LLC, FOR SCHOOL BUS TRANSPORTATION SERVICES TO RUTH K. BROAD BAY HARBOR K-8 CENTER; FINDING THAT THE SERVICES DO NOT REQUIRE OR ARE EXEMPT FROM COMPETITIVE PROCUREMENT PURSUANT TO TOWN CODE; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside ("Town") seeks to implement chartered transportation services on school days for Town resident students ("Services") attending Ruth K. Broad Bay Harbor K-8 Center, Bay Harbor Islands, FL 33154 ("School"); and

WHEREAS, CharterUp, LLC ("Contractor") agrees to furnish the Services by picking up Town resident students at up to two locations in the Town and transporting them to the School and then picking them up at the School upon release and transporting them back to the Town for drop off at up to two locations in the Town; and

WHEREAS, the Contractor agrees to perform the Services pursuant to an agreement in substantially the form attached hereto as Exhibit A; and

WHEREAS, the Town Commission seeks to approve an agreement with the Contractor for the Services in substantially the form attached hereto as Exhibit "A," including or adopting the terms and conditions of the Contract, except as amended or modified by the Town (the "Agreement"); and

WHEREAS, the Town Commission finds that this Resolution is in the best interest and welfare of the residents of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. Each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

Section 2. Approval. The Town Commission approves the Agreement in substantially the form attached hereto as Exhibit "A."

Section 3. Exemption from Competitive Bidding. The Town Commission finds that hiring the Contractor to provide the Services does not require competitive bidding or is exempt from competitive bidding pursuant to Town Code.

Section 4. Authorization. The Town Commission hereby authorizes the Town Manager to execute the Agreement in substantially the form attached hereto as Exhibit "A," subject to approval by the Town Attorney as to form, content, and legal sufficiency; to execute any purchase order or required documentation for the purchases described in this Resolution; and to take any and all necessary action which is reasonably necessary to implement the Agreement, obtain the Services, and implement the purpose of this Resolution.

Section 5. Effective Date. This Resolution shall become effective immediately upon its adoption.

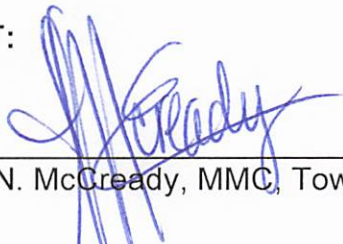
PASSED AND ADOPTED this 24th day of September 2024.

Motion By: Commissioner Velasquez
Second By: Commissioner Vildostegui

FINAL VOTE ON ADOPTION:

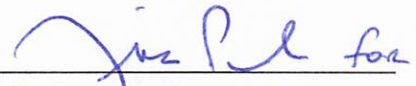
| | |
|----------------------------------|------------|
| Commissioner Ruben A. Coto | <u>Yes</u> |
| Commissioner Nelly Velasquez | <u>Yes</u> |
| Commissioner Gerardo Vildostegui | <u>Yes</u> |
| Vice Mayor Tina Paul | <u>Yes</u> |
| Mayor Charles W. Burkett | <u>Yes</u> |

ATTEST:



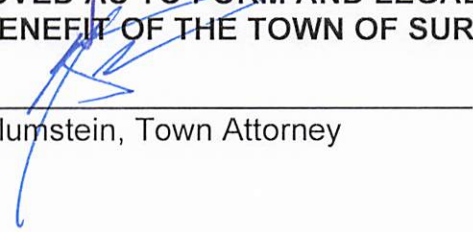
Sandra N. McCready, MMC, Town Clerk





Charles W. Burkett, Mayor

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:



Mark Blumstein, Town Attorney

Faint, illegible text, likely bleed-through from the reverse side of the page.



Exhibit "A" ("Agreement")

**TOWN OF SURFSIDE
CONTRACTUAL SERVICES AGREEMENT**

Charter Up Transportation Services

This Contractual Services Agreement (the “Agreement”) is made and entered into as of this ___ day of September, 2024, by and between **CHARTER UP, LLC**, a Georgia Limited Liability Company, its Successors and/or Assigns (hereinafter “Provider”), with a principal address of 6595 Roswell Road Suite G291, Atlanta, GA 30328 and the **Town of Surfside, Florida**, a Florida municipal corporation (hereinafter “Town”), with a principal address of 9293 Harding Avenue, Surfside, Florida 33154.

WHEREAS, Town agrees to allow Provider to conduct chartered transportation services (“Services”) for Town resident students attending Ruth K. Broad Bay Harbor K-8 Center, Bay Harbor Islands, FL 33154 (“School”); and

WHEREAS, Provider is willing to provide proof of required insurance, release, and indemnify the Town from any liability related to the conduct of the Services.

NOW, THEREFORE, in exchange for the mutual promises contained herein, the Town agrees as follows:

1. **RECITALS**: The recitals above are incorporated herein and made part of this Agreement.
2. **RELEASE, HOLD HARMLESS AND INDEMNIFICATION**:
 - a. Provider releases the Town, its elected officials, officers, employees, agents, contractors, and volunteers from all costs, damages, and expenses, including any attorneys’ fees arising from any claims, damages, and liabilities by Provider and any third parties arising from, related to, and connected with the Services provided pursuant to this Agreement.
 - b. Provider shall defend, indemnify, and hold harmless the Town, its elected officials, officers, agents, and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, including legal fees and costs, arising out of or related to or in any way connected with the Services provided pursuant to this Agreement in conducting the Services. For other and additional good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Provider, including but not limited to the Provider’s officers, officials, employees, representatives, agents, contractors officers, subcontractors and their officers, and all those others providing the Services, against any and all liability, loss, cost, damages, expenses, claims or actions of whatever type or nature, including but not limited to attorney and expert fees and suit costs, for trials and appeals, that the Town may pay, sustain, or incur arising wholly or in part due to any negligent or deliberate act, error or omission

of Provider in the execution, performance or non-performance or failure to adequately perform the Services and Provider's obligations pursuant to this Agreement. This Section 2 shall survive the termination or expiration of this Agreement.

3. **SOVEREIGN IMMUNITY**: Nothing in this Agreement shall be deemed or otherwise be interpreted as waiving the Town's sovereign immunity protections existing under the laws of the State of Florida, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.
4. **TERMINATION FOR CONVENIENCE**: This Agreement may be terminated by Provider or the Town, without cause or for convenience, by providing written notice thereof by certified mail, return receipt requested, or by hand delivery, or by electronic mail to be effective thirty (30) days from the date of said notice.
5. **ASSIGNMENT**: Provider shall not assign all or any portion of this Agreement, or its obligations under this Agreement, without the prior written consent of the Town Manager, in the Town Manager's sole and absolute discretion except Provider may subcontract to its operators, franchisees, and/or licensees provided they meet all legal requirements to operate as a motor carrier under federal law as well as any state in which it is providing transportation services. Provider shall notify the Town Manager of any proposed assignment, in writing, at least sixty (60) days prior to the proposed effective date of such assignment. If any such assignment is approved by the Town Manager, the assignee shall agree to be bound by all the terms, covenants and obligations of this Agreement required of Provider.
6. **NO DISCRIMINATION/EQUAL OPPORTUNITY EMPLOYER**: Provider agrees to comply with all local and state civil rights ordinances and with Title VI of the Civil Rights Act of 1984, as amended, Title VIII of the Civil Rights Act of 1968, as amended, Title I of the Housing and Community Development Act of 1974, as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11248, as amended by Executive Orders 11375 and 12086. Provider shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital/family status, or status regarding public assistance. Provider shall take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Provider agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. Provider agrees to comply with any Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 708), which prohibits discrimination against the handicapped in any Federally assisted program.

7. **DISCRETION OF TOWN:** Provider agrees to consult, review and receive prior approval on every aspect of the Services with the Town before implementing. Any matter not expressly provided for herein dealing with the Town or decisions of the Town pertaining to this Agreement shall be within the exercise of the reasonable professional discretion of the Town Manager.
8. **INDEPENDENT CONTRACTOR RELATIONSHIP:** Provider and its employees, volunteers, and agents shall be and remain independent from, and not an agent or employee of, the Town with respect to all Services performed and all activities of Provider. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties. Provider, including its employees and agents, is an independent Provider and shall be treated as such for all purposes. Nothing contained in this Agreement, or any action of the parties shall be construed to constitute or to render Provider an employee, partner, agent, shareholder, officer or in any other capacity other than as an independent contractor other than those obligations, which have been or shall have been undertaken by the Town. Provider shall be responsible for all of its own expenses in performing its duties as contemplated under this Agreement. The Town shall not be responsible for any expense incurred by Provider. The Town shall have no duty to withhold any Federal income taxes or pay Social Security taxes and that such obligations shall be that of Provider other than those set forth in this Agreement. Provider shall furnish its own transportation, office and other supplies as it determines necessary in carrying out its duties under this Agreement.
9. **COSTS: FEE/HOURS OF SERVICE:** Provider shall receive only the below compensation or benefits from the Town. Provider shall pay all its own expenses incurred in performing the Services except that the Town shall reimburse Provider for expenses pre-approved in writing by the Town Manager. Town shall pay a daily transportation fee of **\$812.50 per vehicle/day (not to exceed \$135,000.00 in Fiscal Year 2025)** to Provider for Services as provided hereinabove, including up to two (2) pick-up and drop-off stops in Town. Provider shall submit an invoice once monthly to the Town as determined by the Services provided. Provider shall be responsible for the payment of all taxes and withholdings in connection with earnings. Town shall report fees earned by Provider to the Internal Revenue Service on IRS Form 1099, as may be required.
10. **PROOF OF INSURANCE:** Provider shall, at its sole cost and expense, during the period of the Services being conducted under this Agreement, procure and maintain the following minimum insurance coverages to protect the Town and Provider against all losses, claims, damages and liabilities caused by Provider, its employees and agents, as indicated below:
- Comprehensive General Liability (“CGL”) insurance, with minimum limits of One Million Dollars (\$1,000,000) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability, and Two Million Dollars (\$2,000,000) aggregate.

Worker's Compensation for all employees, as required by law, and which policy must include Employer's Liability with minimum limits of \$1,000,000.

Business Automobile Liability which shall include coverage for all business owned and business hired vehicles (if applicable) for minimum limits of not less than One Million Dollars (\$1,000,000) per occurrence, One Million Dollars (\$1,000,000) per accident for bodily injury and One Million Dollars (\$1,000,000) per accident for property damage.

Insurance required of Provider shall be primary to, and not contribute with, any insurance or self-insurance maintained by the Town. Such insurance shall not diminish Provider's indemnification and obligations hereunder. The insurance policy(ies) shall be issued by companies authorized to do business under the laws of the State of Florida and acceptable to the Town with a minimum A.M. Best rating of A-Excellent. Before any Services under this Agreement are performed, and at any time upon request, Provider shall furnish to the Town certificates of insurance evidencing the minimum required coverage and shall be appropriately endorsed for contractual liability, with the Town named as additional insured. All policies shall contain a waiver of subrogation endorsement. All policies and certificates shall be in forms and issued by insurance companies acceptable to the Town. All insurance policies and certificates of insurance shall provide that the policies may not be canceled or altered without thirty (30) days prior written notice to the Town. The Town reserves the right from time to time to change the insurance coverage and limits of liability required to be maintained by Provider hereunder. Provider shall also require and ensure that each of its subcontractors, if any, providing Services hereunder (if any) procures and maintains, until the completion of the Services, insurance of the types and to the limits specified herein. ANY EXCEPTIONS TO THE INSURANCE REQUIREMENTS IN THIS SECTION MUST BE APPROVED IN WRITING BY THE TOWN.

11. **BACKGROUND CHECK:** Provider agrees that based upon the type of Services to be provided, the Agreement is conditioned upon successful completion of current criminal and other background checks, including all the following: drug screening, criminal, credit check, reference check, past employment verification, and proof of education.

Provider shall be responsible for maintaining current background checks on all employees involved in the performance of the Agreement. Background checks must be performed prior to the performance of any Services by the employee under this Agreement. Written verification of all background checks must be provided to the Town Manager prior to the performance of any Services by the Provider and its employees under this Agreement. Provider acknowledges that in the performance of the Services contemplated in this Agreement, Provider and its employees may have contact with children. Accordingly, no employees shall be assigned to perform Services for the Town under this Agreement whose background check reveals behavior which would prohibit such contact. Documentation of required certification and insurance must be provided to the Town prior to commencement of any Services by either Provider or instructors hired by Provider.

12. **TERMS AND CONDITIONS OF THE Agreement:**

- a. **Duration:** October 7, 2024, through June 30, 2025.
- b. **Days/Hours of Operations:** Monday - Friday
- c. **Time of Operation:** 8:00AM – 9:00AM and 3:00PM - 4:00PM
- d. **Anticipated attendance:** Maximum 56 Participants per day. Minimum 10 Participants to run.
- e. **Student to Instructor Ratio:** N/A
- f. **Reservation:** Town reserves the right to move Provider to another location/building in the Town when necessary to run a Town program.
- g. **Town will provide:**
 - i. Production and distribution of marketing materials
 - ii. Bus Stops (Community Garden and Paws Up Dog Park)
- h. **Provider will be responsible for:**
 - i. Bus in compliance with USDOT, FMCSA standards and Driver licensed with FMCSA requirements and/or in satisfaction of intrastate charters with valid medical certification and subject to drug and alcohol testing in compliance with USDOT/FMCSA requirements
 - ii. Proof of all insurance with endorsements as outlined in Section 10 above.
 - iii. Proof of current background checks as required in Section 11 above.
 - iv. Compliance with all applicable local, state and federal laws and regulations, including all current licenses and certifications required to perform the Services.

13. **FORCE MAJEURE:** Neither party shall be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include, but are not limited to, acts of God or the public enemy, terrorism, significant fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or governmental authorities' approval delays which are not caused by any act or omission by Provider. The party whose performance is affected shall request an extension of time to perform its obligations stated in this Agreement by notifying the other party in writing, which it is obligated to do immediately following the event. If the notified party agrees that the event was the cause of the delay, the time to perform the obligations stated in this Agreement shall be extended by the delay caused by the event. If the required notice is not given by the delayed party, no time extension shall be granted.

14. **VENUE:** The validity of this Agreement and the interpretation and performance of all its terms shall be construed and enforced in accordance with the laws of the State of Florida. The venue or location of any action or proceeding commenced under or pursuant to this Agreement shall be in Miami-Dade County, in the State of Florida.

15. PREVAILING PARTY COST AND ATTORNEY'S FEES/WAIVER OF JURY TRIAL:

- a. If either the Town or the Provider is required to enforce the terms of this Agreement by court proceedings or otherwise, whether formal legal action is required or not, the prevailing party shall be entitled to recover from the other party all costs, expenses, and reasonable attorneys' fees in accordance with the laws of the State of Florida.
- b. In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

16. SEVERABILITY: The Parties to this Agreement expressly agree that it is not their intention to violate any public policy, statutory or common law rules, regulations, or decisions of any governmental or regulatory body, If any provision of this Agreement is judicially or administratively interpreted or construed as being in violation of any such policy, rule, regulation, or decision, the provision, sections, sentence, word, clause, or combination thereof causing such violation will be inoperative (and in lieu thereof there will be inserted such provision, section, sentence, word, clause, or combination thereof as may be valid and consistent with the intent of the Parties under this Agreement) and the remainder of this Agreement, as amended, will remain binding upon the Parties, unless the inoperative provision would cause enforcement of the remainder of this Agreement to be inequitable under the circumstances.

17. ENTIRE AGREEMENT: This Agreement shall constitute the entire agreement and understanding of the parties relating to the subject matter hereof superseding all prior communications between the parties whether oral or written, and this Agreement may not be altered, modified or otherwise changed nor may any of the terms hereof be waived, except by a written instrument executed by both parties and approved by the Town Attorney. Nothing in this Agreement is intended or should be construed as in any way creating or establishing the relationship of partners or joint ventures between the Town and Provider.

18. COMPLIANCE WITH LAWS: Provider shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out the Services and while occupying the Town's Facilities. Provider shall obtain all required permits from all jurisdictional agencies, including the Town, to perform any Services. Provider shall conduct its operations so as not to interfere with or close any other activities scheduled at Town Facilities, without the written consent of the Town or governing jurisdiction and in compliance with all local, state, and federal regulations, certifications, permits, and requirements.

19. Ownership and Access to Records and Audits.

- a. Provider agrees to keep and maintain public records in Provider's possession or control in connection with Provider's performance under this Agreement. The Town Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have

access to and the right to examine and audit any records of the Provider involving transactions related to this Agreement. Provider additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Provider shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Town.

- b. Upon request from the Town's custodian of public records, Provider shall provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.
- c. Unless otherwise provided by law, all records, including but not limited to reports, other data and documents provided or created in connection with this Agreement are and shall remain the property of the Town.
- d. Upon completion of this Agreement or in the event of termination by either party, all public records relating to the Agreement in the possession of the Provider shall be delivered by the Provider to the Town Manager, at no cost to the Town, within seven (7) days. All such records stored electronically by Provider shall be delivered to the Town in a format that is compatible with the Town's information technology systems. Once the public records have been delivered, upon completion or termination of this Agreement, the Provider shall destroy all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- e. Any compensation due to Provider shall be withheld until all records are received as provided herein.
- f. Provider's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Town.

g. Notice Pursuant to Section 119.0701(2)(a), Florida Statutes.

IF THE PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.

Custodian of Records: Town Clerk
Mailing address: 9293 Harding Avenue
Surfside, FL 33154
Telephone number: 305-861-4863
Email: smccready@townofsurfsidefl.gov

The undersigned have executed this Agreement on the ____ day of September 2024.

TOWN OF SURFSIDE, FL,
A Florida Municipal Corporation

Peter Jankowski
Town Manager
Town of Surfside
9293 Harding Avenue
Surfside, Florida 33154
Miami-Dade: (305) 861-4863

Attest:

Sandra McCready, MMC, Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

Mark Blumstein, Town Attorney

**CHARTER UP, LLC, a Georgia Limited
Liability Company**

Merrick Levy
6595 Roswell Road G291
Atlanta, GA 30328