



Board Meeting Date: 5/15/2023

Title: Que Tal Transportation Facilitation Agreement

Type: Consent

Presenter(s): Mert Woodard, Director, Business Services

Description: Some students of the District participate in programming offered by Que Tal. The District has historically agreed to help facilitate the transportation of students to after school Que Tal programming, ensuring that services do not interfere with the District's transportation operations. Facilitation includes the staging of vehicles utilized by Que Tal and the timing of their arrival and departure from District facilities.

Recommendation: The District administration recommends renewing the agreement with Que Tal for the 2023-2023 school year.

Desired Outcomes from the Board: N/A

Attachments:

1. Transportation Facilitation Agreement

TRANSPORTATION FACILITATION AGREEMENT

This Agreement is made and entered into by and between Independent School District No. 273, Edina Public Schools (the “District”), and Que Tal Spanish Language Program (“Que Tal”). The District and Que Tal are hereinafter referred to collectively as the “parties” and individually as a “party.”

WHEREAS, Que Tal is a private organization that is not affiliated with the District, but which provides services for some District students pursuant to contracts or agreements with the parents of those individual students; and

WHEREAS, the District is not responsible to provide transportation for its students to or from a private organization; and

WHEREAS, the District understands that Que Tal is entering into a transportation services agreement with Metropolitan Transportation Network (“MTN”), to provide such transportation services to Que Tal’s students; and

WHEREAS, the District is not a party to that agreement between Que Tal and MTN, but the Parties would like to collaborate to ensure that the transportation being provided by Que Tal runs smoothly and efficiently for students, and does not interfere with the District’s transportation of its students.

NOW, THEREFORE, IN CONSIDERATION OF the mutual promises contained in the Agreement and other valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Term.** The term of this Agreement shall begin on July 1, 2023, and automatically end on June 30, 2024. Either party may terminate this Agreement, with or without cause and without penalty, by providing written notice of termination to the other party at least thirty (30) calendar days before the effective date of termination. This Agreement shall not automatically renew. The district will begin discussions in December with Que Tal on possible renewal for the upcoming school year with the intent of a recommendation to the School Board approval in January.
2. **Transportation.** Que Tal is solely responsible for transporting all of the students in its programs from their designated elementary schools within the District to Que Tal after school, to the extent these students choose to engage in Que Tal’s services. The District is only responsible for picking up and dropping off individual students at their homes consistent with District Policy, and is not responsible for providing transportation to or from independently owned or operated before or after-school programs, such as Que Tal. The District shall have no liability or responsibility related to the transportation of these students to Que Tal or the transportation agreement between Que Tal and MTN beyond those specifically outlined in this Agreement. Que Tal shall be solely liable and responsible for ensuring the safe and legal transportation of its students, and for ensuring that the transportation is provided in accordance with all state and federal regulations for

such transportation of students. Que Tal shall be solely responsible for handling student discipline or incidents that occur on its transportation, and the District shall have no obligation or responsibility for responding to any disciplinary incidents or allegations of wrongdoing against students on said transportation.

3. **Facilitation of Services.** The District agrees to help facilitate the transportation of Que Tal students with MTN to ensure that the services do not interfere with the general transportation provided by the District to its students. This facilitation shall include positioning and the timing of the arrival and departure of the Que Tal buses at individual sites. The District will not be a party to the agreement between Que Tal and MTN, nor is it undertaking any role or responsibilities related to the services outlined therein beyond merely facilitating the provision of said services. The District will provide Que Tal with a school calendar that outlines the days on which students will need to be picked up, as well as any early release days. The District will also provide Que Tal with the normal release times for each District school. The District will make effort to communicate early dismissals to the Que Tal representative. However, the District is under no obligation to provide additional notice to Que Tal parents of such an early dismissal or changes in schedule.
4. **Pick Up and Supervision.** Que Tal students receiving transportation pursuant to the agreement between Que Tal and MTN shall have up to a thirteen (13) minute window of time in which they shall enter the bus to transport them to Que Tal. The thirteen-minute window of time will begin at 2:32 p.m. when the buses leave Highlands elementary school and will end no later than 2:45 p.m. During this thirteen-minute window, the District agrees to provide supervision for the students to the same extent it provides supervision to any of its students who are exiting the school and entering buses. The District is not responsible to provide supervision or any other services to these students after this thirteen minute window or 2:45 p.m., and Que Tal will be solely responsible for the students and their safety, supervision, and well-being after 2:45 p.m. The District agrees to provide supervision beyond the thirteen minute window only in special circumstances, such as in the rare occurrence of inclement weather or a bus breakdown that causes the Que Tal bus to miss the thirteen minute window. If said circumstances cause the District to provide supervision for the students beyond the thirteen minute window more than three (3) times during the term of this Agreement, the Parties will meet and negotiate in good faith to determine a solution for this issue, which may include Que Tal hiring staff to provide the supervision beyond the thirteen minute window.
5. **Administrative Fee.** The District will charge an Administrative Fee to Que Tal of \$500.00. This Administrative Fee shall be due to the district on October 1, 2023. An invoice will be considered “past due” thirty-one (31) days after October 1, 2023. If payment is received after the past due date, a late fee of \$25 will charged each 30 days that the payment is not received. Que Tal will pay all necessary costs, including reasonable attorney fees, for collecting amounts over which no good faith dispute exists and which are more than sixty (60) days past due. The District reserves the right, at its option, to immediately terminate this Agreement if it does not receive payment within thirty (30) calendar days of the due date. Such termination does not change the

obligation of Que Tal to pay any outstanding invoices or costs for services that have been rendered to that point.

6. **List of Students.** Que Tal must provide the District with a List of Students who will utilize Que Tal transportation pursuant to this Agreement no later than August 1, 2023. This list must include each student's name, address, and designated elementary school. Any additional students who enroll in Que Tal or changes to the List of Students after August 1, 2023, must be delivered to the District as soon as practicable. No students will be allowed to utilize Que Tal transportation unless or until the District receives such official notice from Que Tal.
7. **Notice to and Permission from Parents.** Que Tal must provide notice to the parents of its students that Que Tal, and not the District, is responsible for the transportation of the students pursuant to this Agreement. A copy of said notice must be provided to the District prior to the provision of services under this Agreement. Similarly, Que Tal must provide the District with signed permission forms from the parents of each student to be transported by Que Tal to ensure that the District is aware of and has received parental permission to release the students to Que Tal staff at the end of the school day.
8. **Relationship of the Parties.** The District shall not be considered a partner of Que Tal, nor shall it be considered a fiscal agent or otherwise be responsible for payments or responsibilities of Que Tal. Nothing in this Agreement may be construed to create an employment relationship, a partnership, a joint venture, or a joint enterprise between the Parties and/or the employees of the Parties. The Parties are not authorized and shall have no power under this Agreement to take any action that could legally bind the other Party. It is the intent of the Parties that the relationship created between the Parties is that of independent contractors and is governed by this Agreement.
9. **Equal Employment Opportunity.** Que Tal agrees to provide equal opportunities to all employees and applicants for employment in accordance with applicable laws, directives and regulations of federal, State, and/or local governing bodies. No person shall, on the grounds of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, familial status, disability, sexual orientation, or age be excluded from full employment rights in, participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, service, or activity under the provisions of any or all applicable Federal and state law including, but not limited to, the Civil Rights Act of 1964 and Minnesota Statutes Chapter 363A.
10. **Compliance with Federal and State Laws and District Policies.** When providing services outlined in this Agreement, Que Tal must comply with all federal laws and all Minnesota laws. Such laws specifically include, but are not limited to, the U.S. Constitution, the Minnesota Constitution, the Family Educational Rights and Privacy Act, the Minnesota Government Data Practices Act, the Individuals with Disabilities Education Act, Minnesota special education laws, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and the Minnesota Human Rights Act. Assigned employees and/or contractor of Que Tal must also comply with all District policies, a

copy of which is available on the district website at www.edinaschools.org.

11. **Data Privacy.** All data collected, created, received, maintained, or disseminated in any form, or for any purposes, by Que Tal because of this Agreement are governed by the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 (as amended) (“MGDPA”), the Minnesota Rules promulgated pursuant to the MGDPA, the Family Educational Rights and Privacy Act (as amended) (“FERPA”), its implementing regulations, and/or other applicable State and federal laws. No educational data, as defined by the MGDPA, other nonpublic, private, or confidential data, as defined by the MGDPA, or education record, as defined by the FERPA, that was collected, created, received, maintained, or disseminated in any form, or for any purposes, by Que Tal because of this Agreement may be released by Que Tal, or any of the Que Tal’s employees, owners, agents, or representatives to any third party without the express written consent of the District’s Superintendent. This provision specifically includes, but is not limited to, any media relations. Que Tal acknowledges that the District is bound by FERPA and the MGDPA, and thus, may not provide private educational data on a student to Que Tal absent a FERPA and MGDPA-compliant permission form from a Parent.
12. **Criminal Background Check.** At its own expense, and consistent with Minnesota Statutes section 123B.03, subdivision 1(c), Que Tal must conduct a criminal background check, or require that such a check be conducted, on all employees of Que Tal or contractors providing transportation services on behalf of Que Tal before assigning the employee and/or contractor to provide any transportation services under this Agreement, or the agreement between Que Tal and MTN. If, at any time, Que Tal discovers that employees and/or contractors of Que Tal that are assigned to work with District students have been convicted of a crime, Que Tal must notify the District. The District will make a determination of whether the conviction renders the assigned employee and/or contractor unfit to continue to provide services pursuant to this Agreement, subject to any limitations under state or federal law.
13. **Indemnification.** Que Tal agrees to defend, indemnify, and hold harmless the District, its employees, officers, directors, insurers, attorneys, and agents against any and all claims, demands, suits, costs, judgments, or other forms of liability, actual or claimed, including attorneys’ fees and punitive damages, for injury to property or persons, arising out of any actions or omissions by Que Tal or Que Tal’s employees, officers, directors, agents, or independent contractors. The District shall have the right to choose its own legal counsel and seek reimbursement from Que Tal or its insurer for the cost of defending itself in any legal action or administrative proceeding identified in this paragraph. Que Tal’s duty to defend, indemnify, and hold the District harmless survives the expiration and termination of this Agreement. The District will be legally or financially responsible for any and all liability arising out of any actions or omissions by the District’s employees.
14. **Notices.** Any notice given under this Agreement is sufficient if it is in writing, legible, and delivered to the other party by hand, courier, registered mail, certified mail, regular mail, or electronic mail at the applicable address listed below for the party. Notice is

effective upon receipt. If notice is provided by registered, certified, or regular mail, it is effective upon receipt or three days after the date it was postmarked, whichever is earlier. Notices, including bills and payments, must be sent to the following:

Que Tal Representative

Franciso Peschard, Executive Director
P.O. Box 186
Hamel, MN 55340

District Representative

Dr. Stacie Stanley, Superintendent
Edina Public Schools #273
5701 Normandale Rd
Edina, MN 55424

francisco.peschard@quetalwayzata.org
Ph: 763-208-3231

superintendent@edinaschools.org
Ph: 952-848-4000

15. **Third Parties.** This Agreement does not create any rights, claims or benefits to any person that is not a party hereto, nor does it create or establish any third-party beneficiary.
16. **Insurance.** Que Tal, at its expense and for the duration of this Agreement, shall procure and maintain in full force and effect Commercial General Liability Insurance with minimum limits of \$1,000,000 per occurrence and \$2,000,000 annual aggregate. This policy shall, at a minimum, cover liability arising out of or related to its services and transportation provided under this Agreement. At the District's request, Que Tal will provide the District with proof of the insurance policies required by this Paragraph. An umbrella or excess liability policy may be used in conjunction with primary coverage limits to meet the minimum Commercial General Liability Insurance limit requirements.
17. **Assignment.** Neither party may assign any rights or duties under this Agreement without the written consent of the other party.
18. **Waiver and Enforcement.** The failure to insist on compliance with any term, covenant, or condition contained in this Agreement shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power contained in this Agreement at any time be deemed a waiver or relinquishment of any right or power at any other time. Each Party shall be responsible for its own costs and expenses associated with this Agreement and any related matters, including enforcement of this Agreement.
19. **Choice of Law and Forum.** This Agreement shall be governed by the laws of the State of Minnesota. Venue for all legal proceedings arising out of this Agreement, or breach of this Agreement, must be in Minnesota state or federal court.
20. **Equal Drafting and Severability.** In the event that either Party asserts that a provision of this Agreement is ambiguous, this Agreement must be construed to have been drafted equally by the parties. If any provision of this Agreement is held unenforceable by a court of law, the remaining portions of the Agreement will remain in full force and effect.

unless the remaining portions would not serve the original purpose of the Agreement.

21. **Entire Agreement.** The terms of this Agreement constitute the entire agreement of the parties. Except as stated in this Agreement, no party has relied on any statement, promise, inducement, or representation. This Agreement supersedes any and all prior statements and agreements between the Parties relating to the subject matter of this Agreement. No variation, modification, or waiver of any provision of this Agreement will be valid unless both parties agree to the change in writing, as evidenced by a duly signed addendum to this Agreement. A copy of this Agreement will have the same legal effect as the original.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the dates shown below. By signing below each party specifically acknowledges that it has read this Agreement, that it has been advised to review the terms of this Agreement with legal counsel, that it has received all necessary approvals from governing bodies to enter into such Agreement, and that it agrees to be legally bound by all terms of the Agreement.

Que Tal

Independent School District No. 273, Edina

By: _____
Its: President

By: _____
School Board Chair

Date: _____

Date: _____

By: _____
School Board Clerk

Date: _____

RASW: 134032