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OAKLAND UNIFIED  
SCHOOL DISTRICT

Community Schools, Thriving Students

# Memo

**To** Board of Education  
**From** Jacqueline Minor, General Counsel   
**Board Meeting Date** August 13, 2014  
**Subject** **Agreement – Michael’s Transportation**

**Action Requested** Approval by the Board of Education of the AGREEMENT with Michael’s Transportation to provide School Pupil Activity Bus (SPAB) transportation services with seat belts for District school sites and programs from August 15, 2014 through June 30, 2017.

**Background**  
*A one paragraph explanation of the the MOU.*

In 2013, the District issued an RFP and developed a pre-qualified pool of School Pupil Activity Bus (SPAB) providers to meet the District’s school site transportation needs, such as field trips, including for local/short trips and longer distance/overnight trips, entering into Board approved Agreements with each selected SPAB provider. Subsequently, some parents raised concerns that some buses dispatched by vendors on the District’s approved pool of SPAB providers do not have seat belts. Though this is not currently required by law, staff prepared and issued RFP 2014-6-1-JPSSB on June 5, 2014 for School Pupil Activity Bus (“SPAB”) Vehicles that have seatbelts. The purpose of the RFP was to establish a prequalified list of SPAB providers which OUSD schools would be authorized to use which guarantee to dispatch SPAB vehicles with seatbelts to OUSD schools that request them. The buses will be used by District school sites for both local/short trips and longer distance/overnight trips.

**Discussion**  
*One paragraph summary of the MOU.*

The District has initially selected three SPAB vendors which guarantee to dispatch buses with seatbelts to school sites which request them. The three vendors are Michael’s Transportation, First Student and Charter Pros. The District will enter into contracts with each of these vendors authorizing sites that need bus transportation with seat belts to select form the preapproved list. The initial term of the Agreement is August 15, 2014 to June 30, 2017, with an option to extend for up to two (2) additional one year periods based on satisfactory service/performance.

**Recommendation** Approval by the Board of Education of the AGREEMENT with Michael’s Transportation to provide School Pupil Activity Bus (SPAB) transportation services with seat belts for District school sites and programs August 15, 2014 through June 30, 2017.

**Fiscal Impact** SPAB transportation costs are funded by each site using a variety of funds.

**Attachments** Agreement with Michael’s Transportation

**AGREEMENT FOR SCHOOL PUPIL ACTIVITY BUS  
TRANSPORTATION SERVICES WITH SEATBELTS**

**OAKLAND UNIFIED SCHOOL DISTRICT  
AND  
MICHAEL'S TRANSPORTATION SERVICE, INC.**

**Oakland Unified School District (the "District" or "OUSD") issued RFP 2014-6-1-JPSSB for School Pupil Activity Bus ("SPAB") vehicles that have seatbelts on June 5,, 2014. The purpose of the RFP is to establish a prequalified list of SPAB providers that OUSD schools may use which guarantee to dispatch SPAB vehicles with seatbelts. Three providers responded to the RFP. The responses were evaluated by the District's Evaluation Committee and Michael's Transportation Services, Inc. was one of the vendor's deemed responsive. The District therefore enters into the following agreement.**

THIS AGREEMENT ("Agreement") is entered into as of August 15, 2014 between Michael's Transportation Service, Inc. ("Contractor") and Oakland Unified School District, for Contractor to provide School Pupil Activity Bus transportation vehicles with seatbelts for District school sites and programs when a school site specifically requests that the dispatched vehicles have seatbelts.

NOW THEREFORE, for a valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**A. Term and Termination**

The term of this Agreement shall commence on August 15, 2014 and shall terminate June 30, 2017. After the initial term, the Agreement may be extended for two additional one year terms upon mutual agreement of both parties. The Agreement may be terminated by Contractor at any time with 90 days prior written notice. OUSD may at any time terminate this Agreement upon 30 days prior written notice to Contractor. In addition, OUSD may terminate this Agreement for cause should Contractor fail to perform any part of this Agreement.

**B. Vehicles**

1. Vehicles Upon Request Must Have Seatbelts:

The Contractor agrees to provide such vehicles with seatbelts ("Vehicles") as may be necessary to lawfully perform the Services and which are SPAB certified or exceed SPAB certification requirements. Contractor agrees to dispatch only buses with seatbelts to District schools that request seat belts. The buses will be used by District school sites for both local/short trips and longer distance/overnight trips. The District will distribute an approved list of SPAB providers that have seatbelts in buses. District school sites and school programs that need bus transportation will select from the preapproved list of SPAB providers with buses with seatbelts. All such Vehicles shall fully comply with all applicable laws and regulations. The Contractor shall be solely responsible for all Vehicles used in transporting students.

2. District May Inspect:

The Contractor agrees to permit the District's duly authorized agents, to inspect said bus(es) at any reasonable time, during normal business hours, subject to coordination with Contractor relative to location, and the maintenance schedules of the bus(es). The time and place of such inspection shall be as mutually agreed.

3. Condition of Vehicles:

Upon arrival for scheduled bus service:

- Bus(es) shall be clean and in good working order.
  - Excessively ripped or stained seat cushions will not be deemed acceptable.
  - Rest rooms will be clean, stocked and functioning.
  - Floors will be vacuumed and no trash is to be found (e.g., storage area or seatback magazine holders);
  - Bus environment and Contractor staff shall be appropriate for the transport of students;
  - Buses shall have seatbelts for all passengers
- Should substitute bus equipment be required, it must be equivalent to the required capacity and equipment and be able to meet the requirements of the scheduled trip. When and if delays or equipment substitutions are necessary due to mechanical problems of the bus, the Contractor shall make every immediate effort to remedy the situation and communicate the remedy to the trip contact person, principal, as well as to The District's Risk Management department.

**C. Contractor's Personnel**

1. The Contractor or subcontracted drivers must:

- a. Have all applicable state vehicle permits and licensing.
- b. Be licensed in accordance with all applicable federal and state regulations and policies.
- c. Have a good driving record as verified by the state and other applicable regulatory bodies.
  - (i) The Contractor shall verify each driving record upon initiation of service and then every six (6) months thereafter. Such records shall be placed into the driver's file and must be accessible upon request.
  - (ii) The Contractor shall not use drivers to provide services who have accrued more than three (3) moving violations for any reason in the last two (2) years, and shall not use drivers who have had a DUI, DWI, or controlled substance-related violation.
- d. Drive in a careful and prudent manner, exercising at all times the highest degree of care, and observing and complying with state mandated rules of the road and traffic regulations.
- e. Abstain from using tobacco products while students are present in the vehicle or on school grounds. Drivers as well as their vehicles must not smell of smoke or any other offensive odor.

- f. Be able to effectively communicate and provide route and schedule assurance through proficiency with following driving directions, map reading and route planning tools currently available such as Global Positioning Satellite (GPS) or similar prior to the commencement of the trip and during the trip;
  - g. Not be dependent upon customers for trip directions and/or navigation;
  - h. Demonstrate exemplary customer service;
  - i. Not demonstrate any unprofessional conduct, use of inappropriate language, intimidating behavior, and/or personal or sexual harassment. Contractor is referred to the District's sexual harassment policy, which is incorporated into any contract by this reference.
  - j. Contractor shall take reasonable steps to prevent its employees from exposing any pupil to impropriety of word or conduct. Contractor shall **not** permit its drivers to smoke on the vehicle at any time students are on the vehicle. Contractor shall require that drivers comply with all safety laws and regulations, including but not limited to the prohibition against driving under the influence of drugs or alcohol. Such prohibition shall extend to the use of prescription and non-prescription drugs that impair the safe operation of the vehicle.
  - k. Contractor shall have standards addressing professional dress and hygiene – code for its drivers. Professional dress includes clean clothes (pants, skirts, and shirts with sleeves and collars). The drivers must not wear attire that might generally be considered offensive. Hygiene includes clean shaven, groomed hair (including facial) and refraining from the use of heavy, offensive colognes. Drivers must also not display offensive tattoos and piercings.
  - l. Contractor shall ensure that all drivers display their current driver's license upon request of a school official or the District authorized individual.
2. By signing this Agreement, Contractor certifies compliance with the following requirements:
- a. Tuberculosis Screening: Contractor is required to screen employees who will be working at OUSD sites for more than six hours. Contractor affirms that each employee has current proof of negative TB testing on file and TB results are monitored.
  - b. Fingerprinting of Employees and Agents: The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Contractor's services under this Agreement and Contractor certifies its compliance with these provisions as follows: "Contractor certifies that Contractor has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Contractor's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by OUSD, or acting as independent contractors of Contractor, who may have contact with OUSD pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. Contractor further



certifies that it has received and reviewed fingerprint results for each of its Employees and Contractor has requested and reviews subsequent arrest records for all Employees who may come into contact with OUSD pupils in providing services to the District under this Agreement.

3. The Contractor shall maintain records on all employees, drivers or sub-Contractors that demonstrate that all requirements of this Agreement have been met. The file shall include but not necessarily be limited to applicable current copies of the following:
  - a. Department of Motor Vehicle Record's Check – historical driving record.
  - b. Department of Justice (DOJ) background checks that meet or exceed state laws.
  - c. Federal Bureau of Investigation (FBI) background check, to include Child Index.
  - d. Verification of enrollment in an on-going drug/alcohol testing at random, and "for cause" drug/alcohol testing as deemed appropriate for drivers authorized to perform services for this contract. All drivers must abstain from the use of alcohol and drugs in the performance of their duties under this contract. In addition, drivers will not be under the influence of alcohol or drugs during the performance of their duties under this contract. The Contractor shall be liable for all Drug and Alcohol Testing. No driver may be utilized for this contract that fails a drug and/or alcohol test.
  - e. Verification of a negative test result for Tuberculosis (TB testing).
  - f. Current driver's license and certifications appropriate for driving the vehicle type that corresponds with the assignment, and include SPAB or higher certification.
  - g. Training records
4. Contractor shall be responsible for hiring and discharging personnel employed by Contractor; provided, however, that the District shall have the right to require Contractor to remove from service any employee who, in the District's sole discretion, is deemed unsuitable for the performance of transportation services for the District. The District may make a request in writing and state the reasons therefore. Reasons may include failure of any driver to operate a vehicle in a safe manner, in accordance with the laws of the state of California and the ordinances of any city in which such vehicle operates, or a finding by the District that the personal habits and/or conduct of an employee are detrimental to the best interests of the District or to the welfare and bests interest of the students being transported.

#### **D. Accident & Operational Reports**

All accidents or incidents involving the Contractor's equipment, personnel, or students being transported while operating for the District shall be reported in writing to the District within two (2) working days. A preliminary oral report shall be made to the principal of the school which booked the trip within thirty (30) minutes following the accident or incident, and shall include whether any fatalities or injuries occurred and a general description of property damage and any law enforcement response. Contractor shall also notify the District's Risk Manager via email to [Jerry.Johnson@ousd.k12.ca.us](mailto:Jerry.Johnson@ousd.k12.ca.us) and/or phone at (510) 879-1612 and the District's Claims Manager via email to [Janette.Puccetti@ousd.k12.ca.us](mailto:Janette.Puccetti@ousd.k12.ca.us) and/or phone at (510) 879-8266 of the accident or incident within 24 hours. Follow-up accident written reports shall be made

periodically until all the pertinent facts have been reported to the District. A legible copy of both the responding police agency and the Contractor's accident investigator's final report shall be submitted to the District within ten (10) working days following the accident or incident or when such report is completed, whichever occurs first. Finally, the Contractor's internal communication problems shall not relieve the Contractor of its obligation regarding an accident/incident as may be required by the California Highway Patrol's Passenger Transportation Safety Handbook.

The Contractor shall provide any and all operational records the District deems necessary within ten (10) business days of the District's request.

**E. Customer Service**

1. Contractor will provide a customer service single point of contact 24x7x365 for the District users to contact during bus trips should issues of scheduling, service, quality, bus breakdowns or other issues arise and require immediate remedy by the Contractor.
2. Contractor shall provide training to their personnel in how to provide exemplary customer service and shall provide reasonable remedies/compensation should customer service levels fall below these standards.

**F. Complaints**

Contractor shall keep complete and accurate records of all written and oral complaints received regarding the Contractor's services for the District from all sources including, but not limited to: District employees or agents, parents/guardians, students, school-related service providers, private schools, state or federal agencies and other school districts. Contractor shall provide to the District a written monthly report listing said complaints and actions taken by the Contractor, if any, to resolve each complaint.

**G. Assignment of Contractor's Rights**

Except as it relates to the hiring of independent Contractor drivers, the Contractor shall have no right to assign its rights or obligations under this Agreement, it being understood that this is a personal services agreement.

**H. Indemnity (Hold Harmless) of the District**

Contractor shall indemnify, hold harmless and defend OUSD and each of its officers, officials, employees, volunteers and agents from any loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by OUSD, Contractor or any other person and from any claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. Contractor's obligations under the preceding sentence shall apply jointly and severally regardless of whether OUSD or any of its officers, officials, employees, volunteers or agents are actively or passively negligent, but shall not apply to any loss or liability, fines, penalties, forfeitures, costs or damages caused solely by the active negligence or by the willful misconduct of OUSD. If Contractor should subcontract all or any portion of the work or activities to be performed under this MOU, Contractor shall require each subcontractor to

indemnify, hold harmless and defend OUSD, its officers, officials, employees, volunteers or agents in accordance with the terms of the preceding paragraph. Contractor also agrees to hold harmless, indemnify, and defend the District and its elective board, officers, agents, and employees from any and all claims or losses incurred by any supplier, Contractor, or subcontractor furnishing work, services, or materials to Contractor in connection with the performance of this Agreement. This provision survives termination of this Agreement.

**I. Independent Contractor**

In providing the Services, the Contractor shall be and act as an independent Contractor in all respects and shall not, for any purpose hereunder, be or act as an employee or agent of the District. Nothing contained in this Agreement shall be deemed to create a partnership or joint venture between either of the parties to this Agreement with each other. The Contractor understands and agrees that as an independent Contractor, it will not be eligible to participate in any benefits or privileges given or extended by the District to its employees. The Contractor shall be solely responsible for the payment when due to appropriate taxing authorities of all federal and state income taxes and related obligations of any nature whatsoever on any consideration paid pursuant to this Agreement, as well as any interest, penalties or other sums due thereon and shall indemnify, defend and hold the District, its Board Members, Officers, employees and agents free and harmless therefrom.

**J. Notices**

All notices or other communication required or permitted hereunder shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by registered or certified mail, postage prepaid, return receipt requested, or by facsimile or email transmission followed by delivery of a "hard" copy, and shall be deemed received upon the date of receipt thereof.

The District shall designate agents who shall be responsible for coordination of the student transportation requirements furnished under this Agreement and who shall be the District's liaison to Contractor. The District will designate a crisis management contact person for emergency contact with Contractor. By August 30<sup>th</sup> of each calendar year, the District shall inform Contractor of the name(s), contact telephone number(s) and address(es) of such management personnel.

Contractor: April Brown  
Michael's Transportation  
140 Yolano Dr  
Vallejo, CA 94589  
ph: (707) 674-6013  
fax: (707) 643-1906  
[Aprilb@bustransportation.com](mailto:Aprilb@bustransportation.com)

The District: Jerry Johnson, Risk Manager  
Risk Management  
1000 Broadway, Suite 398  
Oakland, CA 94607  
Ph: (510) 879-1612  
[Jerry.Johnson@ousd.k12.ca.us](mailto:Jerry.Johnson@ousd.k12.ca.us)

Janette Puccetti, Claims Manager  
Office of the General Counsel  
1000 Broadway, Suite 398  
Oakland, CA 94607  
Ph: (510) 879-8266  
Fax: (510) 879-4046

**K. Waivers**

The waiver by each party of a breach or violation of any provisions of this agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of this agreement.

**L. Force Majeure**

Contractor shall be excused from performance hereunder during the time and to the extent that it is prevented from performing in the customary manner by an act of God, fire, flood, war, riot, civil disturbance, terrorism, epidemic, quarantine, strike, lockout, labor dispute, oil or fuel shortage, freight embargo, rationing or unavailability of materials or products, loss of transportation facilities by the Government, or any other occurrence which is beyond the control of the Contractor, when satisfactory evidence thereof is presented to the District.

**M. Compliance with the Law**

Notwithstanding any contrary provision in this Agreement, Contractor shall comply with federal, state and local laws, rules and regulations applicable to Contractor's performance under the contract, including but not limited to: licensing, employment and purchasing practices, and wages, hours and conditions of employment, including non-discrimination.

**N. Dispute Resolution**

The parties agree to meet and confer in good faith on all matters and disputes under this Agreement. If a dispute is not resolved under the foregoing, and one party informs the other in writing that it reasonably believes that the difference between the parties are not likely to be reconciled through further negotiation, then the parties agree to submit such dispute to non-binding arbitration under the Commercial Rules of American Arbitration Association. Such arbitration will be held as promptly as possible in Alameda County, California and will be conducted before a panel of three (3) members. The District and the Contractor shall each select one arbitrator, and the third arbitrator shall be selected by agreement of the other two arbitrators so chosen. All costs and expenses associated with the arbitration shall be borne entirely by the non-prevailing party.

**O. Laws Governing Contract**

This contract shall be in accordance with the laws of the State of California. The parties stipulate that this contract was entered into in the County of Alameda, in the State of California. The parties further stipulate that the County of Alameda, California, is the only appropriate forum for any litigation resulting from a breach hereof or any questions risen here from.



**P. No Rights in Third Parties**

The Agreement does not create any rights in or inure to the benefit of any third party.

**Q. Submittal of Documents**

Contractor shall not commence the Work under this Contract until Contractor has submitted and OUSD has approved evidence of Insurance Certificates and Endorsements.

**R. Contractors Insurance**

1. Commercial General Liability Insurance: The following insurance is required:
  - a. If Contractor employs any person to perform work in connection with this Agreement, Contractor shall procure and maintain at all times during the performance of such work, Workers' Compensation Insurance in conformance with the laws of the State of California and Federal laws when applicable. Employers' Liability Insurance shall not be less than One Million Dollars (\$1,000,000) per accident or disease.
  - b. Contractor is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and will comply with such provisions before commencing the performance of the Work of this Contract.
2. Contractor shall maintain Commercial General Liability insurance, including automobile coverage with limits of Five Million Dollars (\$5,000,000) per occurrence and which shall include coverage for corporal punishment, sexual misconduct, harassment, bodily injury and property damage.
  - a. The coverage shall be primary as to the District and shall name the District as an additional insured. Evidence of insurance and additional insured endorsement must be attached.
  - b. Endorsement of the District as an additional insured shall not affect the District's rights to any claim, demand, suit or judgment made, brought or recovered against Contractor. The policy shall protect Contractor and the District in the same manner as though each were separately issued. Nothing in said policy shall operate to increase the Insurer's liability as set forth in the policy beyond the amount or amounts shown or to which the Insurer would have been liable if only one interest were named as an insured.

**S. Licenses and Permits**

Contractor shall obtain and keep in force all licenses, permits, and certificates necessary for the performance of this Agreement.

**T. Non-Discrimination**

Consistent with the policy of OUSD in connection with all work performed under Contracts, Contractor shall not engage in unlawful discrimination in employment on the basis of actual or

perceived race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex or sexual orientation. Contractor agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and OUSD policy. In addition, Contractor agrees to require like compliance by all its subcontractor(s). Contractor agrees to comply with applicable Federal and California laws prohibiting discrimination against students.

In addition, Contractor agrees to require like compliance by all its subcontractor(s).

**U. Drug-Free / Smoke Free Policy**

No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, Contractors, or subcontractors are to use controlled substances, alcohol or tobacco on these sites.

**V. Severability**

If any provisions, or portions of any provisions, of this contract are held invalid, illegal, or unenforceable, they shall be severed from the contract and the remaining provisions shall be valid and enforceable.

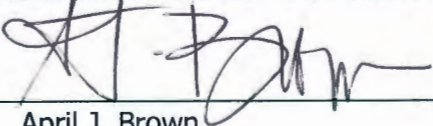
**W. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion**

The District certifies to the best of its knowledge and belief, that it and its officials are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov>).

**X. Entire Agreement**

This Agreement and the attached proposal constitute the entire Agreement between the parties with respect to the provision of the Service and may not be amended except by a writing signed by each of the parties.

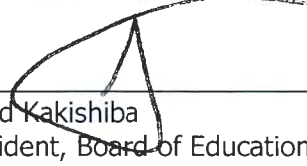
**MICHAEL'S TRANSPORTATION SERVICE, INC.**

  
\_\_\_\_\_  
April J. Brown  
Chief Operating Officer

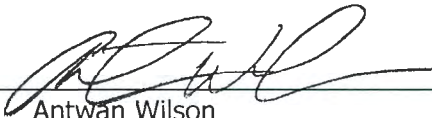
Date: 7/15/14

(Signatures continued on next page)

**OAKLAND UNIFIED SCHOOL DISTRICT**

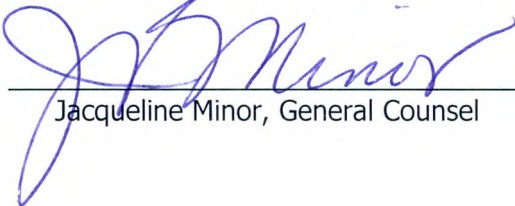
  
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David Kakishiba  
President, Board of Education

Date: 8-14-14

  
\_\_\_\_\_  
Antwan Wilson  
Superintendent and Secretary  
Board of Education

Date: 8-14-14

Approved as to form and content:

  
\_\_\_\_\_  
Jacqueline Minor, General Counsel

Date: 7/21/14

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