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OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education

From Marion McWilliams

Board Meeting Date September 13, 2017

Subject Agreement between Oakland Unified School and Michael's Transportation Service, Inc.

Action Approval of Agreement between the District and Michael's Transportation Service, Inc.

Background Transportation services vendor for Special Education students as provided in the students' IEP's or alternative arrangements with the family for the period of August 21, 2017 through August 20, 2018.

Fiscal Impact Not to exceed \$400,000

Attachment Agreement between Oakland Unified School District Michael's Transportation Service, Inc.



CONTRACT JUSTIFICATION FORM

**This Form Shall Be Submitted to the Board Office
With *Every* Consent Agenda Contract.**

Legislative File ID No. 17-1795

Department: Office of the General Counsel

Vendor Name: Michael's Transportation

Contract Term: Start Date: August 21, 2017 End Date: August 20, 2018

Annual Cost: \$ 400,000.00

Approved by: General Counsel

Is Vendor a local Oakland business? Yes No

Why was this Vendor selected?

This vendor was selected due to providing similar services and pricing as existing special education transportation vendors Friendly Transportation and First American.

Summarize the services this Vendor will be providing.

Vendor will provide transportation services to special education students as provided in the student's IEP or alternative arrangements with the family.

Was this contract competitively bid? Yes No

If No, answer the following:

1) How did you determine the price is competitive?

In 2014, the District solicited proposals for Special Education transportation services (Bid #13-14/07). The successful bidder, First Student, is currently unable to serve all District needs. This vendor's price and services are similar and competitive.

2) Please check the competitive bid exception relied upon:

- Educational Materials**
- Special Services** contracts for financial, economic, accounting, legal or administrative services
- CUPCCAA exception** (Uniform Public Construction Cost Accounting Act)
- Professional Service Agreements** of less than \$87,800 (increases a small amount on January 1 of each year)
- Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
- Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate energy supply sources)
- Emergency** contracts [requires Board resolution declaring an emergency]
- Technology** contracts
 - electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$87,800 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
 - contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
 - Western States Contracting Alliance Contracts (WSCA)
 - California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
- Piggyback" Contracts** with other governmental entities
- Perishable Food**
- Sole Source**
- Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price
- Other, please provide specific exception**

Bid in 2014 (Bid#13-14/07) and the successful bidder is unable to serve all needs. This vendor is competitively priced.



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

**OAKLAND UNIFIED SCHOOL DISTRICT-MICHAEL'S
TRANSPORTATION SERVICE, INC. SPECIAL
EDUCATION TRANSPORTATION SERVICES
AGREEMENT (AUGUST 21, 2017 - AUGUST 20, 2018)**

SPECIAL EDUCATION TRANSPORTATION SERVICES AGREEMENT

THIS AGREEMENT is effective the 21st day of August 2017, by and between Oakland Unified School District, with principal offices at 1000 Broadway, Oakland, California 94607 (hereinafter, "the District"), and Michael's Transportation Service Inc., with its regional business offices at 140 Yolano Drive, Vallejo, CA 94591(hereinafter, "Michael's").

SECTION 1: TERM

- 1.1 Agreement Term: The term of this Agreement shall commence August 21, 2017 and shall continue through August 20, 2018.

SECTION 2: SCOPE OF SERVICES REQUIRED:

Michael's shall, during the term of this Agreement:

- 2.1 Provision of Services: Supply and maintain such school buses and vehicles (in quantity and capacity) and personnel as are required to fulfill the District's needs for transportation of pupils qualified for special education services residing within the jurisdiction of the District from the pickup address to drop off address and return to designated delivery address, said addresses to be designated by the District. Such transportation shall be provided, in accordance with routes and schedules established between the District and Michael's, to designated addresses, as requested by the District, on days schools are in session during the term of this Agreement. This is not an exclusive Agreement. The District may contract with other vendors or contractors to provide transportation services to District students, including special education students.
- 2.2 Spare Buses and Vehicles: Maintain and have available for immediate use and dispatch an adequate number of spare buses and vehicles (above and beyond the number of buses and vehicles designated to regularly service students). Buses and vehicles designated as spare shall not be considered as part of the regular fleet necessary to provide for State-mandated safety inspections, and/or preventative maintenance.
- 2.3 Spare Drivers: Have available for immediate tasking and dispatch an adequate number of spare drivers (above and beyond the number of drivers designated to regularly service students). Spare drivers shall meet the eligibility and screening requirements of Sections 12.4 to 12.12 of this Agreement.
- 2.4 Extracurricular Transportation: Transport any and all special education pupils or other authorized persons as may be requested by the District for field trips, excursions, athletic activities or any other purpose designated by the District.

- 2.5 Belts, Restraints and Harnesses: Furnish all vehicles with a seat belt for each passenger and driver. It shall also furnish all equipment necessary for said transportation of passengers (e.g., car seats, restraints and harnesses). It shall be the driver's responsibility to see that such seat belts, car seats, restraints, or harnesses are properly adjusted and fastened as soon as the pupil occupies his/her seat and for the duration of the trip (including wheelchair students). Michael's shall at all times provide for the safety and welfare of the students transported.
- 2.6 Adjustment of Pick Up Location(s) and/or Time(s): Allow for the District to change the pick up locations and/or times of the students, subject to the requirement that the District provides at least three (3) school days written notice to Michael's of such location and/or time change(s).

SECTION 3: TRANSPORTATION RATES, COMPENSATION AND BILLING

- 3.1 Payment for Services/Not to Exceed Amount: In consideration for services rendered hereunder, the District shall pay to Michael's the rates as set forth in Addendum I to this Agreement, which Addendum is incorporated as if set forth fully herein. The District and Michael's hereby agree that the total amount the District is legally obligated to pay for services under this Agreement shall not exceed \$400,000 during the term of this Agreement.
- 3.2 Invoice and Payment Timing: Once monthly, Michael's will submit to the District a statement of its services rendered during the prior month's billing period. After verification of the statement, and provided Michael's complies with all terms, covenants, and conditions of the Agreement, the District shall issue payment for Michael's services within thirty (30) days of receipt of Michael's invoice. In the event that any statement amount is disputed by District, District shall deliver written notice specifying the disputed amount to Michael's within 30 days of receipt of the statement by District.
- 3.3 Invoice Format: Invoices furnished by Michael's under the Agreement must be in a form acceptable to the District. All amounts paid by the District shall be subject to audit by the District or its designee. Invoices shall include, but not be limited to: Michael's name, address, invoice date, invoice number, purchase order number, period of service, date service was rendered, and total payment requested.
- 3.4 Authorization for Extra Work Required: No bill or claim for extra work or materials shall be allowed or paid to Michael's unless the doing of such extra work or the furnishing of such extra materials shall have been authorized in writing by the District, including but not limited to a District-issued purchase order.

SECTION 4: STUDENTS, ROUTES AND SCHEDULES

- 4.1 **District Provision of Information to Michael's:** The District shall promptly provide Michael's in advance of the transportation of a student with all information relevant for scheduling and providing a student's transportation needs (e.g., name of each student; birth date; day telephone number(s); pick-up and drop-off addresses; the school/program to which a student is assigned; the start and end times for the student's school/program; an indication of whether or not the student requires special handling and/or equipment as specified in the IEP; and emergency information). All student data provided under this Section 4.1 is subject to the confidentiality provisions of Section 5.6 and 5.7 of this Agreement.
- 4.2 **Limitation of Passengers:** Michael's /drivers will not transport any person, except a student enrolled within the District's jurisdiction, or an employee of the District or Michael's, without first obtaining the District's permission. Further, the District has the sole authority and right to place an aide/assistant with a student when deemed necessary, including on Michael's bus/vehicle.
- 4.3 **Electronic Routing System:** Michael's shall have and use a fully functional electronic routing system to route buses, vehicles and students. This electronic routing system must be made accessible to the District at any time upon request.
- 4.3 **Michael's Responsible for Routing:** Michael's shall establish all routes, schedules, and bus stops for students, in compliance with all schedules and other requirements of the Agreement. Up-to-date route sheets and information, retained in the aforementioned electronic routing system, that include, at a minimum, full driver names, full student names, bus/vehicle numbers, route names/numbers, and pick up and drop off sites and addresses, shall be available to the District at any time upon request. Michael's shall (1) furnish the District a complete route map prior to the start of each school year and (2) shall calculate the approximate time of pick up and drop off for each stop and shall provide the District a list of such times. Michael's route sheets and information must also be made available to the District in hard copy format within two (2) business days of the District's request.
- 4.4 **Timely Delivery of Students:** Students are to be transported directly to their schools/sites from their places of residence (or pre-designated boarding point, if different). Pupils are to be delivered to school not more than fifteen (15) minutes, nor less than five (5) minutes, prior to class/program starting time, nor are they to be kept waiting more than ten (10) minutes after dismissal time. The driver and vehicle shall wait a minimum of ten (10) minutes after arrival at school/site to pick up students before departing for the next destination.
- 4.5 **Maximum Trip Length:** The travel time a child is en route on any trip shall not exceed sixty (60) minutes one way except for (a) delays caused by conditions beyond Michael's control, as determined by the District or (b) medical and/or

behavioral needs of a student that necessitate less travel time, as documented in the student's IEP. Trips anticipated to exceed this time limit must be approved in advance in writing by the District.

- 4.6 Exigent Circumstances and Staying on Schedule: Recognizing that exigent circumstances arise where a driver must leave a student at a pick up or drop off location (e.g., when a student refuses to enter the vehicle) in order to adhere to the driver's scheduled route and to not prejudice other students, the driver shall immediately communicate to Michael's the circumstances that required the driver to depart without a student; Michael's shall then immediately telephone and email the District's designated personnel regarding the matter; and Michael's shall also immediately telephone the student's parent/guardian regarding the matter. Michael's shall, within three (3) business days of a driver departing without a student, provide the District with a written report regarding the circumstances giving rise to that particular matter.
- 4.7 Notice to District Regarding Route Changes: Michael's must inform the District in writing, within three (3) business days, of any changes to established routes. This includes, but is not limited to, informing the District of any instances where Michael's determines that a student is not in need of transportation services on one or more routes.
- 4.8 Implementing District-Initiated Changes: Michael's shall implement the District's addition, suspension or deletion of transportation service(s) for a student within three (3) business days of the District's transmittal of the route change to Michael's. In the event the District changes routes or schedules once service has begun or been published, the District will assist (but not supplant) Michael's in republication of changes or other notification to those patrons whose service has been changed.
- 4.9 Safety Concerns Regarding Routes: Michael's shall consult with the District as to stops or portions of routes that Michael's considers to be a safety concern due to traffic patterns or configurations.
- 4.10 Michael's Beginning of Year Notice to Parents/Guardians: No later than one (1) week before the beginning of a school year, Michael's shall notify (by telephone and written confirmation) the parent(s) or guardian(s) of each student of the time and location of pick-up and drop-off for the beginning of the school year, allowing no more than a ten (10) minute window for pick-up and drop-off.
- 4.11 Michael's Notice to Parents/Guardians Regarding Change in Transportation: Michael's shall notify (by telephone and written confirmation) the parent(s) or guardian(s) of a student no later than five (5) business days before any alteration of transportation services for said student, including but not limited to drop off or pick up time(s) or location(s) for that student.

- 4.12 District's Right to Audit Routes and Approval of Additional Bus Services: The District shall have the right to audit (for performance, mileage and routing) any or all routes and may require changes in routing and scheduling if, in its opinion, such changes would result in increased bus and seat utilization or better service to pupils or schools. In addition, the written approval of the District is required for any bus/vehicle modification, which will result in any increase in overall charges to the District.
- 4.13 District's Right to Provide Routing/Scheduling: The District, may, at its sole discretion, elect to provide all, or part, of the routing and scheduling services required under the Agreement.

SECTION 5: RECORDS AND REPORTS; SHARING OF INFORMATION

- 5.1 Accident/Incident Reports: All accidents or incidents involving Michael's equipment, personnel, or students being transported while operating for the District, as well as all incidents involving a traffic violation or accident reportable by law, shall be reported in writing to the District within 24 hours. Where an accident is involved, a preliminary oral report shall be made to the District within thirty (30) minutes following the accident, and shall include whether any fatalities or injuries occurred and a general description of property damage. The students' parents/guardians and school of attendance, shall be notified by the District, after being notified by Michael's as soon as possible, and the whereabouts of the student disclosed. 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 Michael'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, Michael's internal communication problems shall not relieve Michael's of its obligation to provide sufficient information and advance notification to the District, law enforcement or any other person/entity regarding an accident/incident as may be required by the California Highway Patrol's *Passenger Transportation Safety Handbook*.
- 5.2 Operational Records: Michael's shall provide within ten (10) business days, as the District deems necessary and requests, any and all operational reports and records pertaining to students and other information having to do with daily operations. In reviewing Michael's records, the District shall protect the confidentiality of Michael's proprietary or confidential information, provided any such records are clearly marked as "Confidential/Do Not Disclose."
- 5.3 Reporting of Complaints: Michael's shall keep complete and accurate records of all written and oral complaints received regarding Michael's services for the District from all sources including, but not limited to: District employees or agents, parents/guardians, students, and state or federal agencies. Michael's

shall provide to the District a written monthly report listing said complaints and actions taken by Michael's, if any, to resolve each complaint.

- 5.4 Provision of Information to District in Support of Reimbursement Efforts: Michael's shall supply the District with all necessary information within Michael's control so that the District may apply to the California Department of Education or any other state or federal agency for reimbursement for pupil transportation. Michael's further agrees to submit to the District:
- A monthly written report not later than the 15th of the following month showing the total number of miles each vehicle traveled and the number of students transported on each vehicle for each day on which students were transported.
 - An annual written report no later than July 30 showing the average daily number of students transported and the average distance pupils were transported.

However, Michael's is not responsible for filing on behalf of the District any state or federal regulatory reports concerning ridership or reimbursement.

- 5.5 Maintenance Reports: Michael's shall maintain vehicle inspection reports for three years and shall make said reports available to the District for review within five (5) business days of the District's request.
- 5.6 Sharing of Student Information with Michael's: The District will provide Michael's with educational information as necessary for performance under the Agreement. Michael's agrees that it will use educational information only for this purpose and acknowledges that it is prohibited by law from sharing this information. Michael's further understands and agrees that pursuant to this Agreement it provides a service to the District that the District would otherwise provide itself, and therefore Michael's has legitimate educational interests in any student information which it receives, uses, maintains or to which it has access.
- 5.7 Michael's to Comply with FERPA, Etc.: Michael's and its agents, personnel, employees, and/or subcontractors shall maintain the confidentiality of all information received in the course of performing the services pursuant to the Agreement. Michael's and its agents, personnel, employees, and/or subcontractors shall maintain records in accordance with all applicable federal and state laws and regulations and agrees that records relating to individual pupils provided by the District are subject to the Family Educational Rights and Privacy Act ("FERPA"). Such records shall be confidential to the extent required by FERPA, 20 U.S.C. § 1232g; 34 C.F.R. Part 99; and California Education Code §§ 49060, et seq.; and other state and federal law. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement. Michael's and its agents, personnel, employees, and/or subcontractors will be permitted access to student data only where permissible under state and federal law.

SECTION 6: DEFENSE AND INDEMNIFICATION

- 6.1 **Duty to Defend and Indemnify:** Except to the extent arising from or caused by the sole willful misconduct of the District, its governing board, State Trustee, officers, agents, and employees, Michael's agrees to hold harmless, defend, and indemnify the District and its governing board, State Trustee, officers, agents, and employees from and against any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation in connection with the performance of this Agreement and/or arising or alleged to have arisen directly or indirectly out of any negligent or willful acts or omissions of Michael's. Except to the extent arising from or caused by the sole willful misconduct of the District, its governing board, State Trustee, officers, agents, and employees, Michael's also agrees to hold harmless, defend, and indemnify the District and its elective board, State Trustee, officers, agents, and employees from any and all claims or losses incurred in connection with the performance of this Agreement and/or arising or alleged to have arisen directly or indirectly out of any negligent or willful acts or omissions of Michael's. Michael's hold harmless, defense and indemnity obligations under this Agreement shall not be limited by the insurance requirements set forth in this Agreement.

SECTION 7: INSURANCE

- 7.1 **Workers' Compensation Insurance:** Michael's shall, at its expense, procure and keep in force during the entire term of this Agreement for claims arising under this Agreement, 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.
- 7.2 **Liability Insurance and District as Additional Insured:** Michael's shall, at its expense, procure and keep in force during the entire term of this Agreement for claims arising under this Agreement, Commercial General Liability insurance, including automobile coverage for bodily injury and damage to property for all owned, hired and non-owned autos, as well as uninsured/underinsured motorist coverage and medical payments coverage, with limits of Five Million Dollars (\$5,000,000) per occurrence for bodily injury and property damage. The coverage shall be primary, but only as respects the sole negligent errors and/or omissions of the named insured, as to the District and shall name the District as an additional insured. Endorsement of the District as an additional insured for claims arising under this Agreement shall not affect District's rights to any claim, demand, suit or judgment made, brought or recovered against Michael's. The policy shall protect Michael's and the District in the same manner as though each were separately issued.
- 7.3 **Provision of Certificate of Insurance:** Michael's agrees to provide the District with a certificate of insurance evidencing the foregoing coverage and designating the

District as an additional insured for claims arising under this Agreement as its interest may appear for both the General and Automobile Liability programs, and reference to the hold harmless and indemnification provisions in this Agreement, such certificate to be provided the District on or before June 19, 2017. All insurance policies shall provide that no coverage shall be canceled except by thirty (30) days' written notice to Michael's and the District. Insurer shall maintain a minimum A.M. Best's & Company rating of A- (minus) or Michael's shall obtain insurance from a company mutually agreed upon between Michael's and the District. Michael's shall provide the District with a certificate of insurance as evidence of having the workers' compensation coverage required by this Agreement.

SECTION 8: FORCE MAJEURE

- 8.1 Excused Performance Because of Force Majeure: Michael's shall be excused from performance under this Agreement 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 equipment, materials, products, plants or facilities; commandeering of equipment, materials, products, plants, or facilities by the Government; or any other occurrence which is beyond the control of Michael's, when satisfactory evidence thereof is presented to the District.

SECTION 9: SCHOOL CLOSINGS OR CHANGES IN SCHEDULE

- 9.1 Whenever (a) school is canceled or delayed, (b) the school day is scheduled for other than regular start or end times, or (c) school is dismissed early for any reason, the District shall notify Michael's not later than 6:00 a.m. on the day of such cancellation or delay or not later than two (2) hours before early dismissal or the cancellation of school. If the District does not notify Michael's by 6:00 a.m. that day, the District shall pay Michael's half the service for the affected students for that day.

SECTION 10: SAFETY PROGRAM

- 10.1 Michael's shall be responsible for implementing and maintaining a transportation safety program for the transportation of District students pursuant to this Agreement.
- 10.2 Michael's employees shall not be required to perform any medical functions for passengers. However, Michael's and its employees shall comply with all requirements of a pupil's IEP that relates to the transportation of that pupil.

SECTION 11: MICHAEL'S AND DISTRICT MANAGEMENT PERSONNEL

- 11.1 **Michael's Managers, Supervisors and Point(s) of Contact:** Michael's shall employ and maintain staff as required for effective management and supervision of the student transportation services provided to the District. In addition to such other personnel as may be required to administer the agreement for student transportation, Michael's shall designate a liaison and crisis management contact person for emergency contact with the District. At the time Michael's begins transporting District students in 2017, and then by July 1st of each subsequent calendar year, and any time a liaison and crisis management contact changes, Michael's shall inform the District of the name(s), contact telephone number(s), email address(es), and address(es) of such management personnel.
- 11.2 **District Designated Liaison and Crisis Management Contact:** The District shall designate a liaison and crisis management contact person for emergency contact with Michael's. At the time Michael's begins transporting District students in 2017, and then by July 1st of each subsequent calendar year, and any time a liaison and crisis management contact changes, the District shall inform Michael's of the name(s), contact telephone number(s), email address(es), and address(es) of such management personnel.

SECTION 12: OPERATIONS PERSONNEL AND DRIVERS

- 12.1 **Administrative and Support Staff:** Michael's shall maintain a facility that shall be staffed as required to administer and support the transportation of students, including the availability of personnel to receive and place telephone calls and monitor the radio equipment during the hours that students are being transported each school day.
- 12.2 **Pre-Employment Screening:** Michael's shall maintain an internal pre-employment screening program for all candidates for employment, including drivers, that will provide the District services. The screening program shall be designed to assist Michael's in determining a candidate's suitability for assignment to District-related services.
- 12.3 **Provision of Personnel:** Michael's shall employ a sufficient number of qualified drivers and support personnel to assure the District of continuous, reliable, safe and on-time service.
- 12.4 **Licenses:** All drivers employed by Michael's to provide the District service must have, from the California Department of Motor Vehicles ("DMV"), a valid and current license and each driver must meet the minimum California legal licensure requirements to operate the specific type of vehicle used by Michael's to transport District students. Any bus driver must have a valid and current California Commercial Class B Driver's License; a school bus "S" endorsement; and a valid and current "School Bus Driver Certificate", and Michael's shall maintain a list of each driver's name, California Driver's License numbers and

DMV summary record (also known as a DMV "employer pull notice"), which list shall be made available to the District upon two (2) days request.

- 12.5 Prohibition: Michael's shall not use drivers to provide the District 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 any controlled substance-related violation.
- 12.6 Fingerprinting of Employees and Agents: The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Michael's services under this Agreement and Michael's certifies its compliance with these provisions as follows: "Michael's certifies that it has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Michael's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, or acting as independent contractors of Michael's, who may have contact with District pupils in the course of providing services under 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 the Education Code." Michael's shall be liable for the payment of all driver criminal record checks prior to transporting students, with such verification placed in the driver's file.
- 12.7 Health Requirements: Each driver employed by Michael's to provide services to the District shall be in good health. Michael's is required to screen all drivers (and all other employees who will be around District students for more than six hours total) for tuberculosis and affirms that each such employee has current proof of negative TB testing on file and that TB results are monitored. Random testing of drugs and alcohol may be required by the District. Any driver failing to be tested or found to have a "positive" drug test result shall be immediately removed from service to the District. Michael's shall establish and maintain a record keeping system to assure that each driver meets these requirements. These records shall be available for review by the District within two (2) business days upon request.
- 12.8 Smoking Prohibition: Drivers shall abstain from using tobacco or marijuana 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.
- 12.9 Moral Character: Michael's recognizes that, for the protection of students, drivers, other contractors, and the District, Michael's employees who have contact with the students and their families must be responsible and fit for the job. Michael's shall ensure that all of its personnel meet these qualifications. Michael's will not allow any person to drive (a) whose conduct might in any way exposes a child to any impropriety of word or conduct; (b) who Michael's knows

or has reason to know is not in a condition of mental or emotional stability; or (c) who is under the influence of drugs or alcohol, including prescription and non-prescription drugs that impair the safe operation of the vehicle.

- 12.10 Lift Operation Requirements: Drivers who are required to lift students in and out of vehicles shall have special training, including refresher in-service training, provided by Michael's in lifting techniques and treatment of the handicapped children who must be lifted, including appropriate methods of securing wheelchairs within a bus/vehicle. Such personnel shall be physically capable of performing the required lifting. Proof of training will be submitted to the District within two (2) business days upon request.
- 12.11 Time Schedules: All drivers shall be provided and required to have an up-to-date area map and a timepiece with them while on duty so that they can maintain established route and time schedules.
- 12.12 Strict Adherence to Routes: Drivers shall strictly adhere to the driver's specific route and schedule and shall not alter his/her route for any personal reason. He/she is prohibited from stopping along his/her route for any personal reason(s), including but not limited to making a stop at a convenience store, bank, or deli.
- 12.13 Evaluations: Drivers shall be evaluated by Michael's at least once each year for the purpose of observing their driving practices including: safety; mechanical operation; conformance with laws, policies and regulations; adherence to established routes and schedules; handling of students; and other factors inherent in the transportation of special education pupils. Copies of the evaluations shall be maintained by Michael's during the term of the driver's employment by Michael's, plus one (1) year. All drivers assigned to perform services under the agreement shall maintain a minimum evaluation rating of satisfactory in all evaluation categories. In the event of an "at fault" accident, the driver shall be re-evaluated and retrained.
- 12.14 Driver Assignments, Reassignments and Removals: At the District's sole discretion, the District may require the removal or reassignment of any driver under this Agreement; provided however, the request by the District to remove or reassign a driver shall be in writing, state the reasons therefor, and include any supporting documentation. Unless Michael's provides additional and acceptable information to and by the District, and the District and Michael's mutually agree otherwise, Michael's shall comply with such a request within two (2) business days of receipt of the written request. The District shall not require reassignment or removal of a driver in violation of applicable local, state or federal laws, rules or regulations.

SECTION 13: TRAINING REQUIREMENTS

- 13.1 **Training:** Michael's will conduct, on an annual basis and whenever a person is hired as a new driver, driver orientation sessions. The driver orientation shall include, but not be limited to: state and federal safety and operations guidelines and regulations; commercial driver's license requirements and test preparation; drug-free workplace requirements; pre-trip and post-trip equipment and safety inspections; defensive driving; loading and unloading procedures; railroad crossing safety procedures; backing maneuvers; emergency procedures; special equipment instruction; evacuation procedures; seasonal weather conditions; student management; disability awareness and sensitivity; dealing with parents/guardians of students; relationships with school personnel and the general public; student discipline; and other pertinent information.
- 13.2 **District Right to Review:** The District shall have the right to review Michael's course content either during live training sessions and/or through review of written course materials.

SECTION 14: EQUIPMENT AND SUPPLIES

- 14.1 **Buses and vehicles Legally Compliant and Maintained:** All buses and vehicles supplied by Michael's in performance of this Agreement shall meet or exceed the standards established by the applicable state and federal laws and regulations. Michael's shall maintain the buses and vehicles used to provide transportation services under this Agreement in accordance with state and federal laws and regulations, as well as accepted industry maintenance standards.
- 14.2 **Bus/Vehicle Permit and Age:** Michael's shall only use Transportation Charter Party ("TCP") and/or municipally permitted vehicles that meet all applicable regulations and laws relating to special education student transportation. Michael's shall use only certified school buses and vehicles, as required by federal and state laws and regulations. In addition, Michael's buses and vehicles used for subsequent service shall have an average age no older than eight (8) years, and at no time shall the age of any bus or vehicle used exceed the maximum of ten (10) years on July 1 of each year. Michael's shall furnish the District proof that all vehicles utilized for this Agreement are TCP certified by the Public Utilities Commission or have municipal permits applicable to the areas served. This proof shall be furnished prior to beginning operation under the Agreement and at any time during the term of the Agreement upon the District's request.
- 14.3 **Bus/Vehicle Accommodations:** All buses and vehicles shall be equipped with air conditioning and individual seat belts or harnesses. All vehicles shall also be equipped with two-way radios; fire extinguishers (as described in California Education Code Section 39838); and first aid and blood borne pathogen kits.

- 14.4 Wheelchair Lifts: All buses and vehicles transporting students in wheelchairs shall be equipped with hydraulic lifts and wheelchair securement devices that comply with federal and state legal requirements. Lifts purchased in or after 1995 shall have a manual override to provide for operation in the event of failure in the electrical system.
- 14.5 Special/Modified Equipment: If any equipment used by Michael's in the performance of this Agreement is required to be installed or modified due to an unforeseen and unanticipated change in the law or applicable rules and/or regulations, such modification or installation shall be made by Michael's without notification from the District.
- 14.6 Radio Equipment: Michael's shall equip each vehicle with radios/phones for communication to a base station dispatch terminal before being used pursuant to the Agreement. A citizens band radio is not allowed. All communication equipment will be maintained in good working condition at all times during the term of the contract.
- ~~14.7 Digital, Audio Enabled Video Cameras: Michael's shall equip each vehicle with at least one fully functioning in-vehicle audio-enabled digital camera that displays the full interior of the vehicle where students are positioned during transportation. The video camera shall capture and record sounds and images, either on the in-vehicle video recording unit or in a remote location, which must be copied/retained by Michael's (and reviewable immediately upon demand by the District) for at least 30 days.~~
- 14.8 Global Positioning System: Michael's shall equip and/or have available on each vehicle with a fully functioning global positioning system (GPS) that Michael's may use to track and record the vehicle's position at any given time.
- 14.9 Appearance: All vehicles utilized by Michael's under this Agreement shall be clearly marked with a logo. They shall be clean and sanitary and shall have an excellent exterior and interior appearance during the entire term of the Agreement. In addition, repairs to visible body damage, inside and out, shall be made within thirty (30) days from the date such damage occurs.
- 14.10 Inspection: Michael's shall allow the District to inspect all vehicles used in furnishing the services at any time during the term of this Agreement. A copy of each vehicle's yearly TCP or Municipal inspection shall be sent to the District's designee. Michael's agrees that if the District has just cause and requests removal of any vehicle from its fleet, said vehicle will be removed. The District shall make all such requests in writing to Michael's, and Michael's shall have a reasonable opportunity to review and respond to concerns advanced by the District. Any such vehicle that is replaced shall be replaced by Michael's with another vehicle of the same size, type and capacity, and in proper condition.

- 14.11 Maintenance Facility: Michael's shall maintain, throughout the duration of this Agreement, a maintenance facility/garage adequately equipped and staffed as required to perform preventative maintenance and repairs to vehicles used under this Agreement.
- 14.12 Fuel: Michael's shall purchase at its own cost, inclusive of all fuel taxes, all fuel required for the operation of buses and vehicles under this Agreement.
- 14.13 Locally-Sourced Providers and Supplies; Local Hire: In order to provide economic opportunity for Oakland residents and businesses and stimulate economic development in Oakland, the District has implemented a Local Hire and Local, Small Local and Small Local Resident Business Enterprise Program. Michael's is encouraged to hire Oakland residents and purchase services, supplies, parts, fuel, tires and other items from providers and suppliers situated within the City of Oakland, whenever it is economically feasible for Michael's to do so.

SECTION 15: PUPIL DISCIPLINE AND VANDALISM

- 15.1 Pupil Discipline: The ultimate responsibility and authority to suspend or expel any pupil from transportation services hereunder shall rest exclusively with the District. Each driver shall handle all disciplinary matters in strict accordance with District policy. In no case will a driver eject a pupil from a bus for misbehavior except in the event of an extreme emergency endangering the safety of other pupils, and then only after radio/phone notice to Michael's terminal and to the pupil's school principal and the District's designee. In all cases of disciplinary ejection, the bus/vehicle shall remain at the approximate area of student discharge until authorities arrive on site and authorize it to proceed on route. All discipline problems shall be reported in writing by the next school day following completion of the route. The District and Michael's will, in the event it determines that a pupil poses a danger to himself/herself or other passengers, cooperate to provide a safe transportation environment prior to Michael's being required to transport such pupil. Further procedures and regulations for the administration of discipline shall be established cooperatively between the District and Michael's.
- 15.2 Parental Notification: If a determination is made that Michael's will no longer transport a student, upon written notification by Michael's to the District, the District shall immediately notify (by telephone and written confirmation) the parent(s) or guardian(s) of the student.
- 15.3 Vandalism: The District shall give Michael's reasonable assistance in obtaining restitution from a third party for damaged equipment or facilities where damage is determined to be caused by District students or personnel. Michael's may, with the written concurrence by the District, refuse to provide a pupil with transportation services until vandalism damages caused by such District student or personnel are paid. The District may also provide reimbursement for any vandalism damage. ~~Damage from vandalism to Michael's equipment or facilities shall be the~~

~~responsibility of Michael's. The District shall give Michael's reasonable assistance in obtaining restitution from a third party for damaged equipment or facilities where damage is determined to be caused by District students or personnel. Michael's may, with the written concurrence by the District, refuse to provide a pupil with transportation services until vandalism damages caused by such District student or personnel are paid.~~

SECTION 16: ASSIGNMENT AND SUB-CONTRACTING

- 16.1 No Assignment or Rights to Third Parties: This Agreement shall not be assigned by the parties hereto, without the written consent of the District. This Agreement does not create any rights in or inure to the benefit of any third party.
- 16.2 No Sub-Contracting Without District Approval: Michael's shall not enter into any subcontracts for any of the services required by this Agreement without first obtaining the written approval of the District.

SECTION 17: TERMINATION

- 17.1 Termination of Agreement for Convenience:

The Parties mutually agree that this Agreement shall expire on June 18, 2018. The District may terminate the Agreement **without cause** at any time with thirty (30) days written notice to Michael's.

- 17.2 Termination of Agreement for Default:

If the District violates any of the covenants or duties imposed upon it by this Agreement, such violation shall entitle Michael's to terminate this Agreement in accordance with the following procedure: Michael's shall give the District thirty (30) days' written notice of default and the opportunity to remedy the violation or take steps to remedy the violation. If at the end of such 30-day default notice period, the District has not remedied the purported violation or taken steps to do so, Michael's may terminate this Agreement as follows: On the first business day following the last day of the 30-day default notice period, Michael's shall give the District 15 days' notice of termination. If Michael's does not provide this 15-day notice of termination, the default notice shall be deemed rescinded.

SECTION 18: DISPUTE RESOLUTION

- 18.1 Dispute Resolution: Notwithstanding anything in this Agreement to the contrary, prior to the initiation of any litigation, disputes between the District and Michael's regarding this Agreement, including any alleged violation, misinterpretation, or misapplication of this Agreement, shall first be resolved using the dispute resolution process identified in this Section 18.1.

In the event of a dispute, the party initiating the dispute resolution process shall prepare and send to the other party a notice of dispute that shall include the following information: (1) the name(s), address(es) and phone number(s) of designated representatives of the party (the designated representative(s) must be an employee(s) of Michael's or the District); (2) a statement of the facts of the dispute, including information regarding the parties attempts to resolve the dispute; (3) the specific sections of the Agreement that are in dispute; and (4) the specific resolution sought by the party. Within ten (10) business days from receipt of the notice of dispute the representatives from Michael's shall meet with representatives from the District in an informal setting to try to resolve the dispute.

If the informal meeting fails to resolve the dispute, the party initiating the dispute resolution process may proceed to exercise whatever rights it may have under this Agreement and the law. In addition, if Michael's is the party that initiated the dispute resolution process, it shall proceed with the claims presentation process under Government Code section 900 *et. seq.* as a prerequisite to initiating litigation.

Either party may file litigation for equitable remedies such as injunctive relief while proceeding through the dispute resolution process in order to preserve the status quo.

SECTION 19: BREACH AND REMEDIES

- 19.1 **Material Breach:** If Michael's, for any reason, fails to maintain insurance coverage that is required pursuant to this Agreement, the same shall be deemed a material breach of contract. The District, at its sole discretion, may immediately terminate this Agreement and obtain damages from Michael's resulting from said breach. Alternatively, the District may purchase such required insurance coverage, and without further notice to Michael's, the District may deduct from sums due to Michael's any premium costs advanced by the District for such insurance. These remedies shall be in addition to any other remedies available to the District.
- 19.2 **Attorneys' Fees and Costs:** In the event a suit or action is instituted in connection with any controversy arising out of or relating to this Agreement, the prevailing party shall be entitled to recover such sum as the court may adjudge reasonable as to attorney's fees and costs, in addition to all legally available damages.

SECTION 20: STATUS OF MICHAEL'S AND TAXES

- 20.1 **Status of Michael's as Contractor:** This Agreement is not one of employment. Michael's, in the performance of this Agreement, shall be and act as an independent contractor. Michael's understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partners, or joint ventures of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which employees of the

District are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Michael's shall assume full responsibility for payment of all Federal, State, and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Michael's employees. In the performance of the work contemplated in this Agreement, Michael's is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, the District being interested only in the results obtained.

- 20.2 Taxes: Michael's shall be solely responsible for and pay all taxes, levies, duties and assessments of every nature due in connection with any work under this Agreement; shall make any and all payroll deductions required by law; and shall defend, indemnify and hold harmless the District from any liability on account of any and all such taxes, levies, duties, assessments and deductions.

SECTION 21: SEVERABILITY

- 21.1 Legal Severability: In the event any provision, or portion of any provision, of this Agreement is held or determined by a court of competent jurisdiction to be illegal, void or in contravention of any applicable law, the remainder of this Agreement shall remain valid and enforceable.

SECTION 22: EXTENSION AND MODIFICATION

- 22.1 Amendment of Agreement: This Agreement may be amended by written, mutual consent of the District and Michael's. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties thereto, and no oral understanding or agreement not incorporated herein shall be binding on the parties hereto.

SECTION 23: NOTICE TO PARTIES

- 23.1 Notices: All notices provided for under this Agreement shall be in writing and either personally delivered during normal business hours or sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other party's designated contact. Notice shall be effective when received if personally served or, if mailed, three (3) days after mailing.

Notices to the District shall be addressed to:

Kimberly Raney
Director of Transportation
Oakland Unified School District
1000 Broadway, 4th Floor
Oakland, CA 94607
Main: (510) 879-2740

Email : kimberly.raney@ousd.org

Notices to Michael's shall be addressed to:

April J. Brown
Chief Operating Officer
Michael's Transportation Service, Inc.
MTS Training Academy
140 Yolano Drive
Vallejo, CA 94591
Main: (707) 643-2099
Direct: (707) 674-6013
Fax: (707) 563-9550
Email: aprilb@bustransportation.com

- 23.2 Address Change: The District or Michael's may change its designee or address of record for receipt of official notice by giving the other written notice of such change and any necessary mailing instructions.

SECTION 24: ENTIRE AGREEMENT

- 24.1 Entirety of Agreement: This Agreement sets forth the entire agreement between the District and Michael's concerning the subject matter hereof. There are no representations, either oral or written, between the District and Michael's other than those contained in this Agreement.
- 24.2 Incorporation of Recitals and Exhibits: The recitals and each addendum/exhibit/additional document(s) attached hereto are hereby incorporated herein by reference, and the Parties agree that to the extent any recital or document incorporated herein conflicts with any term or provision of this Agreement, the terms and provisions of this Agreement shall govern.

SECTION 25: COMPLIANCE WITH LAW; LICENSES AND PERMITS

- 25.1 Legal Compliance: Notwithstanding any contrary provision in this Agreement, Michael's shall comply with federal, state and local laws, rules and regulations in providing transportation services pursuant to this Agreement, including but not limited to licensing, employment and purchasing practices, and wages, hours and conditions of employment, including non-discrimination.
- 25.2 Certification Regarding Debarment, Etc.: Michael's certifies to the best of his/her/its knowledge and belief, that it and its principals 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

Agreement certifies that Michael's does not appear on the Excluded Parties List (<https://www.sam.gov/>).

- 25.3 Licenses and Permits: Michael's shall, at its sole expense, obtain all permits and licenses and pay all charges and fees necessary for the performance of this Agreement, and shall give all public notices necessary for the lawful performance of this Agreement.
- 25.4 Anti-Discrimination. It is the policy of the District that there be no discrimination against any person because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, age, or other legally-protected status and therefore Michael's 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. Michael's 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, sexual orientation or other legally-protected class.

SECTION 26: PLACE OF CONTRACT AND CONTROLLING LAW

- 26.1 Controlling Law: This Agreement shall be governed by the laws of the State of California, excluding California's conflict of laws provisions, statutes, cases and principles. All references in this Agreement to the "state" shall mean the State of California. All regulations, laws and requirements of the state shall mean the regulations, laws or requirements of the State of California.
- 26.2 Venue: Michael's and the District agree that the legal venue for any and all litigation relative to the formation, interpretation and performance of this Agreement is vested in Alameda County Superior Court of California, without resort to conflict of laws.

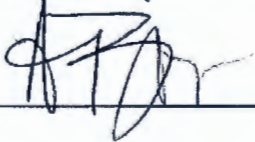
SECTION 27: AUTHORITY & PUBLIC POSTING

- 27.1 Parties Authorized to Enter Agreement: Both parties warrant that they are properly authorized to enter into this Agreement. However, the Parties agree that the District shall not be bound by the terms of this Agreement until it has been formally approved or ratified, as required, by OUSD's Governing Board, and no payment shall be owed or made to Michael's absent that formal approval/ratification.
- 27.2 Agreement Publicly Posted: This Agreement, its contents, and all incorporated documents are public documents and the Parties agree that it shall be made available by OUSD to the public online via the Internet.

27.3 Survival of Sections: The following sections of this Agreement shall survive the termination or expiration of this Agreement: Sections 5.7, 6.1, 18.1, 19.2, 21.1, 22.1, 24.1, 24.2, 26.1, 26.2, 27.2 and 27.3.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first hereinabove written.

Michael's Transportation Service, Inc.

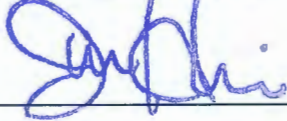
By:  _____

Name: April J. Brown

Title: Chief Operating Officer

Date: 8/18/17

Oakland Unified School District

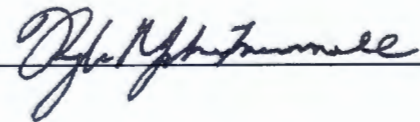
By:  _____

Name: James Harris

Title: President, Board of Education

Date: 9/13/17

File ID Number: 17-1795
Introduction Date: 9/13/17
Enactment Number: 17-1333
Enactment Date: 9/13/17
By: _____

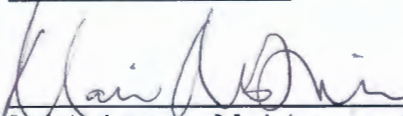
By:  _____

Name: Kyla Johnson-Trammell

Title: Superintendent & Board Secretary

Date: 9/13/17

Approved as to Form


[printed-name →] Marion McWilliams
Office of the General Counsel
Oakland Unified School District

Date: 8/22/17

[K – Contract; Special Education K975000; Michael's-OUSD SPED Contract 2017-2018]

Exhibit A

Rate Schedule till June 8, 2018

Home to School Transportation (per IEP) for Regular School Year and
Extended School Year Program.

Service for Oakland Unified School District

Rate per Bus per Day (Ambulatory): \$695