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OAKLAND UNIFIED SCHOOL DISTRICT
Community Schools, Thriving Students

Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Curtiss Sarikey, Chief of Staff
Kimberley Raney, Director Transportation and Logistics

Board Meeting Date 6/13/18

Subject Special Education Transportation Services Agreement – First American, Inc. – Transportation Dept.

Action Requested Approval of Special Education Transportation Services Agreement between Oakland Unified School District and First American, Inc. for the period of July 1, 2018 through June 30, 2020, in an amount not to exceed \$90,200.00.

Background Some students’ Free and Appropriate Public Education requires accessing special education services/programs in another district. In these cases, the district of residence is responsible for transporting students to the recommended school site. The District’s contract with the school bus company only covers transportation within the Oakland Unified School District. There are some cases where alternative transportation is needed for a student who is unable to ride on the designated school bus. A contract with a company that provides an alternative transportation method assures that all students are transported to their assigned school.

Discussion A contract for services between OUSD and First American, Inc., Alameda, CA, for the latter to provide transportation services as requested by the District each school day to follow school calendar. JIR, Inc. uses reasonable efforts to coordinate transportation of students including the pick-up and drop off times and locations during each school day to ensure that the student will arrive to school and home.

Recommendation Approval of agreement between the District and First American, Inc.

Fiscal Impact Special Education Transportation Funds

Attachments Agreement
Contract Justification Form



CONTRACT JUSTIFICATION FORM

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

Legislative File ID No. _____ Site/Department: Transportation Department Approved by: Kimberly Raney

Contractor Name: First American Inc Is Vendor a local Oakland business? Yes No

Why was this Vendor selected?

Vendor has been providing Special Education transportation services to the District at a competitive price

Summarize the services this Vendor will be providing.

Vendor provides alternate special education transportation services for medical/legal/behavioral/Out of District Non Public schools. /';

Was this contract competitively bid? Yes No

If No, answer the following:

1) How did you determine the price is 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 \$ \$90,200
- 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
- Emergency** contracts [requires Board resolution declaring an emergency]
- Technology** contracts
 - electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$ \$90,200 bid limit, must be competitively advertised, but any one of three lowest responsible bidders may be selected
 - contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment/apparatus, including E-Rate solicitations, may be procured through 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 cost agreed upon in writing does not exceed 10% of original contract price
- Other, please provide specific exception** Special Education Transportation Services (Legal,Medical,NPS)



SPECIAL EDUCATION TRANSPORTATION SERVICES AGREEMENT

THIS AGREEMENT is effective the 1st day of July 2018, by and between Oakland Unified School District, with principal offices at 1000 Broadway, Oakland, California 94607 (hereinafter "District"), and First American Inc _____, with its regional business offices at 119 Regent Street Alameda, California 94501, its physical location at 638 Eagle Ave Alameda California, and its address on file with the California Secretary of State as 119 Regent Street Alameda California 94101 (hereinafter "Contractor").

SECTION 1: TERM

1.1 **Agreement Term**: The term of this Agreement shall commence July 1, 2018 and shall continue through June 30, 2020.

SECTION 2: SCOPE OF SERVICES REQUIRED:

CONTRACTOR 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 Contractor, 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). CONTRACTOR 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 3 school days written notice to CONTRACTOR 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 CONTRACTOR the rates as set forth in Addendum I to this Agreement, which Addendum is incorporated as if set forth fully herein. The District and CONTRACTOR hereby agree that the total amount the District is legally obligated to pay for services under this Agreement shall not exceed \$ \$ 90,200.00 during the term of this Agreement.

3.2 Invoice and Payment Timing: Once monthly, CONTRACTOR 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 CONTRACTOR complies with all terms, covenants, and conditions of the Agreement, the District shall issue payment for CONTRACTOR's services within thirty (30) days of receipt of CONTRACTOR's invoice. In the event that any statement amount is disputed by District, District shall deliver written notice specifying the disputed amount to CONTRACTOR within 30 days of receipt of the statement by District.

3.3 Invoice Format: Invoices furnished by CONTRACTOR 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: CONTRACTOR'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 CONTRACTOR 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 CONTRACTOR: The District shall promptly provide CONTRACTOR 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 Sections 5.6 and 5.7 of this Agreement.

4.2 Limitation of Passengers: CONTRACTOR/drivers will not transport any person, except a student enrolled within the District's jurisdiction, or an employee of the District or CONTRACTOR, 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 CONTRACTOR's bus/vehicle.

4.3 Electronic Routing System: CONTRACTOR shall have and use a fully functional electronic routing system to route buses and students. This electronic routing system must be made accessible to the District at any time upon request.

4.3 CONTRACTOR Responsible for Routing: CONTRACTOR 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. CONTRACTOR 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. CONTRACTOR'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 CONTRACTOR'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 CONTRACTOR the circumstances that required the driver to depart without a student; CONTRACTOR shall then immediately telephone and email the District's designated personnel regarding the matter; and CONTRACTOR shall also immediately telephone the student's parent/guardian regarding the matter. CONTRACTOR 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: CONTRACTOR 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 CONTRACTOR determines that a student is not in need of transportation services on one or more routes.

4.8 Implementing District-Initiated Changes: CONTRACTOR 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 CONTRACTOR. In the event the District changes routes or schedules once service has begun or been published, the District will assist (but not supplant) CONTRACTOR in republication of changes or other notification to those patrons whose service has been changed.

4.9 Safety Concerns Regarding Routes: CONTRACTOR shall consult with the District as to stops or portions of routes that CONTRACTOR considers to be a safety concern due to traffic patterns or configurations.

4.10 CONTRACTOR's Beginning of Year Notice to Parents/Guardians: No later than one (1) week before the beginning of a school year, CONTRACTOR 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 CONTRACTOR's Notice to Parents/Guardians Regarding Change in Transportation: CONTRACTOR 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 CONTRACTOR'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 CONTRACTOR 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 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, CONTRACTOR's internal communication problems shall not relieve CONTRACTOR 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: CONTRACTOR 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 CONTRACTOR's records, the District shall protect the confidentiality of CONTRACTOR's proprietary or confidential information, provided any such records are clearly marked as "Confidential/Do Not Disclose."

5.3 Reporting of Complaints: CONTRACTOR shall keep complete and accurate records of all written and oral complaints received regarding CONTRACTOR'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. CONTRACTOR shall provide to the District a written monthly report listing said complaints and actions taken by CONTRACTOR, if any, to resolve each complaint.

5.4 Provision of Information to District in Support of Reimbursement Efforts: CONTRACTOR shall supply the District with all necessary information within CONTRACTOR'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. CONTRACTOR 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, CONTRACTOR is not responsible for filing on behalf of the District any state or federal regulatory reports concerning ridership or reimbursement.

5.5 Maintenance Reports: CONTRACTOR 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 CONTRACTOR: The District will provide CONTRACTOR with educational information as necessary for performance under the Agreement. CONTRACTOR agrees that it will use educational information only for this purpose and acknowledges that it is prohibited by law from sharing this information. CONTRACTOR 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 CONTRACTOR has legitimate educational interests in any student information which it receives, uses, maintains or to which it has access.

5.7 CONTRACTOR to Comply with FERPA, Etc.: CONTRACTOR 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. CONTRACTOR 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; 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. CONTRACTOR 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, CONTRACTOR 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 CONTRACTOR. 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, CONTRACTOR 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 CONTRACTOR. CONTRACTOR'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: CONTRACTOR 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: CONTRACTOR 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 CONTRACTOR. The policy shall protect CONTRACTOR and the District in the same manner as though each were separately issued.

7.3 Provision of Certificate of Insurance & Additional Insured Endorsement: CONTRACTOR agrees to provide the District with a certificate of insurance evidencing the foregoing coverage and a certification 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 by September 15, 2018, and then by July 1st of each subsequent contract year, or on renewal of such policies. All insurance policies shall provide that no coverage shall be canceled except by thirty (30) days' written notice to CONTRACTOR and the District. Insurer shall maintain a minimum A.M. Best's & Company rating of A- (minus) or CONTRACTOR shall obtain insurance from a company mutually agreed upon between CONTRACTOR and the District. CONTRACTOR 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: CONTRACTOR 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 CONTRACTOR, 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 CONTRACTOR 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 CONTRACTOR by 6:00 a.m. that day, the District shall pay CONTRACTOR half the service for the affected students for that day.

SECTION 10: SAFETY PROGRAM

10.1 CONTRACTOR shall be responsible for implementing and maintaining a transportation safety program for the transportation of District students pursuant to this Agreement.

10.2 CONTRACTOR employees shall not be required to perform any medical functions for passengers. However, CONTRACTOR and its employees shall comply with all requirements of a pupil's IEP that relates to the transportation of that pupil.

SECTION 11: CONTRACTOR AND DISTRICT MANAGEMENT PERSONNEL

11.1 CONTRACTOR Managers, Supervisors and Point(s) of Contact: CONTRACTOR 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, CONTRACTOR shall designate a liaison and crisis management contact person for emergency contact with the District. At the time CONTRACTOR begins transporting District students in 2018, and then by July 1st of each subsequent calendar year, and any time a liaison and crisis management contact changes, CONTRACTOR 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 CONTRACTOR. At the time CONTRACTOR begins transporting District students in 2018, and then by July 1st of each subsequent calendar year, and any time a liaison and crisis management contact changes, the District shall inform CONTRACTOR 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: CONTRACTOR 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: CONTRACTOR 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 CONTRACTOR in determining a candidate's suitability for assignment to District-related services.

12.3 Provision of Personnel: CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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", CONTRACTOR 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.

12.4(a) Participation in EPN Program Required: CONTRACTOR shall, prior to entering into this Agreement enroll in, and at all times during the term of this Agreement maintain enrollment in, the California DMV's Employer Pull Program for all drivers that transport District students under this Agreement.

12.5 Prohibition: CONTRACTOR 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 § 45125.1 apply to CONTRACTOR's services under this Agreement and CONTRACTOR certifies its compliance with these provisions as follows: "CONTRACTOR certifies that it has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all CONTRACTOR employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, or acting as independent contractors of CONTRACTOR, 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." CONTRACTOR 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 CONTRACTOR to provide services to the District shall be in good health. Each driver shall have a medical screening (and examination, as required by a physician) indicating the driver is free from Tuberculosis prior to driving for the District, which screening or examination shall then take place every two (2) years thereafter. 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. CONTRACTOR 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: CONTRACTOR recognizes that, for the protection of students, drivers, other contractors, and the District, CONTRACTOR's employees who have contact with the students and their families must be responsible and fit for the job. CONTRACTOR shall ensure that all of its personnel meet these qualifications. CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR during the term of the driver's employment by CONTRACTOR, 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 CONTRACTOR provides additional and acceptable information to and by the District, and the District and CONTRACTOR mutually agree otherwise, CONTRACTOR 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: CONTRACTOR 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 CONTRACTOR'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 CONTRACTOR in performance of this Agreement shall meet or exceed the standards established by the applicable state and federal laws and regulations. CONTRACTOR 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 Permit and Age: CONTRACTOR 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. CONTRACTOR shall use only certified school buses and vehicles, as required by federal and state laws and regulations, which all shall have been newly built in 2008 or later. In addition, CONTRACTOR's buses 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 used exceed the maximum of ten (10) years on July 1 of each year. CONTRACTOR 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 Accommodations: All buses 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 CONTRACTOR 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 CONTRACTOR without notification from the District.

14.6 Radio Equipment: CONTRACTOR 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: CONTRACTOR 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 First Student (and reviewable immediately upon demand by the District) for at least 30 days.

14.8 Global Positioning System: CONTRACTOR shall equip and/or have available on each vehicle with a fully functioning global positioning system (GPS) that CONTRACTOR may use to track and record the vehicle's position at any given time.

14.9 Appearance: All vehicles utilized by CONTRACTOR under this Agreement shall be clearly marked with 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: CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR, and CONTRACTOR 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 CONTRACTOR with another vehicle of the same size, type and capacity, and in proper condition.

14.11 Maintenance Facility: CONTRACTOR 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: CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR'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 CONTRACTOR 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 CONTRACTOR being required to transport such pupil. Further procedures and regulations for the administration of discipline shall be established cooperatively between the District and CONTRACTOR.

15.2 Parental Notification: If a determination is made that CONTRACTOR will no longer transport a student, upon written notification by CONTRACTOR 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: Damage from vandalism to CONTRACTOR's equipment or facilities shall be the responsibility of CONTRACTOR. The District shall give CONTRACTOR 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. CONTRACTOR 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: CONTRACTOR 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 30, 2020. The District may terminate the Agreement **without cause** at any time with thirty (30) days written notice to CONTRACTOR.

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 CONTRACTOR to terminate this Agreement in accordance with the following procedure: CONTRACTOR 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, CONTRACTOR may terminate this Agreement as follows: On the first business day following the last day of the 30-day default notice period, CONTRACTOR shall give the District 15 days' notice of termination. If CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR is the party that initiated the dispute resolution process, it shall proceed with the claims presentation process under Government Code § 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 CONTRACTOR, 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 CONTRACTOR resulting from said breach. Alternatively, the District may purchase such required insurance coverage, and without further notice to CONTRACTOR, the District may deduct from sums due to CONTRACTOR 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 CONTRACTOR AND TAXES

20.1 Status of CONTRACTOR as Contractor: This Agreement is not one of employment. CONTRACTOR, in the performance of this Agreement, shall be and act as an independent contractor. CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR's employees. In the performance of the work contemplated in this Agreement, CONTRACTOR is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work. District is interested only in the results obtained.

20.2 Taxes: CONTRACTOR 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 Changes to or Extension of the Agreement: This Agreement may be amended by written, mutual consent of the District and CONTRACTOR. 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 CONTRACTOR shall be addressed to:

Name: Neeru Bala
Title: President
Company Name: First American Inc
Address: 119 Regent St
City, State Zip: Alameda, Ca 94501
Main Phone: (510) 522-3999
Email: Firstamericantransit@yahoo.com

23.2 Address Change: The District or CONTRACTOR 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: POSTING OF AGREEMENT

24.1 Agreement Publicly Posted: This Agreement, its contents, and all incorporated documents are public documents and will be made available by the District to the public online via the Internet.

SECTION 25: COMPLIANCE WITH LAW; LICENSES AND PERMITS

25.1 Legal Compliance: Notwithstanding any contrary provision in this Agreement, CONTRACTOR 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.: CONTRACTOR 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 CONTRACTOR does not appear on the Excluded Parties List (<https://www.sam.gov/>).

25.3 Licenses and Permits: CONTRACTOR 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 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. 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, 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: CONTRACTOR 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

27.1 Parties Authorized to Enter Agreement: Both parties warrant that they are properly authorized to enter into this Agreement.

27.2 Agreement Contingent on District Governing Board Approval: The District shall not be bound by the terms of this Agreement until it has been formally approved or ratified, as legally applicable, by the District's Governing Board, and no payment shall be owed or made to CONTRACTOR absent that formal approval. This Agreement shall be deemed approved when it has been signed by the Board of Education, and/or the Superintendent as its designee.

SECTION 28: W-9 FORM

28.1 W-9 Form Required: If CONTRACTOR is doing business with the District for the first time, complete and return with the signed Agreement a W-9 form.

SECTION 29: INCORPORATION OF RECITALS AND EXHIBITS; SURVIVAL OF PROVISIONS; ENTIRE AGREEMENT

29.1 Incorporation of Recitals and Exhibits: The recitals and each exhibit attached hereto are hereby incorporated herein by reference. CONTRACTOR agrees 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.

29.2 Survival: Sections 5.4, 5.5, 5.7, 6.1, 18.1, 19.2, 24.1, 26, and 29 of this Agreement shall survive the termination or expiration of this Agreement.

29.3 Entire Agreement: This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

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

Oakland Unified School District

By: Aimee Eng 6/14/18
Aimee Eng Date
President, Board of Education

By: Kyla Johnson-Trammell 6/14/18
Kyla Johnson-Trammell Date
Superintendent & Board Secretary

By: Neeru Bala 05/14/2018
Date
Name: NEERU BALA
Title: President