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**OAKLAND UNIFIED
SCHOOL DISTRICT**
Community Schools, Thriving Students

Memo

To: Board of Education GE

From: Guillermo Echeverria, Deputy Chief Continuous Improvement and Project Management
Kimberly Raney, Director of Transportation and Logistics

Board Meeting Date: November 15, 2016

Subject: Charter Bros, Inc. – OUSD Approval of Agreement Regarding Montera Middle School Students Transportation

Action Requested

Approval by the Board of Education of the Charter Bros, Inc. Agreement to provide transportation of certain Montera Middle School students that would in the past have been transported by another provider.

Summary

Because of emergency conditions facing the District the week before the beginning of classes on August 22, 2016, Charter Bros, Inc. was selected to provide morning-only bus transportation for approximately 30 Montera students from various pre-determined stops along Snake Road in Oakland, CA to Montera Middle School located at 5555 Ascot Drive, Oakland, CA

Fiscal Impact

\$10,500.00

Recommendation

Approval of the Agreement (attached) between the District and Charter Bros, Inc. to provide transportation of certain Montera Middle School students that would in the past have been transported by another provider.

Attachments

Oakland Unified School District-Charter Bros, Inc. Agreement Regarding Montera Middle School Students Transportation



CONTRACT JUSTIFICATION FORM

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

Legislative File ID No. 16-2144

Department: Transportation and Logistics

Vendor Name: Charter Bros, Inc.

Contract Term: Start Date: August 22, 2016 End Date: September 30, 2016

Annual Cost: \$ 10,500.00

Approved by: _____

Is Vendor a local Oakland business? Yes No

Why was this Vendor selected?

Vendor has capacity to provide emergency services

Summarize the services this Vendor will be providing.

Vendor will provide morning-only bus transportation for approximately 30 Montera students from various pre-determined stops along Snake Road in Oakland, CA to Montera Middle School located at 555 Ascot Drive, Oakland CA

Was this contract competitively bid? Yes No

If No, answer the following:

1) How did you determine the price is competitive?

Contacted several vendors for quote

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 \$86,000 (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
- Technology** contracts
 - electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$86,000 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**



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

**OAKLAND UNIFIED SCHOOL DISTRICT-
CHARTER BROS AGREEMENT REGARDING
MONTERA MIDDLE SCHOOL STUDENTS
TRANSPORTATION**

**MONTERA MIDDLE SCHOOL STUDENTS
TRANSPORTATION SERVICES AGREEMENT**

THIS AGREEMENT is effective the 22nd day of August 2016, by and between Oakland Unified School District, with principal offices at 1000 Broadway, Oakland, California 94607 (hereinafter, "the District"), and Charter Bros, Inc., with its regional business offices at P.O. Box 505, Pleasanton, CA 94566, its physical location at 700 45th Avenue, Oakland, CA 94601, and its address on file with the California Secretary of State as 35972 Killgorglin Common, Fremont, CA 94536 (hereinafter, "CB").

WITNESSETH

WHEREAS, because of emergency conditions facing the District the week before the beginning of classes on August 22, 2016 with regards to the initial lack of transportation for certain Montera Middle School ("Montera") students that would in the past have been transported by another provider, the District has selected CB to provide morning-only transportation for approximately 30 Montera students from various pre-determined stops along Snake Road in Oakland, CA, to Montera Middle School, located at 5555 Ascot Drive, Oakland, CA 94611 for the 2016-17 school year, through September 30, 2016; and

WHEREAS, CB desires to provide such transportation services;

NOW, THEREFORE, in consideration of the covenants hereinafter contained, the parties agree as follows:

SECTION 1: TERM

- 1.1 Agreement Term: The term of this Agreement shall commence August 22, 2016 and shall continue through September 30, 2016. This Agreement may be extended by mutual written agreement for up to two (2) additional one-year periods based on CB's satisfactory service/performance, subject to terms and conditions set forth in this Agreement. For purposes of this Agreement, after the initial year, the term "Contract Year" shall mean each one-year period commencing on July 1 of each year during the term of this Agreement.

SECTION 2: SCOPE OF SERVICES REQUIRED:

CB shall, during the term of this Agreement:

- 2.1 Provision of Services: Supply and maintain one (1) bus and personnel as is required to fulfill the District's needs for morning-only bus transportation for approximately 30 Montera students from various pre-determined stops along Snake Road in Oakland, CA to Montera Middle School, located at 5555 Ascot Drive, Oakland, CA 94611 for the 2016-17 school year, through September 30, 2016. Such transportation shall be provided on all days schools are in

session for the 2016/2017 school year, as well as in any subsequent school year for which an extension of this Agreement is entered into. Morning pick up of the Montera students shall take place as follows:

Snake/Colton at 7:33 a.m.
Glencourt & Saroni at 7:40 a.m.
Snake/Colton at 7:48 a.m.
Montera Middle at 8:00 a.m.

Drop off at Montera shall occur at no later than 8 a.m. each school day. This is not an exclusive Agreement. The District may contract with other vendors or contractors to provide transportation services for Montera and other District students.

- 2.2 Spare Buses: Maintain and have available for immediate use and dispatch an adequate number of spare buses (above and beyond the number of buses designated to regularly service the Montera students). Buses 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. A spare bus that does not include all of the equipment set forth in Section 15 may be used, but not for any longer a period than two (2) consecutive school days.
- 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 Montera students). Spare drivers shall meet the eligibility and screening requirements of Sections 14.2 to 14.10 of this Agreement.
- 2.4 Adjustment of Pick Up Location(s) and/or Time(s): Allow for the District to change the pick up locations of the Montera students, subject to the requirement that the District (a) designates a maximum of four (4) pick up locations for all of the Montera students; (b) limits the changes in pick up times to morning only; and (c) that requires at least 5 school days written notice by the District to CB of such location and/or time change(s).

SECTION 3: TRANSPORTATION RATES, COMPENSATION AND BILLING

- 3.1 Payment for Services: In consideration for services rendered hereunder, the District shall pay to CB the following rate per day of transportation of Montera students, not to exceed a total of one (1) bus per day:
 - Daily (Morning-Only) Rate: \$350.
- 3.2 Invoice and Payment Timing: Once monthly, CB 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 CB complies with all terms, covenants, and conditions of the Agreement, the District shall issue payment for CB's services within thirty (30) days of receipt of CB's invoice. In the event that any statement amount is disputed by District, District shall deliver written notice specifying the disputed amount to CB within 30 days of receipt of the statement by District.

- 3.3 Invoice Format: Invoices furnished by CB 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: CB'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 CB unless the doing of such extra work or the furnishing of such extra materials shall have been authorized in writing by the District.

SECTION 4: ROUTES AND SCHEDULES

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

SECTION 5: RECORDS AND REPORTS; SHARING OF INFORMATION

- 5.1 Accident/Incident Reports: All accidents or incidents involving CB'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 CB 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 CB'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, CB's internal communication problems shall not relieve CB 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: CB 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 CB's records, the District shall protect the confidentiality of CB's proprietary or confidential information, provided any such records are clearly marked as "Confidential/Do Not Disclose."
- 5.3 Reporting of Complaints: CB shall keep complete and accurate records of all written and oral complaints received regarding CB'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. CB shall provide to the District a written monthly report listing said complaints and actions taken by CB, if any, to resolve each complaint.
- 5.4 Maintenance Reports: CB 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.
- 5.5 Sharing of Student Information with CB: The District will provide CB with educational information as necessary for performance under the Agreement. CB agrees that it will use educational information only for this purpose and acknowledges that it is prohibited by law from sharing this information. CB 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 CB has legitimate educational interests in any student information which it receives, uses, maintains or to which it has access.
- 5.6 CB to Comply with FERPA, Etc.: CB 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. CB 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. CB 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 negligence or sole willful misconduct of the District, its governing board, State

Trustee, officers, agents, and employees, CB 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 CB. Except to the extent arising from or caused by the sole negligence or sole willful misconduct of the District, its governing board, State Trustee, officers, agents, and employees, CB 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 CB. CB's hold harmless, defense and indemnity obligations under this Agreement shall not be limited by the insurance requirements set forth in this Agreement.

- 6.2 Survival of Section: This Section (Defense and Indemnification) shall survive the termination or expiration of this Agreement.

SECTION 7: INSURANCE

- 7.1 Workers' Compensation Insurance: CB 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: CB 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 CB. The policy shall protect CB and the District in the same manner as though each were separately issued.
- 7.3 Provision of Certificate of Insurance: CB 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 by September 15, 2016, 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 CB and the District. Insurer shall maintain a minimum A.M. Best's & Company rating of A- (minus) or CB shall obtain insurance from a company mutually agreed upon between CB and the District. CB 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: CB 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 CB, 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 or (b) the school day is scheduled for other than regular start times, the District shall notify CB not later than 3:00 p.m. on the day before the day of such cancellation or rescheduling. If the District does not notify CB by the time required, the District shall, in the instance that school is cancelled or delayed, pay CB half the daily per bus rate actually affected for that day.

SECTION 10: SAFETY PROGRAM

- 10.1 CB shall be responsible for implementing and maintaining a transportation safety program for the transportation of District students pursuant to this Agreement.
- 10.2 CB employees shall not be required to perform any medical functions for passengers.

SECTION 11: CB AND DISTRICT MANAGEMENT PERSONNEL

- 11.1 CB Managers, Supervisors and Point(s) of Contact: CB shall employ and maintain staff as required for effective management and supervision of the Montera students transportation services provided to the District. In addition to such other personnel as may be required to administer the agreement for student transportation, CB shall designate a liaison and crisis management contact

person for emergency contact with the District. At the time CB begins transporting District students in 2016, and then by July 1st of each subsequent calendar year, and any time a liaison and crisis management contact changes, CB 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 CB. At the time CB begins transporting District students in 2016, and then by July 1st of each subsequent calendar year, and any time a liaison and crisis management contact changes, the District shall inform CB 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: CB 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: CB 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 CB in determining a candidate's suitability for assignment to District-related services.
- 12.3 Provision of Personnel: CB 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 CB to provide the District service must have, from the California Department of Motor Vehicles ("DMV"), 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 each driver must meet the minimum California legal licensure requirements to operate any vehicle used by CB to transport District students. CB 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: CB 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 CB's services under this Agreement and CB certifies its compliance with these provisions as follows: "CB certifies that it has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all CB employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, or acting as independent contractors of CB, 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." CB 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 CB to provide services to the District shall be in good health. Each driver shall have a skin test or chest x-ray indicating the driver is free from Tuberculosis prior to driving for the District, which test 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. CB 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: CB recognizes that, for the protection of students, drivers, other contractors, and the District, CB's employees who have contact with the students and their families must be responsible and fit for the job. CB shall ensure that all of its personnel meet these qualifications. CB 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 CB 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 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.

- 12.11 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.
- 12.12 Evaluations: Drivers shall be evaluated by CB 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 CB during the term of the driver's employment by CB, 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.
- 12.13 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 CB provides additional and acceptable information to the District, and the District and CB mutually agree otherwise, CB 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: CB 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 CB's course content either during live training sessions and/or through review of written course materials.

SECTION 14: EQUIPMENT AND SUPPLIES

- 14.1 Buses Legally Compliant and Maintained: All buses supplied by CB in performance of this Agreement shall meet or exceed the standards established by the applicable state and federal laws and regulations. CB shall maintain the buses 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: CB shall only use Transportation Charter Party ("TCP") and/or municipally permitted vehicles that meet all applicable regulations and laws relating to student transportation. CB shall use only certified buses, as required by federal and state laws and regulations, which all shall have been newly built in 2004 or later. CB 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 individual seat belts. All vehicles shall also be equipped with radios/phones; fire extinguishers (as described in California Education Code Section 39838); and first aid and blood borne pathogen kits.
- 14.4 Radio Equipment: CB 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.
- 14.5 Global Positioning System: CB shall equip and/or have available on each vehicle with a fully functioning global positioning system (GPS) that CB may use to track and record the vehicle's position at any given time.
- 14.6 Appearance: All vehicles utilized by CB under this Agreement 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.
- 14.7 Inspection: CB 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. CB agrees that if the District has just cause and requests removal of a bus from its fleet, said bus will be removed. The District shall make all such requests in writing to CB, and CB shall have a reasonable opportunity to review and respond to concerns advanced by the District. Any such bus that is replaced shall be replaced by CB with another vehicle of the same size, type and capacity, and in proper condition.

- 14.8 Maintenance Facility: CB 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.
- 14.9 Fuel: CB shall purchase at its own cost, inclusive of all fuel taxes, all fuel required for the operation of buses under this Agreement.
- 14.10 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. CB 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 CB 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 CB's terminal and to the pupil's school principal and the District's designee. In all cases of disciplinary ejection, the bus 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 CB 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 CB being required to transport such pupil. Further procedures and regulations for the administration of discipline shall be established cooperatively between the District and CB.
- 15.2 Parental Notification: If a determination is made that CB will no longer transport a student, upon written notification by CB 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 CB 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. CB 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.

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, which consent shall not be unreasonably withheld or delayed. 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: CB 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 September 30, 2016. The District may terminate the Agreement **without cause** at any time with thirty (30) days written notice to CB.

- 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 CB to terminate this Agreement in accordance with the following procedure: CB 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, CB may terminate this Agreement as follows: On the first business day following the last day of the 30-day default notice period, CB shall give the District 15 days' notice of termination. If CB 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 CB 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 CB 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 CB 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 CB 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, if applicable.

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 CB, 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 CB resulting from said breach. Alternatively, the District may purchase such required insurance coverage, and without further notice to CB, the District may deduct from sums due to CB 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 CB AND TAXES

- 20.1 **Status of CB as Contractor:** This Agreement is not one of employment. CB, in the performance of this Agreement, shall be and act as an independent contractor. CB 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. CB 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 CB's employees. In the performance of the work contemplated in this Agreement, CB 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: CB 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 changed, amended or extended by written, mutual consent of the District and CB. 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 CB shall be addressed to:

K. Nino
Office Manager

Charter Bros
PO Box 505
Pleasanton, CA 94566
Main: (925) 484-5898
Email: Charterbros@aol.com

- 23.2 Address Change: The District or CB 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 CB concerning the subject matter hereof. There are no representations, either oral or written, between the District and CB other than those contained in this Agreement.

SECTION 25: COMPLIANCE WITH LAW; LICENSES AND PERMITS

- 25.1 Legal Compliance: Notwithstanding any contrary provision in this Agreement, CB 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.: CB 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 CB does not appear on the Excluded Parties List (<https://www.sam.gov/>).
- 25.3 Licenses and Permits: CB 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 CB agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and OUSD policy. In addition, CB agrees to require like compliance by all its subcontractor(s). CB shall not

agrees to require like compliance by all its subcontractor(s). CB 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 rules. 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: CB 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, 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.

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

Charter Bros

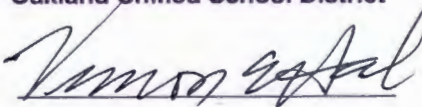
By: KARIM NINDO 

Name: KARIM NINDO
(Print)

Title: office manager

Date: 10/5/2016

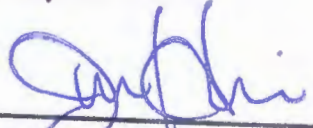
Oakland Unified School District

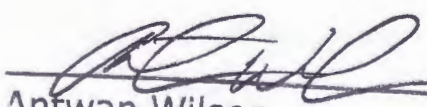
By: Vernon Hal 

Name: Vernon Hal

Title: Senior Business Officer


Date: 10/11/2016

James Harris  11/15/16
James Harris
President, Board of Education

Antwan Wilson  11/15/16
Antwan Wilson
Secretary, Board of Education

Charter Bros-OUSD Agreement
for Montera Middle Transportation

File ID Number: 16-2144
Introduction Date: 11-15-16
Enactment Number: 16-1774
Enactment Date: 11-15-16
By: [Signature]

By: 

Name: Kimberly Raney

Title: Director of Transportation

Date: 10/11/2016

Approved as to Form



Michael L. Smith
Deputy General Counsel
Oakland Unified School District

Date: 10/12/2016