

Board Office Use: Legislative File Info.	
File ID Number	16-1658
Introduction Date	8/10/16
Enactment Number	16-1298
Enactment Date	8-10-16 <i>ef</i>



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education

From Vernon Hal, Senior Business Officer

Board Meeting Date August 10, 2016

Subject **Amendment to Agreement – First Student – Business Services**

Action Requested Ratification by the Board of Education of the Amendment to the Agreement between the Oakland Unified School District and First Student, Inc. for transportation services for students with special needs for the period from July 1, 2016 to July 31, 2018 in an amount not to exceed an additional 2 Million Dollars (\$2,000,000) total over the 2016-2017 and 2017-2018 school years.

Background and Discussion Faced with, among other things, a pending termination notice from First Student and the need to ensure the continued transportation of District special education students, on June 22, 2016, the Board of Education approved Resolution No. 1516-0231 (Enactment No. 16-1209) authorizing the Superintendent of Schools to execute on behalf of the District an amended agreement with First Student for the transportation of students with special needs for the period from July 1, 2016 to July 31, 2018 in an amount not to exceed (over the original contract amount) an additional 2 Million Dollars (\$2,000,000) total over the 2016-2017 and 2017-2018 school years, provided said amended agreement was ratified by the Board of Education at the first meeting in August 2016. The original not to exceed amount is 7 Million Dollars (\$7,000,000) per year.

Recommendation Ratification by the Board of Education of the Amendment to the Agreement between the Oakland Unified School District and First Student, Inc. for transportation services for students with special needs for the period from July 1, 2016 to July 31, 2018 in an amount not to exceed an additional 2 Million Dollars (\$2,000,000) total over the 2016-2017 and 2017-2018 school years.

Fiscal Impact Not to exceed an additional \$2,000,000 total over the 2016-2017 and 2017-2018 school years.



CONTRACT JUSTIFICATION FORM

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

Legislative File ID No. 16-1658

Department: Senior Business Officer

Vendor Name: First Student Business Services

Contract Term: Start Date: 7-1-2016 End Date: 7-31-2018

Annual Cost: \$ 1,000,000.00

Approved by: Senior Business Officer

Is Vendor a local Oakland business? Yes No

Why was this Vendor selected?

Extending contract for two school years.

Summarize the services this Vendor will be providing.

This vendor will provide transportation services for students with special needs.

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



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

**OAKLAND UNIFIED SCHOOL DISTRICT-
FIRST STUDENT SPECIAL EDUCATION
TRANSPORTATION SERVICES AGREEMENT
AMENDMENT**

File ID Number: 16-1658
Introduction Date: 8-10-16
Enactment Number: 16-1298
Enactment Date: 8-10-16
By: [Signature]

File ID Number: 16-1593
Introduction Date: 6/22/16
Enactment Number: 16-1209
Enactment Date: 6/22/16
By: [Signature]

**SPECIAL EDUCATION SCHOOL BUS TRANSPORTATION SERVICES AGREEMENT
AMENDMENT NO. 1**

This Amendment is effective the 1st day of July 2016, by and between Oakland Unified School District, with principal offices at 1000 Broadway, Oakland, California 94607 (hereinafter, "the District"), and First Student, Inc., with its regional business offices at 13200 Crossroads Parkway, Suite 450, City of Industry, California 91746 and local business offices for purposes of this Agreement located at 333 Filbert Street, Oakland, California 94607 (hereinafter, "First Student").

WITNESSETH

WHEREAS, the District selected First Student to provide special education pupil transportation services described herein;

WHEREAS, First Student desires to provide such transportation services; and

WHEREAS, on May 28, 2014, by Enactment No. 14-0905, the District Board of Education approved a contract for transportation services for special education students with First Student, Inc. ("Agreement"). The term of said Agreement began on August 1, 2014, and expires on July 31, 2018, unless the parties to the Agreement agree in writing to extend the Agreement pursuant to Section 1.1 of the Agreement;

NOW, THEREFORE, in consideration of the covenants hereinafter contained, the parties agree to amend the following Sections of the Agreement effective July 1, 2016 as follows:

SECTION 1: TERM

- 1.1 **Agreement Term:** The term of this Agreement shall commence July 1, 2016 and shall continue through July 31, 2018. This Agreement may be extended by mutual written agreement for up to two (2) additional one-year periods based on First Student's satisfactory service/performance, subject to terms and conditions set forth in this Agreement. For purposes of this Agreement, the term "Contract Year" shall mean each one-year period commencing on July 1 of each year during the term of this Agreement.

SECTION 3: TRANSPORTATION RATES, COMPENSATION AND BILLING

- 3.1 **Payment for Services:** In consideration for services rendered hereunder, the District shall pay to First Student all sums due and owing and calculated in accordance with the rates set forth in Exhibit A attached to and incorporated into this Amendment to the Agreement and the Agreement, as may be adjusted pursuant to the provisions herein.

3.1.1 2016-2017 School Year

The Rate Schedule, as set forth in Exhibit A is amended to provide for a rate increase of 16% for the 2016-2017 school year, effective July 1, 2016, which amended rates are set forth in amended Exhibit A.

First Student agrees to implement a starting driver pay rate of at least \$19 per hour effective August 1, 2016 for all drivers, including standby, backup and fill-in drivers, performing any services to the District under the Agreement.

3.1.2. 2017-2018 School Year

Effective July 1, 2017, the Rate Schedule is amended to provide for a rate increase of 14.3% of the 2016-2017 school year rates, which amended rates are set forth in amended Exhibit A.

SECTION 5: RATE ADJUSTMENTS

5.1 Calculation of Rate Adjustments: All rates set forth in Exhibit A of this amendment will be subject to upward (but not downward) adjustment once each year, commencing June 30, 2017, and on each June 30th thereafter, such adjustment shall be based on the percentage increase or decrease in the "Consumer Price Index - All Urban Consumers" for the area: "San Francisco-Oakland-San Jose," as reported by the U.S. Department of Labor for the June-to-June period immediately preceding the adjustment date. Consumer Price Index ("CPI") adjustments: (i) shall not in any event result in a decrease in rates; and (ii) shall be in addition to, and not in lieu of, the 14.3% rate increase effective as of July 1, 2017. The rate adjustment will be one hundred percent (100%) of the increase (but not decrease) of such CPI change, but not to exceed five percent (5%). The rate adjustment formula shall be applicable to the Base Cost per student and the excess hours and miles charged as set forth in amended Exhibit A, and shall be computed in accordance with the following formula:

$$R = I + (I * f)$$

- Where **R=** Revised rate for any subsequent year, applicable to the Base Cost Bid and excess hours and miles charged.
- I=** Initial Rate (base cost, as per First Student's bid and subsequent revised rate).
- f=** One hundred percent (100%) of the annual increase or decrease of the "Consumer Price Index - All Urban

Consumers” for the area: “San Francisco-Oakland–San Jose,” as reported by the U.S. Department of Labor for the June-to-June period immediately preceding the adjustment date.

If the approved Consumer Price Index (CPI) is negative resulting in a downward price adjustment, the CPI shall be disregarded.

SECTION 16: EQUIPMENT AND SUPPLIES

16.14 Fuel: First Student shall purchase at its own cost, inclusive of all fuel taxes, all fuel required for the operation of buses under this Agreement. However, fuel prices are assumed at \$3.00 per gallon. Should First Student’s cost of fuel exceed \$3.00 per gallon including taxes, the District will reimburse First Student the excess cost. First Student will provide documentation substantiating its fuel costs upon written request of the District.

SECTION 19: TERMINATION

19.1 Termination of Agreement for Convenience:

Either party may terminate the Agreement ***without cause*** at any time with one-hundred eighty (180) days written notice to the other party. Should First Student terminate this Agreement for convenience, First Student agrees to provide reasonable transition services for an additional sixty (60) days beyond the initial 180 days to the District and any other designee at the then-current contractual rates.

SECTION 21: LIQUIDATED DAMAGES

Section 21 of the Original Agreement (Liquidated Damages) is deleted in its entirety from this Amendment.

SECTION 26: NOTICE TO PARTIES

26.1 Notices: All notices provided for under this Amendment to the Agreement and 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 days after mailing.

Notices to the District shall be addressed to:

Oakland Unified School District
Attn: Kimberly Raney (or, Director of Transportation)
Oakland Unified School District

1000 Broadway, Suite 440
Oakland, CA 94607
Fax No. : (510) 874-3687

Oakland Unified School District
Attn: Office of the General Counsel
1000 Broadway Suite 680
Oakland, CA 94607
Phone No. : (510) 879-8535
Fax No. : (510) 879-4046

Notices to First Student shall be addressed to:

First Student
Area General Manager
333 Filbert Street
Oakland, CA 94607-2529
ATTN : John Olivares
Fax No. : 510-628-0095
Email : john.olivares@firstgroup.com

With a copy to :

FirstGroup America, Inc.
600 Vine Street, Suite 1400
Cincinnati, OH 45202
ATTN : General Counsel
Fax No.: (513) 362-4537
Email : mike.petrucchi@firstgroup.com

SECTION 27: ENTIRE AGREEMENT

- 27.1 Entirety of Agreement: This Amendment to the Agreement, as well as the Original Agreement, constitute the entire agreement between the District and First Student concerning the subject matter hereof. There are no representations, either oral or written, between the District and First Student other than those contained in this Agreement. All understandings, agreements, covenants, and representations express or implied, oral or written between Parties are contained and merged herein. No other agreements, covenants, representations, express or implied, oral or written have been made between the Parties concerning the subject of this Amendment. This is an integrated agreement. It may not be altered, modified, or otherwise changed in any respect except in a writing signed by each party.

SECTION 28: COMPLIANCE WITH LAW: LICENSES AND PERMITS

28.2 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: The District certifies to the best of its knowledge and belief, that it and its officials are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this Agreement, certifies that First Student does not appear on the Excluded Parties List found at <https://www.sam.gov/portal/public/SAM>.

SECTION 29: PLACE OF CONTRACT AND CONTROLLING LAW

29.1 Controlling Law: This Amendment to the Agreement and the 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.

29.2 Venue: First Student and the District agree that the legal venue for any and all litigation relative to the formation, interpretation and performance of this Amendment to the Agreement and the Agreement is vested in Alameda County, California, without resort to conflict of laws.

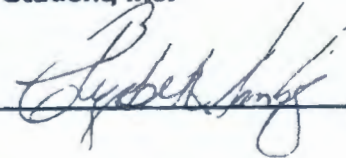
SECTION 30: AUTHORITY

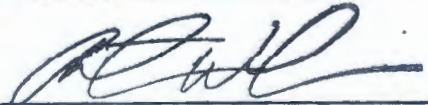
28.1 Parties Authorized to Enter Amendment to Agreement: Both parties warrant that they are properly authorized to enter into this Amendment to the Agreement.

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

First Student, Inc.

Oakland Unified School District

By:  _____

By:  _____

Name: Liz Sanchez

Name: Antwan Wilson

Title: Senior Vice-President

Title: Superintendent & Board Secretary

Date: 6/22, 2016

Date: 6/23, 2016

Approved as to Form



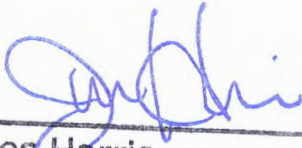
6/23/16

Ben Hood
FirstGroup America, Inc.
Associate General Counsel

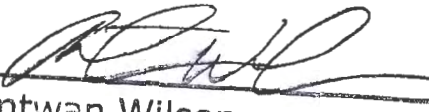


6/22/16

Michael L. Smith
Oakland Unified School District,
Deputy General Counsel



James Harris
President, Board of Education



Antwan Wilson
Secretary, Board of Education

File ID Number: 16-1658
Introduction Date: 8-10-16
Enactment Number: 16-1298
Enactment Date: 8-10-16
By:

File ID Number: 16-1593
Introduction Date: 6-22-16
Enactment Number: 16-1209
Enactment Date: 6-22-16
By: DA

AMENDED EXHIBIT A

RATE SCHEDULE FOR JULY 1, 2016 TO JUNE 30, 2017

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

LOCAL – Within Alameda County

Rate per pupil per day (ambulatory): \$27.52

Rate per pupil per day (wheelchair): \$51.99

OUT OF THE AREA – Greater Bay Area outside of Alameda County

Rate per pupil per day (ambulatory)*: \$92.80*

Rate per pupil per day (wheelchair)*: \$98.60*

* Minimum of four (4) students required, otherwise rate will be based upon negotiated actual miles and hours.

2. Field Trip Rate with trip as specified by special request, on equipment in normal use for the above service:

Ambulatory

Cost per hour of service: \$82.94

Wheelchair

Cost per hour of service: \$87.00

RATE SCHEDULE EFFECTIVE JULY 1, 2017

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

LOCAL – Within Alameda County

Rate per pupil per day (ambulatory): \$31.46

Rate per pupil per day (wheelchair): \$59.42

OUT OF THE AREA – Greater Bay Area outside of Alameda County

Rate per pupil per day (ambulatory)*: \$106.07*

Rate per pupil per day (wheelchair)*: \$112.70*

* Minimum of four (4) students required, otherwise rate will be based upon negotiated actual miles and hours.

2. Field Trip Rate with trip as specified by special request, on equipment in normal use for the above service:

Ambulatory

Cost per hour of service: \$94.80

Wheelchair

Cost per hour of service: \$99.44

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OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education

From Jacqueline Minor, Co-General Counsel
Marion McWilliams, Co-General Counsel
Michael Smith, Deputy General Counsel

Board Meeting Date June 22, 2016

Subject **Resolution Authorizing the Superintendent to Enter into Amended Agreement with First Student for Special Education Transportation Services**

Action Requested **Approval of the Resolution No. 1516-0231 authorizing the Superintendent to enter into Amended Agreement with First Student for Special Education Transportation Services subject to ratification by the Board of Education at the August 10, 2016 Board Meeting**

Background On May 28, 2014, the Board of Education approved a four (4) year contract for transportation services for special education students with First Student, Inc. ("Original Agreement") in an amount not to exceed \$7 million (\$7,000,000) a year. On April 21, 2016, First Student sent the District a 120-day Termination Notice. The District has entered into negotiations for an amended agreement for the 2016-2017 and 2017-2018 school years to ensure the continued provision of transportation services for students with special needs.

Discussion The resolution authorizes the Superintendent of Schools to execute on behalf of the District an amended agreement with First Student for the provision of transportation services for students with special needs for the period from July 1, 2016 to June 30, 2018 in an amount not to exceed an additional 2 million dollars (\$2,000,000) total over the 2016-2017 and 2017-2018 school years, provided said amended agreement is ratified by the Board of Education at the first meeting in August 2016.

Recommendation Approval by the Board of Education of the Resolution No. 1516-0231 authorizing the Superintendent to enter into Amended Agreement with First Student for Special Education Transportation Services subject to ratification by the Board of Education at the August 10, 2016 Board Meeting

Fiscal Impact Funding Resource: Special Education – 7240 – Not to exceed an additional 2 million dollars (\$2,000,000) total over the 2016-2017 and 2017-2018 school years.

Attachments • **Resolution**

**RESOLUTION OF THE BOARD OF EDUCATION OF THE
OAKLAND UNIFIED SCHOOL DISTRICT
RESOLUTION NO. 1516-0231**

Authorizing the Superintendent to Enter into Amended Agreement with First Student for Special Education Transportation Services Subject to Ratification by the Board of Education at the August 10, 2016 Board Meeting

WHEREAS, by Enactment # 14-0905 approved by the Board of Education on May 28, 2014, the Board of Education of the District, approved a four (4) year contract for transportation services for special education students with First Student, Inc. ("Original Agreement") in an amount not to exceed \$7 million (\$7,000,000) a year;

WHEREAS, the term of said Original Agreement began on August 1, 2014, and expires on July 31, 2018;

WHEREAS, the District Legal Department met with First Student on March 22, 2016 and First Student requested an increase in rates for services for the two remaining years of the Original Agreement (2016-2017 and 2017-2018 school years);

WHEREAS, on April 21, 2016, First Student sent the District a 120-day Termination Notice;

WHEREAS, the Termination Notice will be effective on August 19, 2016 and result in students eligible for special education and related services under the Individuals with Disabilities Education Act not having access to transportation that takes our students to and from their educational programs;

WHEREAS, proper, efficient, and cost-effective transportation of students with special needs demonstrates our commitment to all students and families;

WHEREAS, in order to provide proper, efficient, reliable, and cost-effective transportation for District students, the District is negotiating an Amended Agreement with First Student for the period from July 1, 2016 to June 30, 2018 to provide minimum driver wages and an increase rate for services by First Student in amount that equates to an additional 1 million (\$1,000,000) per school year;

WHEREAS, the Parties cannot complete an Amended Agreement before the end of the fiscal year;

NOW THEREFORE, BE IT RESOLVED THAT the Board of Education of the District authorizes the Superintendent of Schools to execute on behalf of the District an amended agreement with First Student for the provision of transportation services for students with special needs for the period from July 1, 2016 to June 30, 2018 in an amount not to exceed an additional 2 million dollars (\$2,000,000) total over the 2016-2017 and 2017-2018 school years, provided said amended agreement is ratified by the Board of Education at the first meeting in August 2016.

PASSED AND ADOPTED by the Board of Education of the Oakland Unified School District this 22nd day of June, 2016, by the following vote, to wit:

AYES: Aimee Eng, Shanthi Gonzales, Roseann Torres, Jody London, Jumoke Hinton Hodge, Vice President Nina Senn, President James Harris

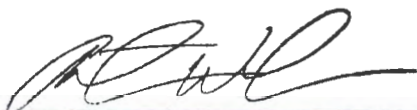
NOES: None

ABSTAINED: None


ABSENT: None

CERTIFICATION

I hereby certify that the foregoing Resolution was duly approved and adopted by the Board of Education of said district at a Special Meeting I thereof held on the 22nd day of June, 2016 with a copy of such Resolution being on file in the Office of the Board of Education of said district.



Antwan Wilson, Superintendent and Board Secretary

File ID Number: 16-1593
Introduction Date: 6/22/16
Enactment Number: 16-1209
Enactment Date: 6/22/16
BY: 

Board Office Use: Legislative File Info.	
File ID Number	13-1834
Introduction Date	August 14, 2013
Enactment Number	13-1554
Enactment Date	8/14/13 <i>ok</i>



OAKLAND UNIFIED SCHOOL DISTRICT

Community schools, Thriving students

Memo

To Board of Education

From Jacqueline Minor, General Counsel *JM*

Board Meeting Date August 14, 2013

Subject **Approval of AGREEMENT with First Student, Inc To Provide School Pupil Activity Bus ("SPAB") transportation services for District school sites and programs**

Action Requested **Approval of the AGREEMENT with First Student, Inc of Concord To Provide SPAB transportation services for District school sites and programs**

Background
A one paragraph explanation of why the consultant's services are needed.

The District issued an RFP for School Pupil Activity Bus (SPAB) providers to contract with for local/short trips and longer distance/overnight field trips. In issuing the RFP the District's intent was to have an approved list of SPAB providers and to authorize District school sites and school programs that need bus transportation to select from the preapproved list.

Discussion
One paragraph summary of the scope of work.

The District has initially selected five SPAB vendors to provide transportation services as a part of the RFP process. The five vendors are Walker Charter of Oakland, Delta Charter of Stockton, Michael's Transportation of Vallejo, Durham of Concord and First Student of Richmond. The term of the Agreements is August 1, 2013 to June 30, 2016; with an option to extend for two additional one year terms.

Recommendation **Approval of AGREEMENT with First Student, Inc To Provide SPAB transportation services for District school sites and programs**

Fiscal Impact School Bus Costs for Field Trips are funded by each site using a variety of funds

Attachments

- Agreement

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

**THE OAKLAND UNIFIED SCHOOL DISTRICT
AND
FIRST STUDENT, INC.**

THIS AGREEMENT ("Agreement") is entered into as of August 1, 2013 between First Student, Inc. ("Contractor") and the Oakland Unified School District (the "District"), for Contractor to provide School Pupil Activity Bus ("SPAB") transportation services for District school sites and programs.

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

A. Term and Termination

The term of this Agreement shall commence on August 1, 2013 and shall terminate June 30, 2016. After the initial term, the Agreement may be extended for two additional one year terms upon mutual agreement of both parties. The Agreement may be terminated by Contractor at any time with 90 days prior written notice. OUSD may at any time terminate this Agreement upon written notice to CONTRACTOR. OUSD shall compensate CONTRACTOR for services satisfactorily provided through the date of termination. In addition, OUSD may terminate this Agreement for cause should CONTRACTOR fail to perform any part of this Agreement. In the event of termination for cause, OUSD may secure the required services from another contractor. If the cost to OUSD exceeds the cost of providing the services pursuant to this Agreement, CONTRACTOR shall pay the additional cost.

B. Vehicles

The Contractor agrees to supply, at its sole cost and expense, such vehicles ("Vehicles") as may be necessary to lawfully perform the Services and which are SPAB certified or exceed SPAB certification requirements. All such Vehicles shall fully comply with all applicable laws and regulations. The Contractor shall be solely responsible for all Vehicles used in transporting students.

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

Upon arrival for scheduled bus service:

- Bus(es) shall be clean and in good working order.
- Excessively ripped or stained seat cushions will not be deemed acceptable.

- Rest rooms will be clean, stocked and functioning.
 - Floors will be vacuumed and no trash is to be found (e.g., storage area or seatback magazine holders)
- Appropriate environment for the transport of students .

C. Contractor's Personnel

1. The Contractor or subcontracted drivers must:
 - a. Have all applicable state vehicle permits and licensing.
 - b. Be licensed in accordance with all applicable federal and state regulations and policies.
 - c. Have a good driving record as verified by the state and other applicable regulatory bodies.
 - (i) The Contractor shall verify each driving record upon initiation of service and then every six (6) months thereafter. Such records shall be placed into the driver's file and must be accessible upon request.
 - (ii) The Contractor shall not use drivers to provide services who have accrued more than three (3) moving violations for any reason in the last two (2) years, and shall not use drivers who have had a DUI, DWI, or controlled substance-related violation.
 - d. Drive in a careful and prudent manner, exercising at all times the highest degree of care, and observing and complying with state mandated rules of the road and traffic regulations.
 - e. Abstain from using tobacco products while students are present in the vehicle or on school grounds. Drivers as well as their vehicles must not smell of smoke or any other offensive odor.
 - f. Not provide service to the District when any background check or findings indicate criminal history convictions, as obtained through state and national searches (DOJ and FBI).
 - (i) The Contractor shall verify and be liable for the payment of all driver criminal record checks prior to transporting students. Such verification shall be placed in the driver's file. The Contractor shall ensure that all drivers display their current driver's license upon request of a school official or the District authorized individual.

The Contractor shall have standards addressing professional dress and hygiene – code for its drivers. Professional dress includes clean clothes (pants, skirts, and shirts with sleeves and collars). The drivers must not wear attire that might generally be considered offensive. Hygiene includes clean shaven, groomed hair (including facial) and refraining from the use from the use of heavy, offensive colognes. Drivers must also not display offensive tattoos and piercings.

Child Abuse and Neglect Reporting Act. CONTRACTOR and their personnel will comply with the Child Abuse and Neglect Reporting Act (CANRA) guidelines as Mandated Reporters to report suspicions of possible child abuse to the appropriate reporting agency as stated in California Penal Code § 11164 – 11174.

2. The Contractor shall maintain records on all employees, drivers or sub-Contractors that demonstrate that all requirements of this Agreement have been met. The file shall include but not necessarily be limited to applicable current copies of the following:

- a) Department of Motor Vehicle Record's Check – historical driving record.
- b) Department of Justice (DOJ) background checks that meet or exceed state laws.
- c) Federal Bureau of Investigation (FBI) background check, to include Child Index.
- d) Verification of enrollment in an on-going drug/alcohol testing at random, and "for cause" drug/alcohol testing as deemed appropriate for drivers authorized to perform services for this contract. All drivers must abstain from the use of alcohol and drugs in the performance of their duties under this contract. In addition, drivers will not be under the influence of alcohol or drugs during the performance of their duties under this contract. The Contractor shall be liable for all Drug and Alcohol Testing. No driver may be utilized for this contract that fails a drug and/or alcohol test.
- e) Verification of a negative test result for Tuberculosis (TB testing).
- f) Current driver's license and certifications appropriate for driving the vehicle type that corresponds with the assignment, and include SPAB or higher certification.

Training records

3. Contractor shall take reasonable steps to prevent its employees from exposing any pupil to impropriety of word or conduct. Contractor shall **not** permit its drivers to smoke on the vehicle at any time students are on the vehicle. Contractor shall require that drivers comply with all safety laws and regulations, including but not limited to the prohibition against driving under the influence of drugs or alcohol. Such prohibition shall extend to the use of prescription and non-prescription drugs that impair the safe operation of the vehicle.

4. Contractor shall be responsible for hiring and discharging personnel employed by Contractor; provided, however, that the District shall have the right to require Contractor to remove from service any employee who, in the District's sole discretion, is deemed unsuitable for the performance of transportation services for the District. The District may make a request in writing and state the reasons therefore. Reasons may include failure of any driver to operate a vehicle in a safe manner, in accordance with the laws of the state of California and the ordinances of any city in which such vehicle operates, or a finding by the District that the personal habits and/or conduct of an employee are detrimental to the best interests of the District or to the welfare and bests interest of the students being transported

D. Assignment of Contractor's Rights

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

E. Indemnity (Hold Harmless) of the District

CONTRACTOR shall indemnify, hold harmless and defend OUSD and each of its officers, officials,

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

F. Independent Contractor

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

G. Notices

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

Contractor will provide a customer service single point of contact 24x7x365 for the District users to contact during bus trips should issues of scheduling, service, quality, bus breakdowns or other issues arise and require immediate remedy by the Contractor.

The District shall designate agents who shall be responsible for coordination of the student transportation requirements furnished under this Agreement and who shall be the District's liaison to Contractor. The District will designate a crisis management contact person for emergency contact with Contractor. By August 30th of each calendar year, the District shall inform Contractor of the name(s), contact telephone number(s) and address(es) of such management personnel. All accidents shall be reported to the District's Risk Manager at 510-273-0475 and Claims Manager at 510-273-3282 in addition to the school site principal.

Contractor: Paul Egger
First Student, Inc.
13200 Crossroads Parkway, Suite 450
City of Industry, CA 91746
ph: 562-271-4413

The District: Rebecca Cingolani
955 High Street
Oakland, Ca 94601
Ph: (510) 535-2750
Rebecca.cingolani@ousd.k12.ca.us

H. Waivers

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

I. Force Majeure

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

J. Compliance with the Law

Notwithstanding any contrary provision in this Agreement, Contractor shall comply with federal, state and local laws, rules and regulations in providing transportation services described herein.

K. Dispute Resolution

The parties agree to meet and confer in good faith on all matters and disputes under this Agreement. If a dispute is not resolved under the foregoing, and one party informs the other in writing that it reasonably believes that the difference between the parties are not likely to be

reconciled through further negotiation, then the parties agree to submit such dispute to non-binding arbitration under the Commercial Rules of American Arbitration Association. Such arbitration will be held as promptly as possible in Alameda County, California and will be conducted before a panel of three (3) members. The District and the Contractor shall each select one arbitrator, and the third arbitrator shall be selected by agreement of the other two arbitrators so chosen. All costs and expenses associated with the arbitration shall be borne entirely by the non-prevailing party.

L. Laws Governing Contract

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

M. No Rights in Third Parties

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

N. Submittal of Documents

CONTRACTOR shall not commence the Work under this Contract until CONTRACTOR has submitted and OUSD has approved evidence of the following:

1. Individual consultants:
 - Tuberculosis Clearance – Documentation from health care provider showing negative TB status within the last four years.
 - Insurance Certificates and Endorsements
- Agencies or organizations:
- Insurance Certificates and Endorsements – Workers' Compensation

O. Contractors Insurance

Commercial General Liability Insurance: The following insurance is required:

- i. If Contractor employs any person to perform work in connection with this Agreement, Contractor shall procure and maintain at all times during the performance of such work, Workers' Compensation Insurance in conformance with the laws of the State of California and Federal laws when applicable. Employers' Liability Insurance shall not be less than One Million Dollars (\$1,000,000) per accident or disease.
- ii. Contractor is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and will comply with such provisions before commencing the performance of the Work of this Contract.

2. Contractor shall maintain Commercial General Liability insurance, including automobile coverage with limits of Five Million Dollars (\$5,000,000) per occurrence and which shall include coverage for corporal punishment, sexual misconduct, harassment, bodily injury and property damage.
 - iii. The coverage shall be primary as to the District and shall name the District as an additional insured. Evidence of insurance and additional insured endorsement must be attached.
 - iv. Endorsement of the District as an additional insured shall not affect the District's rights to any claim, demand, suit or judgment made, brought or recovered against Contractor. The policy shall protect Contractor and the District in the same manner as though each were separately issued. Nothing in said policy shall operate to increase the Insurer's liability as set forth in the policy beyond the amount or amounts shown or to which the Insurer would have been liable if only one interest were named as an insured.

P. Licenses and Permits

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

Q. Non-Discrimination

2. **Non-Discrimination.** Consistent with the policy of OUSD in connection with all work performed under Contracts, CONTRACTOR shall not engage in unlawful discrimination in employment on the basis of actual or perceived race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex or sexual orientation. CONTRACTOR agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and OUSD policy. In addition, CONTRACTOR agrees to require like compliance by all its subcontractor(s). CONTRACTOR agrees to comply with applicable Federal and California laws prohibiting discrimination against students.

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

R. Drug-Free / Smoke Free Policy

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

S. Local Business Program

In order to provide economic opportunity for Oakland residents and businesses and stimulate economic development in Oakland, the District has implemented a Local, Small Local and Small Local Resident Business Enterprise Program. ("Local Business Program"). The 20% local business participation requirement must be met with a maximum participation of 10% for Local Business Enterprises (LBE) and a minimum participation of 10% for Small Local and Small Local Resident Business Enterprises (SLBE / SLRBE). Any percentage combination of SLBE's and SLRBE may be used to calculate the full 20% requirement. More details about this Program are provided in the bid packet.

Contractors claiming preference as a *certified* Oakland Small Business must attach a copy of their certification letter to their bid. (*Information at Exhibit ___*)

T. Severability

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

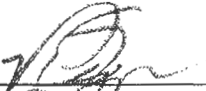
Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

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

U. Entire Agreement


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

Contractor: FIRST STUDENT, INC.

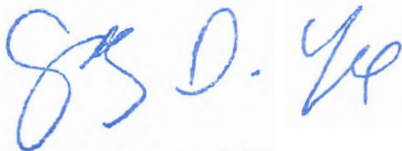

Name: Paul Egger

Date: 8/8/13

Charles Business Mgr.
Title

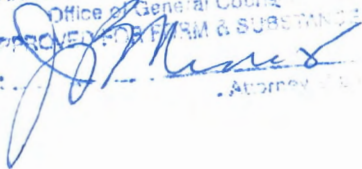

David Kakishiba,
President, Board of Education
Oakland Unified School District

Date: 8/15/13


Gary Yee
Acting Superintendent and Secretary
Board of Education
Oakland Unified School District

Date: 8/15/13

File ID Number: 13-1834
Introduction Date: 8/14/13
Enactment Number: 13-1554
Enactment Date: 8/14/13
By: DS

OAKLAND UNIFIED SCHOOL DISTRICT
Office of General Counsel
APPROVED FOR FIRM & SUBSTANCE
By: 
Attorney