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Introduction Date	6/26/19
Enactment Number	19-1111
Enactment Date	6/26/19 er



Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Andrea Bustamante, Executive Director, Community Schools and Student Services Dept.
Sonjha Phillips, Commissioner, Oakland Athletic League

Board Meeting Date June 26, 2019

Subject Amendment No. 1 - Agreement for School Pupil Activity Bus Transportation with Seat Belts
Contractor: Bay Area Transport Services
Services For: Oakland Athletic League

Action Requested and Recommendation Approval by the Board of Education of Amendment No. 1 to the Agreement between the District and Bay Area Transport Services, Oakland, CA, for the latter to increase the not to exceed amount from \$300,000.00 to \$400,000.00, for this vendor's services as the primary provider for athletic transportation services, for the period of August 8, 2018 through June 30, 2021. All other terms and conditions remain in full force and effort.

Background
(Why do we need these services? Why have you selected this vendor?)

The District issued an RFP for transportation service providers to contract with for local/short trips and longer distance/ overnight trips. In issuing the RFP the District selected three vendors to provide the necessary services for Oakland Athletic league. This enactment is to just increase the not to exceed amount since we had to shift more routes/trips to this vendor. This will not impact the total cost of athletic transportation costs.

Competitively Bid Was this contract competitively bid? Yes
If no, exception:

Fiscal Impact Funding resource(s): 5826 Unrestricted Athletics

Attachments

- Services Amendment Agreement
- Copy of original Agreement, Legislative File #18-1675

**AMENDMENT NO. 1 TO OAKLAND UNIFIED SCHOOL DISTRICT – BAY AREA
TRANSPORT SERVICES AGREEMENT FOR SCHOOL PUPIL ACTIVITY BUS (FOR
OAKLAND ATHLETIC LEAGUE) TRANSPORTATION SERVICES WITH SEAT BELTS**

1. On August 22, 2018, by Enactment No. 18-1500, the Oakland Unified School District ("District") Board of Education approved an agreement for school pupil activity bus (for Oakland Athletic League) transportation services with Bay Area Transport Services ("Contractor") ("Agreement"). The term of said Agreement began on August 8, 2018, and expires on June 30, 2021.
2. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:** The District certifies to the best of 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 Contractor according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, verifies that this vendor does not appear on the Excluded Parties List. <https://www.sam.gov>.
3. This Amendment No. 1 to the Agreement, as well as the Agreement, attached hereto as Exhibit A, constitute the entire understanding and agreement between the Parties. The Agreement is amended as set forth in paragraph numbers 4 and 5, below.
4. The not to exceed amount language of the first sentence of the third paragraph of Section 1 of the Agreement is amended and replaced to state as follows: "The total amount payable to Contractor under this Agreement shall not exceed \$400,000 per contract year."
5. All understandings, agreements, covenants, and representations express or implied, oral or written between the Parties are contained and merged herein. No other agreements, covenants, or representations, express or implied, oral or written, have been made by or 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.

Oakland Unified School District

Almee Eng

Almee Eng
President, Board of Education

Date: 6/27/19

Bay Area Transport Services

Marlon McWilson

Marlon McWilson
President, Bay Area Transport
Services

Date: 5/15/19

Kyla Johnson-Trammell

Kyla Johnson-Trammell
Superintendent & Board Secretary

Date: 6/27/19

Approved as to form:

Michael L. Smith

Michael L. Smith, Co-General Counsel
Oakland Unified School District

Date: 5/31/19

OUSD or the District verifies that the Contractor does not appear on the Excluded Parties List at <https://www.sam.gov/>

Board Office Use: Legislative File Info.	
File ID Number	18-1675
Introduction Date	8/22/18
Enactment Number	18-1500
Enactment Date	9/12/18 If



**OAKLAND UNIFIED
SCHOOL DISTRICT**

Community Schools, Thriving Students

Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Andrea Bustamante, Executive Director, Community Schools and Student Services Department

Board Meeting Date August 22, 2018
(To be completed by Procurement)

Subject Agreement - Bay Area Transport Services (contractor) - Oakland Athletic League (site/department)

Action Requested Approval by the Board of Education of an Agreement between the District and Bay Area Transport Services. Services to be primarily provided to the Oakland Athletic League for the period of August 8, 2018 through June 30, 2021.

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

The District issued an RFP for transportation providers to contract with for local/short trips and longer distance/ overnight trips. In issuing the RFP the District's has selected three vendors to provide the necessary services for Oakland Athletic League.

Discussion
One paragraph summary of the scope of work.

Approval by the Board of Education of an Agreement between the District and Bay Area Transport Services (B.A.T.S), Oakland, CA, for the latter to transport OUSD Oakland Athletic League (OAL) employees and students according to District's needs and requirements to various District approved sporting events for the period of August 8, 2018 through June 30, 2021, in an amount not to exceed \$300,000.00 annually.

Recommendation Approval by the Board of Education of an Agreement between the District and Bay Area Transport Services. Services to be primarily provided to the Oakland Athletic League for the period of August 8, 2018 through June 30, 2021.

Fiscal Impact Funding resource name (please spell out): 0000/Unrestricted-Athletics in an amount not to exceed \$300,000.00 annually.

Attachments

- Memorandum of Understanding
- Scope of Work
- Certificate of Insurance



CONTRACT JUSTIFICATION FORM

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

Legislative File ID No. 18-1675

Department: Oakland Athletic League

Vendor Name: Bay Area Transport Services (B.A.T.S.)

Contract Term: Start Date: August 8, 2018 End Date: June 30, 2021

Annual Cost: \$ 300,000.00 Annually

Approved by: Kimberly Raney / Andrea Bustamante

Is Vendor a local Oakland business? Yes No

Why was this Vendor selected?

Bay Area Transport Services (B.A.T.S.) is one of three vendors selected from the District's RFP process for transportation providers for local/short trips and longer distance/overnight trips.

Summarize the services this Vendor will be providing.

Vendor will provide transportation for the Oakland Athletic League employees and students according to the District's needs and requirements to various approved sporting events.

Was this contract competitively bid? Yes No

If No, answer the following:

1) How did you determine the price is competitive?

[Empty box for answer]

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**

**AGREEMENT FOR SCHOOL PUPIL ACTIVITY BUS
(FOR OAKLAND ATHLETIC LEAGUE) TRANSPORTATION SERVICES WITH SEAT BELTS**

**OAKLAND UNIFIED SCHOOL DISTRICT
AND
BAY AREA TRANSPORT SERVICES**

This Agreement for School Pupil Activity Bus Transportation Services with Seat Belts ("Agreement" or "Contract") is entered into as of August 8, 2018 between Bay Area Transport Services ("Contractor") and Oakland Unified School District ("District" or "OUSD"), for Contractor to provide School Pupil Activity Bus transportation vehicles for District students (including with seat belts, when the OAKLAND ATHLETIC LEAGUE ("OAL") specifically requests and/or when the law requires that the dispatched vehicles have seat belts.)

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

1. Term and Termination; Contract Not to Exceed Amount; Pricing

The term of this Agreement shall commence on August 8, 2018 and shall terminate June 30, 2021. After the initial term, the Agreement may be extended for two (2) additional one (1) year terms upon mutual written agreement of both parties. The first "contract year" shall be from August 8, 2018 to June 30, 2019, and any successive "contract year" shall be from July 1 of one year to June 30 of the next successive year.

The Agreement may be terminated by Contractor at any time with 90 days prior written notice. OUSD may at any time and without cause terminate this Agreement upon 30 days written notice to Contractor. In addition, OUSD may terminate this Agreement for cause immediately should Contractor fail to perform any part of this Agreement.

The total amount payable to Contractor under this Agreement shall not exceed \$300,000 per contract year. The rates payable to Contractor are as set forth in the Bus Rate Worksheet, attached to this Agreement.

The prices set forth in the Bus Rate Worksheet, which the District shall pay the Contractor, shall be firm through June 30, 2021. In the event the District exercises its option to extend the Contract beyond that date, Contractor may request a rate adjustment. Any request for rate adjustment shall be made in writing and presented 30 days prior to the anniversary date of each relevant contract year ending date. In no event shall the amount of increase, if granted by the District, exceed two (2) percent annually.

2. Vehicles & Contractor's Personnel

Vehicles Upon Request Must Have Seat belts:

The Contractor agrees to provide such vehicles with seat belts

("Vehicles") as may be necessary to lawfully perform the Services and which are SPAB certified or exceed SPAB certification requirements. Contractor agrees to dispatch buses with seat belts to District schools that request seat belts. The buses will be used by District school sites for both local/short trips and longer distance/overnight trips. The District will distribute an approved list of SPAB providers that have seat belts in buses. District school sites and school programs that need bus transportation will select from the preapproved list of SPAB providers with buses with seat belts. 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.

District May Inspect:

The Contractor agrees to permit the District's duly authorized agents to inspect said bus(es) at any reasonable time, during normal business hours, subject to coordination with Contractor relative to

location, and the maintenance schedules of the bus(es). The time and place of such inspection shall be as mutually agreed.

Condition of Vehicles:

Upon arrival for the transportation of District students/staff, bus(es):

- Shall be clean and in good working order;
- Shall not have excessively ripped or stained seat cushions;
- Shall have, where applicable, restrooms that are clean, stocked and functioning; and
- Shall have clean, vacuumed/mopped floors with no trash present (e.g., in a storage area or seatback magazine holder);
- Bus environment and Contractor staff shall be appropriate for the transport of students;
- Buses shall have seat belts for all passengers, if and when requested by a school or District site.
- Should substitute bus equipment be required, Vendor must ensure equivalency to the required capacity and be able to meet the requirements of the scheduled trip. When and if delays or equipment substitutions are necessary due to mechanical problems of the bus, the Vendor shall make every immediate effort to remedy the situation and communicate the remedy to the trip contact person, as well as to the District's Transportation Department.

The Contractor or subcontracted drivers must:

Have all applicable state vehicle permits and licensing.

Be licensed in accordance with all applicable federal and state regulations and policies.

Have a good driving record as verified by the state and other applicable regulatory bodies.

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.

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.

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.

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.

Be able to effectively communicate and provide route and schedule assurance through proficiency with following driving directions, map reading and route planning tools currently available such as Global Positioning Satellite (GPS) or similar prior to the commencement of the trip and during the trip;

Not be dependent upon customers for trip directions and/or navigation;

Demonstrate exemplary customer service;

Not demonstrate any unprofessional conduct, use of inappropriate language, intimidating behavior, and/or personal or sexual harassment. Contractor is referred to the District's sexual harassment policy, which is incorporated into any contract by this reference.

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.

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

Contractor shall ensure that all drivers display their current driver's license upon request of a school official or the District authorized individual.

By signing this Agreement, Contractor certifies compliance with the following requirements:

Tuberculosis Screening: Contractor is required to screen all of its employees who will be working with OUSD students and/or at sites. Contractor affirms that each employee who will have contact with any OUSD student(s)/site(s) has current proof of negative TB testing on file and TB results are monitored.

Fingerprinting of Employees and Agents: The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Contractor's services under this Agreement and Contractor certifies its compliance with these provisions as follows: "Contractor certifies that Contractor has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Contractor's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by OUSD, or acting as independent contractors of Contractor, who may have contact with OUSD pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. Contractor further certifies that it has received and reviewed fingerprint results for each of its Employees and Contractor has requested and reviews subsequent arrest records for all Employees who may come into contact with OUSD pupils in providing services to the District under this Agreement.

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:

Department of Motor Vehicle Record's Check – historical driving record.

Department of Justice (DOJ) background checks that meet or exceed state laws.

Federal Bureau of Investigation (FBI) background check, to include Child Index.

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.

Verification of a negative test result for Tuberculosis (TB testing).

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.

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.

3. Accident & Operational Reports

All accidents or incidents involving the Contractor's equipment, personnel, or students being transported while operating for the District shall be reported in writing to the District within two (2) working days. A preliminary oral report shall be made to the principal of the school which booked the trip within thirty (30) minutes following the accident or incident, and shall include whether any fatalities or injuries occurred and a general description of property damage and any law enforcement response. Contractor shall also notify the District's Transportation Director via email at Kimberly.Raney@ousd.org and/or phone at (510) 879-2740 and the District's Third Party Adjuster at OUSDIncidents@ccmsi.com of the accident or incident within 24 hours. Follow-up accident written reports shall be made periodically until all the pertinent facts have been reported to the District. A legible copy of both the responding police agency and the Contractor's accident investigator's final report shall be submitted to the District within ten (10) working days following the accident or incident or when such report is completed, whichever occurs first. Finally, the Contractor's internal communication problems shall not relieve the Contractor of its obligation regarding an accident/incident as may be required by the California Highway Patrol's Passenger Transportation Safety Handbook.

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

4. Customer Service

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.

Contractor shall provide training to its personnel in how to provide exemplary customer service and shall provide reasonable remedies/compensation should customer service levels fall below these standards.

5. Time of the Essence/Assessment of Damages

Time is of the essence under this Contract.

The District reserves the right to assess the Contractor damages ("Assessed Damages") should the Contractor fail to provide at least 7 business days' notice of cancellation of equipment and/or trip. The amount of the damages which may be assessed to the Contractor shall be equal to the charges to be paid by Oakland Unified School District for cancellation, plus any costs incurred by the District in obtaining an alternate carrier (to include the difference in trip fees). In addition, Contractor must pay added cost to District for booking with another company. All such damages shall be payable to the District within ten (10) business days of District's demand.

Further, should Contractor fail to either (a) provide adequate notice to the District of cancellation as required directly above; (b) fail to provide any notice of cancellation to the District; and/or (c) fail to service a confirmed trip with any or all of the necessary personnel/equipment, and should the District (including the site/program ordering such service) be unable to timely secure a replacement service from another source, Contractor shall be liable to the District for all losses and damages therefrom; and because from the nature of the services to be provided under this Agreement, it is and will be impracticable and extremely difficult to ascertain and fix the District's actual damages from any such failure of performance, it is agreed that Contractor will pay as "liquidated damages" to the District \$1,250 within ten (10) business days of any of the foregoing events occurring.

If Assessed Damages and/or Liquidated Damages are not paid within the time specified above, the District may, in addition to its other remedies, deduct the same from any moneys due or to become due Contractor under this Agreement. The District has the express right to seek and obtain "actual damages" in addition to Assessed Damages or Liquidated Damages.

6. Complaints

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

7. Subcontracting & Assignment of Contractor's Rights

Contractor shall only be authorized to subcontract its provision of services under this Agreement upon the express written approval of, and subject to the limitations prescribed by, the District's Director of Transportation. If and when such approval is granted to Contractor, Contractor expressly agrees and certifies that any Subcontractor it retains for any and all services under this Agreement shall be subject to all of the duties and obligations applicable to Contractor under this Agreement.

Except as it relates to the hiring of independent Contractor drivers, the Contractor shall have no right (without the express written agreement of the District's Director of Transportation) to assign its rights or obligations under this Agreement, it being understood that this is a personal services agreement. If and when the District agrees to such assignment, Contractor and any Assignee(s) agree that each and every provision of this Contract shall apply to it/them.

8. Indemnity (Hold Harmless) of the District

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

9. 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.

10. Notices

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

The District shall designate agents who shall be responsible for coordination of the student transportation requirements furnished under this Agreement and who shall be the District's liaison to Contractor. The District will designate a crisis management contact person for emergency contact with Contractor. By August 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.

Contractor: Bay Area Transport Services
2012 99th Ave
Oakland Ca
510-812-4247
baytransports@gmail.com

The District: Kimberly Raney, Director of Transportation
Business Operations
1000 Broadway, Suite 440
Oakland, CA 94607
Ph: (510) 879-2740
Kimberly.Raney@ousd.org

11. Waiver

No delay or omission by either party in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of the Agreement.

12. 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.

13. Compliance with the Law

Notwithstanding any contrary provision in this Agreement, Contractor shall at all times be responsible for and will comply with all federal, state and local laws, rules and regulations applicable to Contractor's performance under the Contract, including but not limited to: the provision of vehicles with seat belts; licensing, employment and purchasing practices, and wages, hours and conditions of employment, including non-discrimination.

14. 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, that Party may, upon giving the other Party at least ten days' prior written notice, initiate litigation submitting such claims or disputes for decision by a court of competent jurisdiction. Either Party may, at its option and at any time during the dispute resolution process, seek injunctive relief (including, but not limited to preliminary injunctive relief). All reasonable costs and expenses, including attorneys' fees, associated with any litigation between the Parties arising from this Agreement, including any and all applicable rights and obligations under this Agreement, shall be borne entirely by the non-prevailing party.

15. Laws Governing Contract

This Agreement shall be performed in Oakland, California and is governed by the laws of the State of California, but without resort to California's principles and laws regarding conflict of laws. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.

16. No Rights in Third Parties

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

17. Submittal of Documents

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

18. Insurance Requirements of Contractor

The following insurance is required of Contractor under this Agreement:

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, as well as (when applicable) federal laws. Employers' Liability Insurance shall not be less than One Million Dollars (\$1,000,000) per accident or disease.

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.

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.

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, and must also be provided to the District upon demand.

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.

19. Licenses and Permits

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

20. 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).

21. 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.

22. Conflict of Interest

Contractor shall abide by and be subject to all applicable, regulations, statutes or other laws regarding conflict of interest. Contractor shall not hire any officer or employee of OUSD to perform any service by this Agreement without the prior written approval of OUSD Human Resources and OUSD Director of Transportation. Contractor affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between Contractor's family, business or financial interest and the services provided under this Agreement, and in the event of change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to OUSD's attention in writing. Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provisions of section 1090, *et seq.* and section 87100, *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event Contractor receives any information subsequent to execution of this Agreement which might constitute a violation of said provisions, Contractor agrees it shall notify OUSD in writing.

23. Incorporation of Recitals and Exhibits

The Recitals and each exhibit (if any) attached hereto are incorporated herein by reference. Contractor agrees that to the extent any recital or document incorporated herein conflicts with any term or provision of this Agreement, the terms and provisions of this Agreement shall govern.

24. Counterparts

This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

25. Signature Authority

Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been given the proper authority and empowered to enter into this Agreement.

26. Agreement Contingent on OUSD Governing Board Approval

OUSD shall not be bound by the terms of this Agreement until it has been formally approved by OUSD's Governing Board, and no payment shall be owed or made to Contractor absent that formal approval. This Agreement shall be deemed approved when it has been signed by the Board of Education and/or the Superintendent, as its designee.

27. Piggybackable Contract

Other education agencies in the State of California may piggyback upon this Agreement pursuant to Public Contract Code Sections 20118 and 20652. Education agencies, including school districts, so choosing to piggyback shall be responsible for obtaining approval from their Boards of Education or other approving body of authority as required, and shall defend, indemnify and hold harmless OUSD from any disputes, disagreements or actions which may arise as a result of using this Agreement. The District waives any right to receive payment from other California agencies making purchases off of this Agreement, and those agencies will make payment directly to the Contractor. *This "Piggybackable Contract" provision shall only apply if Contractor signs and dates here:* *Harley McDwE* 7/16/18

28. Severability, Headings & Drafting

If any provision, or portion of any provision, of this Agreement is held invalid, illegal, or unenforceable, it shall be severed from the Agreement and the remaining provisions shall be valid and enforceable. The Parties also agree that the headings used in this Agreement are for reference only, and shall have no bearing on the construction or interpretation of this Agreement. Notwithstanding the general rules of construction, both the District and Contractor acknowledge that both Parties were given an equal opportunity to negotiate the terms and conditions contained in this Agreement, and agree that the identity of the drafter of this Agreement is not relevant to any interpretation of the terms and conditions of this Agreement.

29. Survival

The following sections of this Agreement shall survive expiration and termination of this Agreement: E (Time of the Essence, Assessment of Damages); H (Indemnity (Hold Harmless) of the District); K (Waiver); N (Dispute Resolution); O (Laws Governing Contract); R (Insurance Requirements of Contractor); and BB (Severability, Headings & Drafting).

30. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

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

31. Contract Publicly Posted

This Agreement, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.

32. Entire Agreement

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

CONTRACTOR'S NAME


Contractor

Date: 7/16/18

(Signatures continued on next page)

OAKLAND UNIFIED SCHOOL DISTRICT



Date: 9/13/18

Aimee Eng
President, Board of Education



Date: 9/13/18

Kyla Johnson- Trammell, Superintendent and Secretary
to the Board of Education

OAKLAND UNIFIED SCHOOL DISTRICT

Office of the General Counsel
APPROVED FOR FORM & SUBSTANCE

By:  9/17/18

Marion McWilliams, General Counsel

OUSD or the District verifies that the Contractor does not appear on the Excluded Parties List at <https://www.sam.gov/>