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OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education

From Gary Yee, Ed.D., Superintendent and Secretary, Board of Education
Sheilagh Andujar, Associate Superintendent, Programs for Exceptional Children

Board Meeting Date May 28, 2014

Subject Award of Bid – First Student, Inc. – Special Education Transportation (Bus) Services

Action Requested

Authorize the President's Secretary of the Board to enter into and execute Resolution No. 1314-1118, Award of Bid and four (4) year Contract on behalf of the District to First Student, Inc. to provide special education transportation ("SET") bus services in an amount not to exceed \$7 million (\$7,000,000) per year, as the lowest responsive, responsible bidder, rejecting all other bids, and authorizing the President's Secretary of the Board to enter into and execute an Agreement for same with the successful bidder. The services will be performed for an initial four year term, commencing August 1, 2014 and ending July 31, 2018, with an option to extend the contract up to two (2) additional years.

Background

The District's current SET provider's (Durham School Services') contract expires on June 30, 2014. During the 13/14 school year, Durham was assigned to transport approximately 1,546 ambulatory students and 76 wheelchair students, with the District/PEC placing 24 students on alternative transportation. Durham also provides transportation during the special education Extended School Year (*i.e.*, a four-week period that runs from June to July of each year).

The District solicited formal bids for SET services for a four year contract period, with a District option to extend the term for up to two years. The District/PEC was motivated to solicit bids, instead of extending the existing contract, because of myriad issues that have arisen with Durham (*e.g.*, buses picking up and dropping off students late; bus rides in excess of 60 minutes; late delivery causing students to miss instructional time; failure to route students for weeks, or even months; District incurring significant additional costs to arrange for transportation of students through other providers; numerous informal and formal complaints from parents/guardians). Durham has provided the District SET services since 1984.¹

PEC's goal is to engage with the new SET provider in order to drastically reduce

¹ Although in 2009, the District switched and contracted with Petermann for SET services for a five year period, at a point thereafter Durham acquired Petermann and again became the District's provider.



these issues, while at the same time maximizing value and service for the District and its students.

While First Student's proposed rates per student per day (*e.g.*, ambulatory - \$23.72; wheelchair - \$44.82) are higher than Durham's proposed rates (*e.g.*, ambulatory - \$21.69; wheelchair \$40.98), PEC anticipates the same overall cost for such services as between the two bidders, if not a savings. PEC estimates it incurred through March 2014 of this (13/14) school year an additional approximate \$71,000 to arrange and pay for the transportation of students who should have otherwise been transported by Durham (and PEC anticipates the total extra incurred costs for the current school year as \$100,000 or more). PEC expects improved bus transportation services that would drastically decrease the extra costs it has incurred based on Durham's provision of services.

**Strategic
Alignment**

Proper, efficient and cost-effective transportation of special education students demonstrates our commitment to all students and families. Additionally, it complies with the District's legally-mandated requirement to provide transportation to such pupils.

Switching from Petermann/Durham to First Student should result in our students receiving much better transportation services; the families of such students having to dedicate less time to addressing what the District, through a SET provider, is supposed to provide; and students receiving the education which they deserve and to which they are legally entitled. A failure to route, to deliver students on time, *et seq.* negatively impacts the District's efforts to attain those goals.

Retention of a new SET provider, First Student, is a major component of PEC's rededication to the District's special education students.

Recommendation

Authorize the President's Secretary of the Board to enter into and execute Resolution No. 1314-1118, Award of Bid and four (4) year Contract on behalf of the District to First Student, Inc. to provide SET bus services in an amount not to exceed \$7 million (\$7,000,000), as the lowest responsive, responsible bidder, rejecting all other bids, and authorizing the President's Secretary of the Board to enter into and execute an Agreement for same with the successful bidder. The services will be performed for an initial four year term, commencing August 1, 2014 and ending July 31, 2018, with an option to extend the contract up to two (2) additional years.

Fiscal Impact

Funding Resource: Special Education – 7240; Not to exceed \$7 million.

Attachments

- Award of Bid and Contract including scope of work.

**RESOLUTION OF THE BOARD OF EDUCATION
OAKLAND UNIFIED SCHOOL DISTRICT**

RESOLUTION NO. 1314-1118

**AWARD OF BID AND CONTRACT FOR
SPECIAL EDUCATION TRANSPORTATION BUS SERVICES**

WHEREAS the **DISTRICT** has heretofore requested bids for special education transportation bus services; and

WHEREAS three (3) qualifying bids were provided via Programs for Exceptional Children in response to the said request as follows:

Contractor	Location	Bid Amount¹
Durham School Services	Warrenville, IL	<ul style="list-style-type: none"> • \$21.69 (ambulatory) • \$40.98 (wheelchair) • \$187.00 (ambulatory; Bay Area, outside Alameda County) • \$242.00 (wheelchair; Bay Area, outside Alameda County)
Student Transportation of America	Goleta, CA	<ul style="list-style-type: none"> • \$23.54 (ambulatory) • \$44.48 (wheelchair) • \$23.54 (ambulatory; Bay Area, outside Alameda County, if daily route of four hours or less. Otherwise, \$38.50 per hour per route if beyond four hours.) • \$44.48 (wheelchair; Bay Area, outside Alameda County, if daily route of four hours or less. Otherwise, \$38.50 per hour per route if beyond four hours.)
First Student, Inc.	Cincinnati, OH	<ul style="list-style-type: none"> • \$23.72 (ambulatory) • \$44.82 (wheelchair) • \$80.00 (ambulatory; Bay Area, outside Alameda County; min. four students. Otherwise, negotiated actual miles and hours.) • \$85.00 (wheelchair; Bay Area; outside Alameda County; min. four students. Otherwise, negotiated actual miles and hours.)

¹ These rates are on a per pupil, per day calculation, unless otherwise noted.

**RESOLUTION OF THE BOARD OF EDUCATION
OAKLAND UNIFIED SCHOOL DISTRICT**

RESOLUTION NO. 1314-1118

**AWARD OF BID AND CONTRACT FOR
SPECIAL EDUCATION TRANSPORTATION BUS SERVICES**

NOW, THEREFORE, BE IT RESOLVED, that the bid of the lowest responsive, responsible bidder, FIRST STUDENT, INC., for the performance of the bid work, in an amount not to exceed SEVEN MILLION DOLLARS AND NO CENTS (\$7,000,000.00) per contract year, be and is hereby accepted and all other bids are rejected.

BE IT FURTHER RESOLVED that the President and Secretary of this Board be and they are hereby authorized to enter into a contract, subject to form and content approval by the General Counsel, with FIRST STUDENT, INC. for the performance of bid work.

Passed by the following vote:

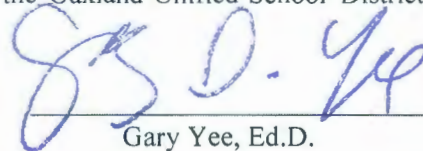
AYES: Jody London, Jumoke Hinton Hodge, Roseann Torres, Christopher Dobbins, Vice President James Harris, President David Kakishiba

NOES: None

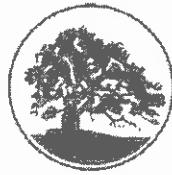
ABSTAINED: None

ABSENT: Anne Washington

I hereby certify that the foregoing is a full, true and correct copy of a Resolution adopted, at a Regular Meeting of the Governing Board of the Oakland Unified School District held on May 28, 2014.



Gary Yee, Ed.D.
Secretary, Board of Education



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

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

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SPECIAL EDUCATION SCHOOL BUS TRANSPORTATION SERVICES AGREEMENT

THIS AGREEMENT is effective the 1st day of August 2014, 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 has selected First Student to provide special education pupil transportation services described herein; and

WHEREAS, First Student 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 1, 2014 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 August 1 of each year during the term of this Agreement.

SECTION 2: SCOPE OF SERVICES REQUIRED:

First Student shall, during the term of this Agreement:

- 2.1 Provision of Services: Supply and maintain such school buses (in quantity and capacity) and personnel as are required to fulfill the District's needs for transportation of pupils qualified for special education services residing within the jurisdiction of the District from the pickup address to drop off address and return to designated delivery address, said addresses to be designated by the District. Such transportation shall be provided, in accordance with bus routes and schedules established between the District and First Student, to designated addresses on all days schools are in session for the 2014/2015, 2015/2016, 2016/2017 and 2017/2018 school years, and for all summer school/extended school year sessions during the term of this Agreement. This is not an exclusive Agreement. The District may contract with other vendors or contractors to

provide transportation services to District students, including special education students.

- 2.2 Spare Buses: 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 District routes) with a minimum of ten percent (10%) spare bus factor for each type and capacity calculated to the closest whole bus, but not less than one (1). 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.
- 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 District routes) with a minimum of ten percent (10%) spare driver factor. Spare drivers shall meet the eligibility and screening requirements of Sections 14.2 to 14.10 of this Agreement.
- 2.4 Extracurricular Transportation: Transport any and all special education pupils or other authorized persons as may be requested by the District for field trips, excursions, athletic activities or any other purpose designated by the District.
- 2.5 Belts, Restraints and Harnesses: Furnish all vehicles with a seat belt for each passenger and driver. It shall also furnish all equipment necessary for said transportation of passengers (e.g., car seats, restraints and harnesses). It shall be the driver's responsibility to see that such seat belts, car seats, restraints, or harnesses are properly adjusted and fastened as soon as the pupil occupies his/her seat and for the duration of the trip (including wheelchair students). First Student shall at all times provide for the safety and welfare of the students transported.
- 2.6 Adjustment of Services: The District and First Student may at any time convene a meeting to discuss adjustments or changes in the special education pupil transportation requirements of the District. In the event of increases or decreases in the number of students requiring transportation, or in routes or schedules, the number of buses and drivers, and the number of spare buses and spare drivers, will be adjusted accordingly. The District may increase or decrease services to be provided by First Student under this Agreement. During the first year of this Agreement, the Parties shall meet on a mutually agreeable date within the week of November 17-21, 2014 and on a mutually agreeable date within the week of March 16-20, 2015 to review implementation and discuss any needed modifications or changes in this Agreement. After the first year, and every year thereafter that this Agreement is in effect, the Parties shall meet at least once on or before March 15 of the fiscal year to review the services provided, to identify modifications in the Agreement, and for a thorough quality review. District may increase or decrease service levels to be provided by First Student under this

Agreement. However, where such increases or decreases impact by greater than 5% the students transported, service levels or equipment levels required of First Student under the assumed routes, schedules, days of service, hours or miles, or vehicle requirements contained in this Agreement, First Student shall be permitted to adjust rates commensurately to cover increases or decreases in cost structure associated with such changes by District.

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 Appendix A attached to and incorporated into this Agreement, as may be adjusted pursuant to the provisions herein.

3.2 Invoice and Payment Timing: Not later than the 10th working day after the end of each monthly billing period during the term of this Agreement, First Student will submit to the District a statement of its services rendered during the prior billing period. After verification of the statement, and provided First Student complies with all terms, covenants, and conditions of the Agreement, the District shall issue payment for First Student's services within forty-five (45) days of receipt of First Student's invoice(s).

In the event that the District fails to make a payment on any sums due hereunder, and such sums remain unpaid for 45 days following receipt of the invoice by District, First Student shall be entitled to charge interest on unpaid amounts at the rate of 1.5% per month or the maximum allowable statutory amount.

In the event that any statement amount is disputed by District, District shall deliver written notice specifying the disputed amount to First Student within 30 days of receipt of the statement by District. District shall pay all amounts not disputed to First Student on or before the 45th business day following the date on which the statement was submitted.

3.3 Invoice Format: Invoices furnished by First Student 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: First Student's name, First Student's address, invoice date, invoice number, purchase order number, period of service, date service was rendered, brief description of services provided, number and classification (e.g., ambulatory, wheelchair, etc.; within or outside of Alameda County) of pupils transported, miles and hours (where applicable), per pupil and per day rate, 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 First Student unless the doing of such extra work or the

furnishing of such extra materials shall have been authorized in writing by the District.

- 3.5 In the event of unforeseen and unanticipated changes in state or federal taxes, laws or specifications, increased insurance or surety premiums or any other condition which causes any of the First Student's overall operating costs hereunder to increase at a rate in excess of the CPI provided for in Section 5.1 below, then the parties shall determine a reasonable and just amount to cover such increase, and rates of First Student compensation set forth in Exhibit A shall be adjusted to reflect such increase.

SECTION 4: ADDITIONAL DISTRICT RIGHTS AND RESPONSIBILITIES

- 4.1 District Provision of Information to First Student: No later than 30 days before the start of each school year, the District shall provide First Student with all information relevant for scheduling and providing a student's transportation needs (e.g., name of each student; birth date; day telephone number(s); pick-up and drop-off addresses; the school/program to which a student is assigned; the start and end times for the student's school/program; an indication of whether or not the student requires special handling and/or equipment as specified in the IEP; and emergency information). All student data provided under this Section 4.1 is subject to the confidentiality provisions of Section 7.7 and 7.8 of this Agreement.

SECTION 5: RATE ADJUSTMENTS

- 5.1 Calculation of Rate Adjustments: All rates set forth in Appendix A of this Agreement will be subject to adjustment once each year, commencing August 1, 2016, and on each August 1 thereafter. There shall be no rate adjustment during 2015. 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. The rate adjustment will be one hundred percent (100%) of the increase or 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 Appendix 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.

- l=** 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 and the rate for the extended term shall be determined by the District and First Student.

SECTION 6: ROUTES AND SCHEDULES

- 6.1 **Electronic Routing System:** First Student shall have and use a fully functional electronic routing system to route buses and students. This electronic routing system must be made accessible to the District at any time upon request.
- 6.2 **First Student Responsible for Routing:** First Student shall establish all routes, schedules, and bus stops for students, in compliance with all schedules and other requirements of the Agreement. Up-to-date route sheets and information, retained in the aforementioned electronic routing system, that include, at a minimum, full driver names, full student names, bus/vehicle numbers, route names/numbers, and pick up and drop off sites and addresses, shall be available to the District at any time upon request. First Student shall (1) furnish the District a complete route map prior to the start of each school year and (2) shall calculate the approximate time of pick up and drop off for each stop and shall provide the District a list of such times. First Student's route sheets and information must also be made available to the District in hard copy format within two (2) business days of the District's request.
- 6.3 **Timely Delivery of Students:** Students are to be transported directly to their schools from their places of residence (or pre-designated boarding point, if different). Pupils are to be delivered to school not more than fifteen (15) minutes, nor less than five (5) minutes, prior to class starting time, nor are they to be kept waiting more than ten (10) minutes after dismissal time. The driver and vehicle shall wait a minimum of ten (10) minutes after arrival at school to pick up students before departing for the next destination.
- 6.4 **Maximum Trip Length:** The travel time a child is en route on any trip shall not exceed sixty (60) minutes one way except for (a) delays caused by conditions beyond First Student's control, as determined by the District or (b) medical and/or behavioral needs of a student that necessitate less travel time, as documented in

the student's IEP. Trips anticipated to exceed this time limit must be approved in advance in writing by the District.

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

transportation services for said student, including but not limited to drop off or pick up time(s) or location(s) for that student.

- 6.11 District's Right to Audit Routes and Approval of Additional Bus Services: The District shall have the right to audit (for performance, mileage and routing) any or all routes and may require changes in routing and scheduling if, in its opinion, such changes would result in increased bus and seat utilization or better service to pupils or schools. In addition, the written approval of the District is required for the addition of any buses to the Agreement or to any bus modification, which will result in any increase in overall charges to the District.
- 6.12 Limitation of Passengers: First Student/drivers will not transport any person, except a student enrolled within the District's jurisdiction, or an employee of the District or First Student, 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 First Student's bus/vehicle.
- 6.13 District's Right to Provide Routing/Scheduling: The District, may, at its sole discretion, elect to provide all, or part, of the routing and scheduling services required under the Agreement.

SECTION 7: RECORDS AND REPORTS; SHARING OF INFORMATION

- 7.1 Accident/Incident Reports: All accidents or incidents involving First Student'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 five (5) working days. Where an accident is involved, a preliminary oral report shall be made to 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 parents/guardians and school of attendance, as well as any student affected, shall be notified by First Student 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 First Student'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, First Student's internal communication problems shall not relieve First Student 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*. (Attached hereto as Exhibit B for ease of reference is the contact information for the District's various relevant departments/personnel.)

- 7.2 Operational Records: First Student shall provide within ten (10) business days, as the District deems necessary and requests, any and all operational reports and records pertaining to students, routes, mileage audits, and other information having to do with daily operations. In reviewing First Student's records, the District shall protect the confidentiality of First Student's proprietary or confidential information, provided any such records are clearly marked as "Confidential/Do Not Disclose."
- 7.3 Reporting of Complaints: First Student shall keep complete and accurate records of all written and oral complaints received regarding First Student'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. First Student shall provide to the District a written monthly report listing said complaints and actions taken by First Student, if any, to resolve each complaint.
- 7.4 Provision of Information to District in Support of Reimbursement Efforts: First Student shall supply the District with all necessary information within First Student's control so that the District may apply to the California Department of Education or any other state or federal agency for reimbursement for pupil transportation. First Student further agrees to submit to the District:
- A monthly written report not later than the 15th of the following month showing the total number of miles each vehicle traveled and the number of students transported on each vehicle for each day on which students were transported.
 - An annual written report no later than July 30 showing the average daily number of students transported and the average distance pupils were transported.
- However, First Student is not responsible for filing on behalf of the District any state or federal regulatory reports concerning ridership or reimbursement.
- 7.5 Maintenance Reports: First Student 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.
- 7.6 Customer Survey: First Student shall include the District in First Student's annual customer satisfaction surveys conducted by an independent, professional research company. Said survey shall be timely communicated to (1) the District's Director/Associate Superintendent of Programs for Exceptional Children and (2) the District's designated liaison identified by the District pursuant to Section 13.3 of this Agreement.
- 7.7 Sharing of Student Information with First Student: The District will provide First Student with IEP Behavior Plan and other educational information as necessary for performance under the Agreement. First Student agrees that it will use IEP

Behavior Plan and other educational information only for this purpose and acknowledges that it is prohibited by law from sharing this information. First Student 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 First Student has legitimate educational interests in any student information which it receives, uses, maintains or to which it has access.

- 7.8 First Student to Comply with FERPA, Etc.: First Student 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. First Student and its agents, personnel, employees, and/or subcontractors shall maintain records in accordance with all applicable federal and state laws and regulations and agree that records relating to individual pupils provided by 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. First Student and its agents, personnel, employees, and/or subcontractors will be permitted access to student data only where permissible under state and federal law.

SECTION 8: DEFENSE AND INDEMNIFICATION

- 8.1 Duty to Defend and Indemnify: Except to the extent arising from or caused by the negligence or willful misconduct of District, its governing board, State Trustee, officers, agents, and employees, First Student 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 First Student. Except to the extent arising from or caused by the negligence or willful misconduct of District, its governing board, State Trustee, officers, agents, and employees, First Student 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 by any supplier, contractor, or subcontractor furnishing work, services, or materials to First Student 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 First Student. First Student's hold harmless, defense and indemnity obligations under this Agreement shall not be limited by the insurance requirements set forth in this Agreement.
- 8.2 Survival of Section: This Section (Defense and Indemnification) shall survive the termination or expiration of this Agreement.

SECTION 9: INSURANCE

- 9.1 **Workers' Compensation Insurance:** First Student 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 Five Million Dollars (\$5,000,000) per accident or disease.
- 9.2 **Liability Insurance and District as Additional Insured:** First Student 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. First Student shall also maintain Abuse and Molestation insurance coverage, with a minimum limit of Two-Hundred Fifty Thousand Dollars (\$250,000). The coverage shall be primary 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 First Student. The policy shall protect First Student 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.
- 9.3 **Provision of Certificate of Insurance:** First Student 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 July 1st of each 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 First Student and the District. Insurer shall maintain a minimum A.M. Best's & Company rating of A or First Student shall obtain insurance from a company mutually agreed upon between First Student and the District. First Student shall provide the District with a certificate of insurance as evidence of having the workers' compensation coverage required by this Agreement.

SECTION 10: FORCE MAJEURE

- 10.1 **Excused Performance Because of Force Majeure:** First Student 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 First Student, when satisfactory evidence thereof is presented to the District.

SECTION 11: SCHOOL CLOSINGS OR CHANGES IN SCHEDULE

- 11.1 Whenever (a) school is canceled or delayed, (b) the school day is scheduled for other than regular start or end times, or (c) school is dismissed early for any reason, the District shall notify First Student not later than 6:00 a.m. on the day of such cancellation or delay or not later than two (2) hours before early dismissal or the cancellation of school. If the District does not notify First Student by 6:00 a.m. that day, the District shall pay First Student half the daily rate per student actually affected for that day.
- 11.2 Notwithstanding the foregoing, in the event of circumstances in the operation of any school which necessitate early dismissal for student health or safety reasons, First Student and the District shall cooperate to facilitate orderly transportation of students in the most efficient manner possible in light of the circumstances presented.

SECTION 12: SAFETY PROGRAM

- 12.1 First Student shall be responsible for implementing, maintaining, and reviewing annually a comprehensive pupil transportation safety program for the transportation of District students pursuant to this Agreement. First Student shall provide the District a copy of the safety program plan on or before August 1 of each Contract Year.
- 12.2 First Student's employees shall not be required to perform any medical functions for passengers. However, First Student and its employees shall comply with all requirements of a pupil's IEP that relates to the transportation of that pupil.

SECTION 13: FIRST STUDENT AND DISTRICT MANAGEMENT PERSONNEL

- 13.1 **First Student Managers, Supervisors and Point(s) of Contact:** First Student shall employ and maintain staff as required for effective management and supervision of the special education transportation services provided to the District. In addition to such other personnel as may be required to administer the agreement

for student transportation, First Student shall designate a liaison and crisis management contact person for emergency contact with the District. By July 1st of each calendar year, and any time a liaison and crisis management contact changes, First Student shall inform the District of the name(s), contact telephone number(s), email address(es), and address(es) of such management personnel.

- 13.2 District Involvement Regarding Hiring/Assignment of Location Manager: First Student shall include the District's liaison (or the liaison's designee) identified pursuant to Section 13.3 of this Agreement on the selection committee for the hiring and assignment of the Location Manager responsible for supervising First Student's Oakland, California site for First Student's operations under this Agreement. However, the decision to hire or assign a person as Location Manager shall rest solely within First Student's discretion, with the District's liaison serving in only an advisory capacity.
- 13.3 District Designated Liaison and Crisis Management Contact: The District shall designate a liaison and crisis management contact person for emergency contact with First Student. By July 1st of each calendar year, and any time a liaison and crisis management contact changes, the District shall inform First Student of the name(s), contact telephone number(s), email address(es), and address(es) of such management personnel.

SECTION 14: OPERATIONS PERSONNEL AND DRIVERS

- 14.1 Administrative and Support Staff: First Student shall maintain a facility located in Oakland, California 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. First Student shall maintain a private telephone number solely dedicated to District-related business, at no cost to the District.
- 14.2 Pre-Employment Screening: First Student shall develop and implement a 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 First Student in determining a candidate's suitability for assignment to District-related services.
- 14.3 Provision of Personnel: First Student shall employ a sufficient number of qualified drivers and support personnel to assure the District of continuous, reliable, safe and on-time service.
- 14.4 Licenses: All drivers employed by First Student 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 First Student to transport District students. First Student 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.

- 14.5 Prohibition: First Student 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.
- 14.6 Fingerprinting of Employees and Agents: The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to First Student's services under this Agreement and First Student certifies its compliance with these provisions as follows: "First Student certifies that it has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all First Student employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, or acting as independent contractors of First Student, who may have contact with OUSD pupils in the course of providing services under 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. First Student 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.
- 14.7 Health Requirements: Each driver employed by First Student 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. First Student 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.
- 14.8 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.
- 14.9 Moral Character: First Student recognizes that, for the protection of students, drivers, other contractors, and the District, First Student's employees who have contact with the students and their families must be responsible and fit for the job. First Student shall ensure that all of its personnel meet these qualifications.

First Student will not allow any person to drive (a) whose conduct might in any way expose a child to any impropriety of word or conduct; (b) who First Student 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.

- 14.10 Lift Operation Requirements: Drivers who are required to lift students in and out of vehicles shall have special training, including refresher in-service training, provided by First Student in lifting techniques and treatment of the handicapped children who must be lifted, including appropriate methods of securing wheelchairs within a bus/vehicle. Such personnel shall be physically capable of performing the required lifting. Proof of training will be submitted to the District within two (2) business days upon request.
- 14.11 Time Schedules: All drivers shall be provided and required to have an up-to-date route sheet, area map and a timepiece with them while on duty so that they can maintain established route and time schedules.
- 14.12 Route Assignments: Drivers shall be permanently assigned to the same route, whenever possible and shall have no more than two (2) reassignments during the school year unless a reassignment is determined by the District to be in the District's best interest.
- 14.13 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.
- 14.14 Evaluations: Drivers shall be evaluated by First Student at least once each semester 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 First Student during the term of the driver's employment by First Student, 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.
- 14.15 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. First Student 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 15: TRAINING REQUIREMENTS

- 15.1 **Training:** First Student 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 (including wheelchairs); railroad crossing safety procedures; backing maneuvers; emergency procedures; special equipment instruction (including car seat training); evacuation procedures; seasonal weather conditions; student management; disability awareness and sensitivity; dealing with parents/guardians of handicapped students; relationships with school personnel and the general public; student discipline; and other pertinent information.
- 15.2 **District Right to Review:** The District shall have the right to review First Student's course content either during live training sessions and/or through review of written course materials.
- 15.3 **District Presentation:** Prior to the start of a school year, First Student will offer and provide time at one of its driver orientation sessions so that District administrators/representatives may address drivers assigned to work under this Agreement on matters relating to the expectations for student conduct and to familiarize drivers with members of District administration. Such orientation will be at a time and place mutually agreed upon by First Student and the District. The District may not distribute written materials to drivers without First Student's approval.

SECTION 16: EQUIPMENT AND SUPPLIES

- 16.1 **Buses Legally Compliant and Maintained:** All school buses supplied by First Student in performance of this Agreement shall meet or exceed the standards established by the applicable state and federal laws and regulations. First Student 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.
- 16.2 **Bus Permit and Age:** First Student shall only use Transportation Charter Party ("TCP") and/or municipally permitted vehicles that meet all applicable regulations and laws relating to special education student transportation. First Student shall use only certified school buses, as required by federal and state laws and regulations, which all shall have been newly built in 2014 or later. In addition, First Student's buses used for subsequent service shall have an average age no

older than eight (8) years, and at no time shall the age of any bus used exceed the maximum of ten (10) years on July 1 of each year. First Student 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.

- 16.3 Bus Accommodations: All buses shall be equipped with air conditioning and individual seat belts or harnesses. All vehicles shall also be equipped with two-way radios; fire extinguishers (as described in California Education Code Section 39838); and first aid and blood borne pathogen kits.
- 16.4 Wheelchair Lifts: All buses transporting students in wheelchairs shall be equipped with hydraulic lifts and wheelchair securement devices that comply with federal and state legal requirements. Lifts purchased in or after 1995 shall have a manual override to provide for operation in the event of failure in the electrical system.
- 16.5 Special/Modified Equipment: If any equipment used by First Student in the performance of this Agreement is required to be installed or modified due to an unforeseen and unanticipated change in the law or applicable rules and/or regulations, such modification or installation shall be made by First Student without notification from the District. First Student and District shall negotiate in good faith concerning price increases applicable to such equipment installation and any associated increase in vehicle maintenance costs.
- 16.6 Radio Equipment: First Student shall equip each vehicle with radios/phones for communication to a base station dispatch terminal before being used pursuant to the contract. 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.
- 16.7 Student Tracking: First Student shall provide the District electronic-based student tracking through ZPass or an equivalent whereby a computer program records when a student boards and exits a bus and enables First Student and the District to monitor ridership and locate students while in route.
- 16.8 Digital Video Cameras: First Student shall equip each vehicle with at least one fully functioning in-vehicle digital video camera that displays the full interior of the vehicle where students are positioned during transportation. The video camera shall capture and record images, either on the in-vehicle video recording unit or in a remote location, which must be copied/retained by First Student (and reviewable immediately upon demand by the District) for at least 30 days.

- 16.9 Global Positioning System: First Student shall equip each vehicle with a fully functioning global positioning system (GPS) that First Student may use to track and record the vehicle's position at any given time.
- 16.10 Appearance: All vehicles utilized by First Student 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.
- 16.11 Inspection: First Student 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. First Student 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 First Student, and First Student 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 First Student with another vehicle of the same size, type and capacity, and in proper condition. Any required special education equipment shall be altered or installed on all such replacement vehicles at First Student's sole expense.
- 16.12 Maintenance Facility: First Student shall establish and 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. The maintenance facility shall be maintained and staffed in Oakland, California.
- 16.13 Electronic Database: First Student shall supply and maintain a computerized database, accessible by the District, that contains all pertinent information for each student served. First Student's electronic database shall be able to seamlessly import files from and export files to the District's Special Education Information System ("SEIS") or any other information system the District uses regarding special education students.
- 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.
- 16.15 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. First Student 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 First Student to do so.

SECTION 17: PUPIL DISCIPLINE AND VANDALISM

- 17.1 **Pupil Discipline:** Students transported by First Student shall be under the authority of, and responsible directly to, the driver of the vehicle, and the driver shall be held responsible for the safe and orderly conduct of the students at all times while they are in the vehicle. 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 notice to First Student's terminal and to the pupil's building or school principal. 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 First Student 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 First Student being required to transport such pupil. Further procedures and regulations for the administration of discipline shall be established cooperatively between the District and First Student.
- 17.2 **Parental Notification:** If a determination is made that First Student will no longer transport a student, First Student and the District shall immediately notify (by telephone and written confirmation) the parent(s) or guardian(s) of the student.
- 17.3 **Vandalism:** Damage from vandalism to First Student's equipment or facilities shall be the responsibility of First Student. The District shall give First Student 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. First Student may, with the written concurrence by the District, refuse to provide a pupil with transportation services until vandalism damages caused by such District student or personnel are paid.

SECTION 18: ASSIGNMENT AND SUB-CONTRACTING

- 18.1 **No Assignment or Rights in 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. Notwithstanding the above, First Student may assign this Agreement if the assignment is made to a parent, subsidiary, related or affiliated company.
- 18.2 **No Sub-Contracting:** First Student 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 19: TERMINATION

19.1 Termination of Agreement for Convenience:

Either party may terminate the Agreement *without cause* at any time with one-hundred twenty (120) days written notice to the other party.

19.2 Termination of Agreement for Default:

Subject to full compliance with Section 20.1 below, if either party violates any of the covenants or duties imposed upon it by this Agreement, such violation shall entitle the other party to terminate this Agreement in accordance with the following procedure: The non-defaulting party shall give the offending party 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 party notified has not remedied the purported violation or taken steps to do so, the non-defaulting party may terminate this Agreement as follows: on the first business day following the last day of the 30-day default notice period, the non-defaulting party shall give the defaulting party 15 days' notice of termination. If the non-defaulting party does not provide this 15-day notice of termination, the default notice shall be deemed rescinded.

19.3 Termination of Agreement Based on Funding: The District reserves the absolute right without cause to cancel this Agreement effective at the end of any Contract Year upon the failure of the state legislature to provide adequate funding to allow the District to provide transportation services to students within the District. In the event the District shall elect to terminate this Agreement due to state legislative funding deficiencies, the District shall give written notice to First Student on or before May 1 prior to the end of any Contract Year for services to be rendered in the following Contract Year. In the event state funding is restored following a termination of this Agreement under this Section 19.2, First Student shall be entitled to a right of first refusal to provide continuing service to the District under the terms and conditions of this Agreement so long as the Agreement's present term of service, as set forth in Section 1.1 (Agreement Term), has not naturally expired.

SECTION 20: DISPUTE RESOLUTION

20.1 Dispute Resolution: Notwithstanding anything in this Agreement to the contrary, prior to the initiation of any litigation, disputes between the District and First Student regarding this Agreement, including, any alleged violation, misinterpretation, or misapplication of this Agreement and prior to the assessment of liquidated damages as provided in Section 21, shall first be resolved using the dispute resolution process identified in this Section 20.1.

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 First Student 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 First Student 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 shall notify the other party (the responding party) in writing that it intends to proceed to mediation of the dispute and shall request the State Mediation and Conciliation Service ("SMCS") to appoint a mediator within ten (10) business days to assist the parties in resolving the dispute. If the SMCS is unable or refuses to provide a mediator the parties shall mutually agree upon a mediator with fifteen (15) days from notice that SMCS will be unable to provide a mediator. The initiating party shall request appointment of a mediator who is available to meet as soon as possible but not later than 30 calendar days after receipt of the request for appointment. The party initiating the dispute shall forward a copy of the notice of the dispute to the appointed mediator. The responding party shall file a written response with the mediator and serve a copy on the initiating party within seven (7) business days of the first scheduled mediation. The mediation procedure shall be entirely informal in nature; however, copies of exhibits upon which either party bases its case shall be shared with the other party in advance of the mediation. The relevant facts should be elicited in a narrative fashion to the extent possible, rather than through examination and cross examination of witnesses. The rules of evidence will not apply and no record of the proceedings will be made. If an agreement is reached, the agreement shall be reduced to writing and shall be signed by the District and First Student.

Neither party may commence a civil action related to the matters submitted to mediation until after the completion of the initial mediation session, or 60 calendar days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties so desire. If, following the mediation, the dispute remains unresolved, First Student 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 equitable remedies such as injunctive relief while proceeding through mediation in order to preserve the status quo.

SECTION 21: LIQUIDATED DAMAGES

- 21.1 Assessment of Liquidated Damages: If First Student fails to provide transportation to students as specified in this Agreement, it 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 First Student will pay as liquidated damages to the District:

- A. One hundred dollars (\$100.00) per First Student-operated vehicle that is dispatched without the proper, functioning equipment (e.g., seat belts, harnesses, air conditioning) and/or functioning two-way radio and/or functioning video camera or GPS.
- B. Two hundred dollars (\$200.00) per student per day who is not routed and transported by the sixth business day of the District's request to First Student for route addition or change.
- C. Two hundred dollars (\$200.00) per student per day not transported.
- D. Two hundred dollars (\$200.00) per bus per day that arrives at school or at a school-related site more than fifteen minutes OR less than five (5) minutes before classes or school-related activities begin.
- E. Two hundred dollars (\$200.00) per bus per day that arrives to pick up a student/students at a school-related site more than ten (10) minutes after classes or school-related activities are dismissed.
- F. Three hundred dollars (\$300.00) per student per day who is (a) en route on a trip in excess of sixty (60) minutes one way or (b) en route on a trip in excess of the time limits set forth in the student's IEP, if applicable.

If the same be not paid, the District may, in addition to its other remedies, deduct the same from any moneys due or to become due First Student under this Agreement. The District has the expressed right to seek and obtain "actual damages" in addition to Liquidated Damages. The provisions of this paragraph do not apply, as defined in Liquidated Damages, when delays are caused by conditions beyond the control of First Student, as described in the Force Majeure section.

Liquidated damages shall not be imposed during the first thirty (30) days of the contract period. Further, liquidated damages shall only be imposed where the service failure results from factors within the control of First Student. District must inform First Student within 30 days of the District's knowledge of a listed violation of its intent to assess liquidated damages for such event and must bill for such liquidated damage within 31 days of so informing First Student.

21.2 Survival of Section: This Section (Liquidated Damages) shall survive the termination or expiration of this Agreement.

SECTION 22: BREACH AND REMEDIES

22.1 Material Breach: If First Student, 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 First Student resulting from said breach. Alternatively, the District may purchase such required insurance

coverage, and without further notice to First Student, the District may deduct from sums due to First Student any premium costs advanced by the District for such insurance. These remedies shall be in addition to any other remedies available to the District.

- 22.2 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 23: STATUS OF FIRST STUDENT AND TAXES

- 23.1 Status of First Student as Contractor: This Agreement is not one of employment. First Student, in the performance of this Agreement, shall be and act as an independent contractor. First Student 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. First Student 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 First Student's employees. In the performance of the work contemplated in this Agreement, First Student 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.
- 23.2 Taxes: First Student 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 24: SEVERABILITY

- 24.1 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 25: EXTENSION AND MODIFICATION

- 25.1 Changes to or Extension of the Agreement: This Agreement may be changed, amended or extended by written, mutual consent of the District and First Student. 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 26: NOTICE TO PARTIES

- 26.1 **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 days after mailing.

Notices to the District shall be addressed to:

Programs for Exceptional Children for Oakland Unified School District
Attn: Maryanne Conner/Transportation Director
Oakland Unified School District
2850 West Street
Oakland, CA 94608
Fax No. : (510) 874-3717
Email : mary.conner@ousd.k12.ca.us

Notices to First Student shall be addressed to:

First Student
Location Manager
333 Filbert Street
Oakland, CA 994607
Fax No. : [To be provided by First Student upon appointment of Location Manager]
Email : [To be provided by First Student upon appointment of Location Manager]

and to (only until a Location Manager is appointed):

First Student
Brian Rufford, Regional Director
436 Parr Boulevard
Richmond, California 94801
Fax No. : (510) 237-0440
Email : brian.rufford@firstgroup.com

With a copy to :

First Group America
600 Vine Street, Suite 1400
Cincinnati, OH 45202

ATTN : General Counsel
Fax No. : (513) 362-4537
Email : bruce.rasch@firstgroup.com

- 26.2 Address Change: The District or First Student may change its address of record for receipt of official notice by giving the other written notice of such change and any necessary mailing instructions.

SECTION 27: ENTIRE AGREEMENT

- 27.1 Entirety of Agreement: This Agreement sets forth 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.

SECTION 28: COMPLIANCE WITH LAW; LICENSES AND PERMITS

- 28.1 Legal Compliance: Notwithstanding any contrary provision in this Agreement, First Student 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.
- 28.2 Certification Regarding Debarment, Etc.: 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>.
- 28.3 Licenses and Permits: First Student 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.
- 28.4 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, or age and therefore the First Student 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, the First Student agrees to require like compliance by all its subcontractor(s). First Student 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.

SECTION 29: PLACE OF CONTRACT AND CONTROLLING LAW

29.1 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.

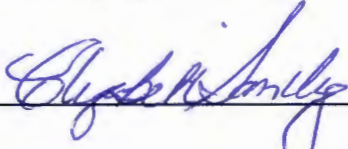
29.2 Venue: First Student and the District agree that the legal venue for any and all litigation relative to the formation, interpretation and performance of this Agreement is vested in Alameda County, California, without resort to conflict of laws.

SECTION 30: AUTHORITY

30.1 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.

First Student, Inc.

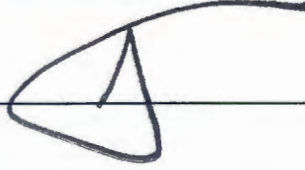
By: 

Name: Elizabeth Sirota
(Print)

Title: Sr Vice President

Date: 5/8/14


Oakland Unified School District

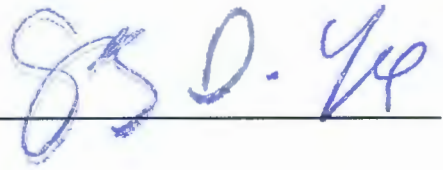
By: 

Name: David Kakishiba

Title: President, Board of Education

Date: 5/29/14

File ID Number: 14-0970
Introduction Date: 5/28/14
Enactment Number: 14-0905
Enactment Date: 5/28/14
By: 

By: 

Name: Dr. Gary Yee

Title: Superintendent & Board Secretary

Date: 5/29/14

Approved as to Form

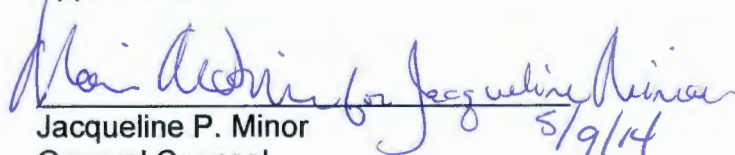

Jacqueline P. Minor
General Counsel
5/9/14

EXHIBIT A

RATE SCHEDULE

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): \$23.72

Rate per pupil per day (wheelchair): \$44.82

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

Rate per pupil per day (ambulatory)*: \$80.00*

Rate per pupil per day (wheelchair)*: \$85.00*

* 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: \$71.50

Wheelchair

Cost per hour of service: \$75.00

EXHIBIT B

DISTRICT DEPARTMENTAL/PERSONNEL CONTACT INFORMATION

Transportation Director

Programs for Exceptional Children
Oakland Unified School District
2850 West Street
Oakland, CA 94608
Telephone Nos. (510) 874-3732 or (510) 874-3705
Fax No. (510) 874-3717
Email : mary.conner@ousd.k12.ca.us

Claims Manager

Oakland Unified School District
Office of the General Counsel
1000 Broadway, Suite 398
Oakland, CA 94607
Telephone No. (510) 879-8535
Fax No. (510) 879-4046
Email : janette.puccetti@ousd.k12.ca.us

Risk Management Officer

Oakland Unified School District
1000 Broadway
Oakland, CA 94607
Telephone No. (510) 380-8111
Email : risk@ousd.k12.ca.us