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# Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Kimberly Raney, Executive Director, Transportation and Logistics

**Board Meeting Date** January 9, 2019

**Subject** Agreement for School Pupil Activity Bus Transportation Services with Seat Belts  
Contractor: Bay Area Transport Service  
Services For: Charter bus field trip transportation services for District school sites

**Action Requested and Recommendation** Approval by the Board of Education of an Agreement between the District and Bay Area Transport Services, Oakland, CA, to provide charter bus field trip transportation services to District school sites and programs as specified in the District's RFP of approved providers, for the period of August 8, 2018 through June 30, 2021, in an amount not to exceed \$99,300.00.

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

The District issued an RFP for charter bus field trips transportation service providers to provide service for field trips. In issuing the RFP, the District's intent was to have an approved list of charter bus service providers for school sites to choose from. The District has initially selected eleven charter bus field trip vendors to provide field trip transportation services as part of the RFP process. The eleven approved vendors are: Storer Transportation, Bay Area Transport, Charter Brothers, Inc., Corinthian International Parking, Delta Charter, D Harris Tours, Inc., First Transportation, White Castle Tours, and Zum Inc.

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

**Fiscal Impact** Funding resource(s): Various funding sources from each school site in an amount not to exceed \$99,300.00.

**Attachments**

- Agreement

AGREEMENT FOR SCHOOL PUPIL ACTIVITY BUS  
TRANSPORTATION SERVICES WITH SEAT BELTS

OAKLAND UNIFIED SCHOOL DISTRICT  
AND

**Bay Area Transport Service**

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 school sites and programs (including with seat belts, when a school or District site 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:

**A. 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 \$99,300 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.

**B. 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.

### **C. 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.

### **D. 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.

### **E. 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.

#### **F. 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.

#### **G. 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.

#### **H. 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.

## **I. 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.

## **J. 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 30<sup>th</sup> 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  
10700 MacArthur Blvd  
Oakland , Ca 94605  
(510) 812- 4247  
Baytransport@gmail.com

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

## **K. 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.

## **L. 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.



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.

**X. 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.


**Y. 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.

**Z. 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.

**AA. 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:* 

**BB. 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.

**CC. 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).

**DD. 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/>).

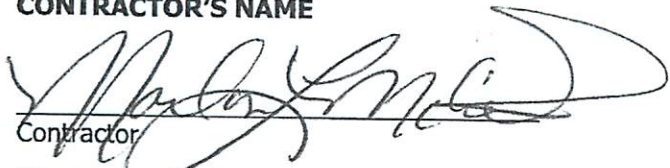
**EE. Contract Publicly Posted**

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.

**FF. 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**

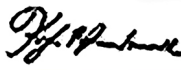
  
Contractor  
(Signatures continued on next page)

Date: 10/25/18

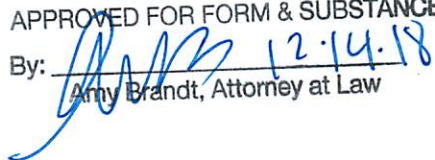
**OAKLAND UNIFIED SCHOOL DISTRICT**

  
Aimee Eng  
President, Board of Education

Date: 1/9/2019

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

Date: 1/9/2019

OAKLAND UNIFIED SCHOOL DISTRICT  
Office of the General Counsel  
APPROVED FOR FORM & SUBSTANCE  
By:  12.14.18  
Amy Brandt, Attorney at Law

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

