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# Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent

**Board Meeting Date** September 12, 2018

**Subject** Agreement - Zum Services Inc.- Special Education Transportation Services - Transportation and Logistics Department

**Action Requested** Approval by the Board of Education of an Agreement between the District and Zum Services Inc. to provide alternative special education transportation services to District special education school sites and programs. Services to be primarily provided to the Transportation and Logistics Department for the period of August 13, 2018 through June 30, 2021.

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

The District issued an RFP for Special Education transportation service providers to provide a specialized van/sedan service for Special Education students as per their IEP's. In issuing the RFP, the District's intent was to have an approved list of Special Education service providers and to have to bid on various routes created by the District Transportation Staff. The four selected special education alternative vendors are Friendly Transportation, Zum Services Inc., JIR Inc., and Rids Brothers Inc.

**Discussion**  
*One paragraph summary of the scope of work.*

Approval by the Board of Education of an Agreement between the District and Zum Services, Inc., Redwood City, CA, for the latter to provide specialized transportation services for students per their IEP's to school sites and programs, as part of the RFP process, for the period of August 13, 2018 through June 30, 2021, in the total amount not to exceed \$400,000.00.

**Recommendation** Approval by the Board of Education of an Agreement between the District and Zum Services Inc. to provide alternative special education transportation services to District special education school sites and programs. Services to be primarily provided to the Transportation and Logistics Department for the period of August 13, 2018 through June 30, 2021.

**Fiscal Impact** Funding resource name (please spell out): 5830/Unrestricted - in an amount not to exceed \$400,000.00.

**Attachments**

- Agreement



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

**Legislative File ID No.** 18-1851

**Department:** Transportation and Logistics Department

**Vendor Name:** Zum Services, Inc.

**Contract Term:** Start Date: August 13, 2018 End Date: June 30, 2021

**Annual Cost:** \$ 400,000.00

**Approved by:** Kimberly Raney

**Is Vendor a local Oakland business?** Yes  No

**Why was this Vendor selected?**

RFP was issued and vendor was selected for routes based on lowest cost to District for selected routes.

**Summarize the services this Vendor will be providing.**

Vendor will provide transportation to special education students who are unable to ride the bus.

**Was this contract competitively bid?** Yes  No

If No, answer the following:

1) How did you determine the price is competitive?

The District issued an RFP for Special Education transportation service providers to provide a specialized van/sedan service for Special Education students as per their IEP's. In issuing the RFP, the District's intent was to have an approved list of Special Education service providers and to have to bid on various routes created by the District Transportation Staff. The four selected special education alternative vendors are Friendly Transportation, Zum Services, Inc., JIR Inc., and Rids Brothers Inc.

2) Please check the competitive bid exception relied upon:

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

Transportation Contract selected form RFP

AGREEMENT FOR SPECIAL EDUCATION  
TRANSPORTATION SERVICES WITH SEAT BELTS

OAKLAND UNIFIED SCHOOL DISTRICT  
AND  
Zum Services Inc.

This Agreement for Special Education Transportation Services with Seat Belts ("Agreement" or "Contract") is entered into as of August 8, 2018 between Zum Services Inc. ("Contractor") and Oakland Unified School District ("District" or "OUSD"), for Contractor to provide Special Education transportation vehicles with seat belts for District school sites and programs.

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

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

The term of this Agreement shall commence on August 13, 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 13, 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 \$400,000 per contract year. The rates payable to Contractor are as set forth in the Vehicle Rate Worksheet, attached to this Agreement.

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

**2. Vehicles and Contractor's Personnel**

All Vehicles Must Have Seat belts:

The Contractor agrees to provide such vehicles with seat belts

("Vehicles") as necessary to lawfully perform the Services and which are, when legally required, SPAB certified or exceed SPAB certification requirements. Contractor agrees to, at all times, dispatch vehicles with seat belts to District schools. 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 vehicle(s) at any reasonable time, during normal business hours, subject to coordination with Contractor relative to location, and the maintenance schedules of the vehicle(s). The time and place of such inspection shall be as mutually agreed.

Condition of Vehicles:

OUSD RE SPECIAL EDUCATION TRANSPORTATION AGREEMENT (ISSUED AUGUST 2018)

Upon arrival for the transportation of District students/staff, vehicle(s):

- 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);
- Vehicle environment and Contractor staff shall be appropriate for the transport of students;
- Vehicles shall have seat belts for all passengers, if and when requested by a school or District site.
- Should substitute vehicle equipment be required, Vendor must ensure equivalency to the required capacity and be able to meet the requirements of the scheduled trip. When and if delays or equipment substitutions are necessary due to mechanical problems of the bus, the Vendor shall make every immediate effort to remedy the situation and communicate the remedy to the trip contact person, as well as to the District's Transportation Department.

The Contractor or subcontracted drivers must:

Have all applicable state vehicle permits and licensing.

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

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

The Contractor shall verify each driving record upon initiation of service and then every six (6) months thereafter. Such records shall be placed into the driver's file and must be accessible upon request.

The Contractor shall not use drivers to provide services who have accrued more than three (3) moving violations for any reason in the last two (2) years, and shall not use drivers who have had a DUI, DWI, or controlled substance-related violation.

Drive in a careful and prudent manner, exercising at all times the highest degree of care, and observing and complying with state mandated rules of the road and traffic regulations.

Abstain from using tobacco products while students are present in the vehicle or on school grounds. Drivers as well as their vehicles must not smell of smoke or any other offensive odor.

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

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

Demonstrate exemplary customer service;

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

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

Contractor shall have standards addressing professional dress and hygiene – code for its drivers. Professional dress includes clean clothes (pants, skirts, and shirts with sleeves and collars). The

drivers must not wear attire that might generally be considered offensive. Hygiene includes clean shaven, groomed hair (including facial) and refraining from the use of heavy, offensive colognes. Drivers must also not display offensive tattoos and piercings.

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

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

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

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

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

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

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

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

Verification of enrollment in an on-going drug/alcohol testing at random, and "for cause" drug/alcohol testing as deemed appropriate for drivers authorized to perform services for this contract. All drivers must abstain from the use of alcohol and drugs in the performance of their duties under this contract. In addition, drivers will not be under the influence of alcohol or drugs during the performance of their duties under this contract. The Contractor shall be liable for all Drug and Alcohol Testing. No driver may be utilized for this contract that fails a drug and/or alcohol test.

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

Current driver's license and certifications appropriate for driving the vehicle type that corresponds with the assignment, and include SPAB or higher certification.

Training records.

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

District that the personal habits and/or conduct of an employee are detrimental to the best interests of the District or to the welfare and bests interest of the students being transported.

### **3. Spare Buses and Vehicles**

Contractor shall maintain and have available for immediate use and dispatch an adequate number of spare buses and vehicles (above and beyond the number of buses and vehicles designated to regularly service students). Buses and vehicles 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.

### **4. Spare Drivers**

Contractor shall have available for immediate tasking and dispatch an adequate number of spare drivers (above and beyond the number of drivers designated to regularly service students). Spare drivers shall meet the eligibility and screening requirements of Sections 12.4 to 12.12 of this Agreement.

### **5. Extracurricular Transportation**

Contractor shall 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.

### **6. District Provision of Information to Contractor**

The District shall promptly provide Contractor in advance of the transportation of a 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 6 is subject to the confidentiality provisions of Sections 28 and 29 of this Agreement.

### **7. Limitation of Passengers**

The Contractor will not transport any person, except a student enrolled within the District's jurisdiction, or an employee of the District or Contractor, 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 the Contractor's vehicle.

### **8. Electronic Routing System**

The Contractor 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.

### **9. Contractor Responsible for Routing**

The Contractor 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, 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. The Contractor 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. The Contractor'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.

#### **10. Timely Delivery of Students**

Students are to be transported directly to their schools/sites 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/program 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/site to pick up students before departing for the next destination.

#### **11. 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 the Contractor'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.

#### **12. 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 the Contractor the circumstances that required the driver to depart without a student; Contractor shall then immediately telephone and email the District's designated personnel regarding the matter; and Contractor shall also immediately telephone the student's parent/guardian regarding the matter. Contractor 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.

#### **13. Notice to District Regarding Route Changes**

Contractor must inform the District in writing, within three (3) business days, of any changes to established routes. This includes, but is not limited to, informing the District of any instances where Contractor determines that a student is not in need of transportation services on one or more routes.

#### **14. Implementing District-Initiated Changes**

Contractor shall implement the District's addition, suspension or deletion of transportation service(s) for a student within three (3) business days of the District's transmittal of the route change to Contractor. In the event the District changes routes or schedules once service has begun or been published, the District will assist (but not supplant) Contractor in republication of changes or other notification to those patrons whose service has been changed.

#### **15. Safety Concerns Regarding Routes**

Contractor shall consult with the District as to stops or portions of routes that Contractor considers to be a safety concern due to traffic patterns or configurations.

#### **16. Contractor's Beginning of Year Notice to Parents/Guardians**

No later than one (1) week before the beginning of a school year, Contractor 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.

### **17. Contractor's Notice to Parents/Guardians Regarding Change in Transportation**

Contractor shall notify (by telephone and written confirmation) the parent(s) or guardian(s) of a student no later than five (5) 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.

### **18. 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 any bus/vehicle modification, which will result in any increase in overall charges to the District.

### **19. 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.

### **20. 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 Contractor 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.

### **21. Wheelchair Lifts**

All buses and vehicles 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.

### **22. 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](mailto:Kimberly.Raney@ousd.org) and/or phone at (510) 879-2740 and the District's Third Party Adjuster at [OUSDIcidents@ccmsi.com](mailto:OUSDIcidents@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) working days following the request.

business days of the District's request.

### **23. Customer Service**

Contractor will provide a customer service single point of contact 24x7x365 for the District users to contact during 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.

### **24. 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.

### **25. 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.

### **26. Pupil Discipline**

The ultimate responsibility and authority to suspend or expel any pupil from transportation services hereunder shall rest exclusively with the District. Each driver shall handle all disciplinary matters in strict accordance with District policy. In no case will a driver eject a pupil from a bus for misbehavior except in the event of an extreme emergency endangering the safety of other pupils, and then only after radio/phone notice to Contractor's terminal and to the pupil's school principal and the District's designee. In all cases of disciplinary ejection, the bus/vehicle 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 Contractor 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 [Contractor] being required to transport such pupil. Further procedures and regulations for the administration of discipline shall be established cooperatively between the District and Contractor.

### **27. Parental Notification**

If a determination is made that Contractor will no longer transport a student, upon written notification by Contractor to the District, the District shall immediately notify (by telephone and written confirmation) the parent(s) or guardian(s) of the student.

### **28. Sharing of Student Information with Contractor**

The District will provide Contractor with educational information as necessary for performance under the Agreement. Contractor agrees that it will use educational information only for this purpose and acknowledges that it is prohibited by law from sharing this information. Contractor 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 Contractor has legitimate educational interests in any student information which it receives, uses, maintains or to which it has access.

### **29. Contractor to Comply with FERPA, Etc.**

Contractor 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. Contractor and its agents, personnel, employees, and/or subcontractors shall maintain records in accordance with all applicable federal and state laws and regulations and agrees that records relating to individual pupils provided by the District are subject to the Family Educational Rights and Privacy Act ("FERPA"). Such records shall be confidential to the extent required by FERPA, 20 U.S.C. § 1232g; 34 C.F.R. Part 99; and California Education Code §§ 49060, et seq.; and other state and federal law. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement. Contractor and its agents, personnel, employees, and/or subcontractors will be permitted access to student data only where permissible under state and federal law.

### **30. 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.

### **31. 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.

### **32. 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.

### **33. 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: Zum Services Inc.  
275 Shoreline Dr Suite 300  
Redwood CA 94065  
(650) 799-7675  
vivek@ridezum.com

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

### **34. 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.

### **35. 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.

### **36. Compliance with the Law**

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

### **37. Dispute Resolution**

The parties agree to meet and confer in good faith on all matters and disputes under this Agreement. If a dispute is not resolved under the foregoing, and one party informs the other in writing that it reasonably believes that the difference between the parties are not likely to be reconciled through further negotiation, that Party may, upon giving the other Party at least ten days' prior written notice, initiate litigation submitting such claims or disputes for decision by a court of competent jurisdiction. Either Party may, at its option and at any time during the dispute resolution process, seek injunctive relief (including, but not limited to preliminary injunctive relief). All reasonable costs and expenses, including attorneys' fees, associated with any litigation between the Parties arising from this Agreement, including any and all applicable rights and obligations under this Agreement, shall be borne entirely by the non-prevailing party.

### **38. Laws Governing Contract**

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

### **39. No Rights in Third Parties**

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

### **40. Submittal of Documents**

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

#### **41. Insurance Requirements of Contractor**

The following insurance is required of Contractor under this Agreement:

If Contractor employs any person to perform work in connection with this Agreement, Contractor shall procure and maintain at all times during the performance of such work, Workers' Compensation Insurance in conformance with the laws of the State of California, as well as (when applicable) federal laws. Employers' Liability Insurance shall not be less than One Million Dollars (\$1,000,000) per accident or disease.

Contractor is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and will comply with such provisions before commencing the performance of the Work of this Contract.

Contractor shall maintain Commercial General Liability insurance, including automobile coverage with limits of Five Million Dollars (\$5,000,000) per occurrence and which shall include coverage for corporal punishment, sexual misconduct, harassment, bodily injury and property damage.

The coverage shall be primary as to the District and shall name the District as an additional insured. Evidence of insurance and additional insured endorsement must be attached, and must also be provided to the District upon demand.

Endorsement of the District as an additional insured shall not affect the District's rights to any claim, demand, suit or judgment made, brought or recovered against Contractor. The policy shall protect Contractor and the District in the same manner as though each were separately issued. Nothing in said policy shall operate to increase the Insurer's liability as set forth in the policy beyond the amount or amounts shown or to which the Insurer would have been liable if only one interest were named as an insured.

#### **42. Licenses and Permits**

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

#### **43. Non-Discrimination**

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

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

#### **44. Drug-Free / Smoke Free Policy**

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

#### **45. Conflict of Interest**

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

#### **46. Incorporation of Recitals and Exhibits**

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

#### **47. 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.

#### **48. 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.

#### **49. 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.

#### **50. 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:***

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### 51. 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.

### 52. Survival

The following sections of this Agreement shall survive expiration and termination of this Agreement: 24 (Time of the Essence, Assessment of Damages); 31 (Indemnity (Hold Harmless) of the District); 34 (Waiver); 37 (Dispute Resolution); 38 (Laws Governing Contract); 41 (Insurance Requirements of Contractor); and 51 (Severability, Headings & Drafting).

### 53. 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/>).

### 54. 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.

### 55. 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

DocuSigned by:

*Ritu Narayan*

Contractor - Ritu Narayan

CEO, Zūm Services, Inc.

(Signatures continued on next page)

Date: 8/10/2018 8:35:15 AM PDT



**OAKLAND UNIFIED SCHOOL DISTRICT**

*Aimee Eng*

\_\_\_\_\_  
Aimee Eng  
President, Board of Education

Date: 9/13/18

*Kyla Johnson-Trammell*

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

Date: 9/13/18

OAKLAND UNIFIED SCHOOL DISTRICT  
Office of the General Counsel  
APPROVED FOR FORM AND SUBSTANCE

By: *[Signature]* *8/21/18*  
Michael L. Smith, Attorney at Law  
*CAGC 8/21/18*

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