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**OAKLAND UNIFIED  
SCHOOL DISTRICT**

*Community Schools, Thriving Students*

# Memo

**To** Board of Education

**From** Hitesh Haria, Chief Operations Officer

**Board Meeting Date** May 11, 2016

**Subject** **Agreement with Michael's Transportation**

## Action Requested

## Approval of Agreement with Michael's Transportation

## Background and Discussion

The District issued an RFP for temporary transportation services to transportation Glenview students to and from Santa Fe Elementary School during the two year (16/17 and 17/18) period of construction of the new Glenview campus. The District received no responsive bid from yellow school bus companies. The District contacted two yellow school bus vendors. One of the companies, Michael's Transportation, agreed to provide the needed service. Under the contract, Michael's will transport approximately 300 Glenview Elementary School students in grades TK through 5 from Edna Brewer Middle School, located at 3748 13th Avenue, Oakland, to Santa Fe Elementary School, located at 915 53<sup>rd</sup> Street, Oakland for the 2016-17 and 2017-18 school years. The term of the Agreement is May 11, 2016 and shall continue through June 30, 2018, at a cost not to exceed the daily rate of \$692 per bus, per day or a total of \$1,536,240 for six yellow school buses.

## Recommendation

## Approval of Agreement with Michael's Transportation

## Fiscal Impact

Funding resource name: Measure J

## Attachments

- Agreement



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

**Legislative File ID No.** 16-0616

**Department:** Legal

**Vendor Name:** Michael's Transportation

**Contract Term:** Start Date: 05/11/2016 End Date: 06/30/2018

**Annual Cost:** \$ 1,536,240.00

**Approved by:** General Counsel

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

**Why was this Vendor selected?**

The only yellow school bus company willing to provide the temporary transportation service.

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

This vendor will transport Glenview students on yellow school buses with seat belts to the temporary location at Santa Fe Elementary School during the Glenview construction project.

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

If No, answer the following:

1) How did you determine the price is competitive?

Only quote.

2) Please check the competitive bid exception relied upon:

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



OAKLAND UNIFIED  
SCHOOL DISTRICT

*Community Schools, Thriving Students*

**OAKLAND UNIFIED SCHOOL DISTRICT-MICHAEL'S  
TRANSPORTATION SERVICE, INC. AGREEMENT  
REGARDING GLENVIEW ELEMENTARY SCHOOL  
STUDENTS TRANSPORTATION**

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## **GLENVIEW ELEMENTARY SCHOOL STUDENTS TRANSPORTATION SERVICES AGREEMENT**

THIS AGREEMENT is effective the 23rd day of March 2016, by and between Oakland Unified School District, with principal offices at 1000 Broadway, Oakland, California 94607 (hereinafter, "the District"), and Michael's Transportation Service, Inc., with its regional business offices at 140 Yolano Drive, Vallejo, CA 94591(hereinafter, "Michael's").

### **W I T N E S S E T H**

**WHEREAS**, the District has selected Michael's to provide transportation for approximately 300 Glenview Elementary School students in grades TK through 5 from Edna Brewer Middle School, located at 3748 13th Avenue, Oakland, to Santa Fe Elementary School, located at 915 53<sup>rd</sup> Street, Oakland ("Santa Fe Elementary") for the 2016-17 and 2017-18 school years during the period of the construction of the new Glenview School campus, with an estimated 185 school days in each school year; and

**WHEREAS**, Michael's 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 May 11, 2016 and shall continue through June 30, 2018. This Agreement may be extended by mutual written agreement for up to two (2) additional one-year periods based on Michael's' satisfactory service/performance, subject to terms and conditions set forth in this Agreement. For purposes of this Agreement, after the initial year, the term "Contract Year" shall mean each one-year period commencing on July 1 of each year during the term of this Agreement. The Parties agree that transportation of students shall not commence prior to the first day of the 2016-17 school year.

### **SECTION 2: SCOPE OF SERVICES REQUIRED:**

Michael's shall, during the term of this Agreement:

- 2.1 Provision of Services: Supply and maintain such school buses (in quantity and capacity, which Michael's estimates as six (6) buses with a capacity of up to 79 passengers per bus) and personnel as are required to fulfill the District's needs for transportation of approximately 300 Glenview Elementary School ("Glenview Elementary") students per day each way from the designated pick up and drop off location of Edna Brewer Middle School, located at 3748 13th Avenue, Oakland ("Edna Brewer Middle"), to Santa Fe Elementary School, located at 915 53<sup>rd</sup> Street, Oakland ("Santa Fe Elementary"), and back. Such transportation

shall be provided on all days schools are in session for the 2016/2017 and 2017/2018 school years. Morning pick up on Mondays, Tuesdays, Wednesdays, Thursdays and Fridays will be between 7:00 am and 8:00 am and afternoon drop off will be between 3:00 pm and 4:00 pm, with the exception of Wednesday drop off which will be between 2:30 pm and 3:30 pm, as Wednesdays are minimum school days for Glenview Elementary students, with the exact scheduling to be made in collaboration between the District and Michael's in order for Michael's to ensure compliance with Section 5.2 of this Agreement. Students will be supervised at the designated school bus stops by District personnel. This is not an exclusive Agreement. The District may contract with other vendors or contractors to provide transportation services for Glenview Elementary and other District students. The Parties shall confirm in writing prior to July 1, 2016 the exact morning and afternoon pick up and drop off schedules.

- 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 Glenview Elementary students). 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. A spare bus that does not include all of the equipment set forth in Section 15 may be used, but not for any longer a period than two (2) consecutive school days.
- 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 Glenview elementary students). Spare drivers shall meet the eligibility and screening requirements of Sections 14.2 to 14.10 of this Agreement.
- 2.4 Adjustment of Pick Up and/or Drop Off Location(s): Allow for the District to change the pick up and/or drop off location(s) of the Glenview Elementary students, subject to the requirement that the District (a) maintains only one pick up and one drop off location for all of the Glenview Elementary students that (b) must be located within the City of Oakland and (c) that requires at least 30 days written notice by the District to Michael's of such location change(s).

### **SECTION 3: TRANSPORTATION RATES, COMPENSATION AND BILLING**

- 3.1 Payment for Services: In consideration for services rendered hereunder, the District shall pay to Michael's the following rate per bus, per day of transportation of Glenview Elementary students, not to exceed a total of six (6) buses per day:
  - Rate with Overnight Parking: \$617.
  - Rate without Overnight Parking: \$692.

- a. Afternoon Only or Morning Only service rates will be negotiated separately based on requested service, and a credit will be applied to the daily rate for that route if an assigned route bus and driver is used to service a Michael's customer, or different District site, not covered by this Agreement.
- b. Special Service (e.g., Field Trip) rates will be negotiated separately based on requested service. If Special Service is provided in/by an assigned route bus and driver, a credit will be applied to the daily rate for that route.

- 3.2 Invoice and Payment Timing: Twice monthly, Michael's will submit to the District a statement of its services rendered during the prior, two-week billing period. After verification of the statement, and provided Michael's complies with all terms, covenants, and conditions of the Agreement, the District shall issue payment for Michael's' services within thirty (30) days of receipt of Michael'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, Michael's 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 Michael's within 30 days of receipt of the statement by District. District shall pay all amounts not disputed to Michael's on or before the 45<sup>th</sup> business day following the date on which the statement was submitted.

- 3.3 Invoice Format: Invoices furnished by Michael's 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: Michael's' name, address, invoice date, invoice number, purchase order number, period of service, date service was rendered, 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 Michael's unless the doing of such extra work or the furnishing of such extra materials shall have been authorized in writing by the District.

#### **SECTION 4: BUS PARKING**

- 4.1 Provision of Bus Parking Area for Michael's' Buses Used to Transport Glenview Elementary Students: If the District agrees to provide, within the confines of the City of Oakland, a mutually-agreeable designated area on District property for the parking of those Michael's buses designated and used for the transportation of the Glenview Elementary students pursuant to this Agreement, then the rates charged

to the District shall be as set forth (or adjusted) pursuant to Section 3.1 of this Agreement.

## **SECTION 5: ROUTES AND SCHEDULES**

- 5.1 Electronic Tracking System: Michael's shall provide an electronic tracking system (similar to a swipe-pass) for all students transported between pick-up and drop-off points each school day morning, and at the end of each school day.
- 5.2 Timely Delivery of Students: Provided adequate embarkation and disembarkation arrangements and supervision, including Edna Brewer-related and surrounding traffic patterns, are provided at Edna Brewer Middle School, Glenview Elementary students are to be delivered to Santa Fe Elementary not more than fifteen (15) minutes, nor less than five (5) minutes, prior to class starting time, nor are they to be kept waiting for pick up more than ten (10) minutes after dismissal time.
- 5.3 Limitation of Passengers: Michael's/drivers will not transport any person, except a student enrolled within the District's jurisdiction, or an employee of the District or Michael's, 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 Michael's' bus/vehicle.

## **SECTION 6: RECORDS AND REPORTS; SHARING OF INFORMATION**

- 6.1 Accident/Incident Reports: All accidents or incidents involving Michael'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 24 hours . 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 the District, after being notified by Michael's 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 Michael'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, Michael's' internal communication problems shall not relieve Michael's 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*.



- 6.2 Operational Records: Michael's shall provide within ten (10) business days, as the District deems necessary and requests, any and all operational reports and records pertaining to students and other information having to do with daily operations. In reviewing Michael's' records, the District shall protect the confidentiality of Michael's' proprietary or confidential information, provided any such records are clearly marked as "Confidential/Do Not Disclose."
- 6.3 Reporting of Complaints: Michael's shall keep complete and accurate records of all written and oral complaints received regarding Michael's' services for the District from all sources including, but not limited to: District employees or agents, parents/guardians, students, and state or federal agencies. Michael's shall provide to the District a written monthly report listing said complaints and actions taken by Michael's, if any, to resolve each complaint.
- 6.4 Maintenance Reports: Michael's 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.
- 6.5 Sharing of Student Information with Michael's: The District will provide Michael's with educational information as necessary for performance under the Agreement. Michael's agrees that it will use educational information only for this purpose and acknowledges that it is prohibited by law from sharing this information. Michael's 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 Michael's has legitimate educational interests in any student information which it receives, uses, maintains or to which it has access.
- 6.6 Michael's to Comply with FERPA, Etc.: Michael's 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. Michael's 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. Michael's and its agents, personnel, employees, and/or subcontractors will be permitted access to student data only where permissible under state and federal law.

## **SECTION 7: DEFENSE AND INDEMNIFICATION**

- 7.1 Duty to Defend and Indemnify: Except to the extent arising from or caused by the negligence or willful misconduct of the District, its governing board, State Trustee, officers, agents, and employees, Michael's 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 Michael's. Except to the extent arising from or caused by the negligence or willful misconduct of the District, its governing board, State Trustee, officers, agents, and employees, Michael's 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 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 Michael's. Michael's' hold harmless, defense and indemnity obligations under this Agreement shall not be limited by the insurance requirements set forth in this Agreement.

- 7.2 Survival of Section: This Section (Defense and Indemnification) shall survive the termination or expiration of this Agreement.

## **SECTION 8: INSURANCE**

- 8.1 Workers' Compensation Insurance: Michael's 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 One Million Dollars (\$1,000,000) per accident or disease.
- 8.2 Liability Insurance and District as Additional Insured: Michael's 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. Michael's shall also maintain Abuse and Molestation insurance coverage, with a minimum limit of One-Hundred Thousand Dollars (\$100,000). The coverage shall be primary, but only as respects the sole negligent errors and/or omissions of the named insured, 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 Michael's. The policy shall protect Michael's 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.

- 8.3 Provision of Certificate of Insurance: Michael's 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 Michael's and the District. Insurer shall maintain a minimum A.M. Best's & Company rating of A- (minus) or Michael's shall obtain insurance from a company mutually agreed upon between Michael's and the District. Michael's shall provide the District with a certificate of insurance as evidence of having the workers' compensation coverage required by this Agreement.

## **SECTION 9: FORCE MAJEURE**

- 9.1 Excused Performance Because of Force Majeure: Michael's 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 Michael's, when satisfactory evidence thereof is presented to the District.

## **SECTION 10: SCHOOL CLOSINGS OR CHANGES IN SCHEDULE**

- 10.1 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 Michael's not later than 5:00 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 Michael's by 5:00 a.m. that day, the District shall pay Michael's half the daily per bus rate actually affected for that day.
- 10.2 Notwithstanding the foregoing, in the event of circumstances in the operation of any school which necessitate early dismissal for student health or safety reasons, Michael's and the District shall cooperate to facilitate orderly transportation of students in the most efficient manner possible in light of the circumstances presented.

## **SECTION 11: SAFETY PROGRAM**

- 11.1 Michael's shall be responsible for implementing and maintaining a comprehensive transportation safety program for the transportation of District students pursuant to this Agreement.
- 11.2 Michael's employees shall not be required to perform any medical functions for passengers.

## **SECTION 12: MICHAEL'S AND DISTRICT MANAGEMENT PERSONNEL**

- 12.1 Michael's Managers, Supervisors and Point(s) of Contact: Michael's shall employ and maintain staff as required for effective management and supervision of the Glenview Elementary students transportation services provided to the District. In addition to such other personnel as may be required to administer the agreement for student transportation, Michael's shall designate a liaison and crisis management contact person for emergency contact with the District. By July 1<sup>st</sup> of each calendar year, and any time a liaison and crisis management contact changes, Michael's shall inform the District of the name(s), contact telephone number(s), email address(es), and address(es) of such management personnel.
- 12.2 District Designated Liaison and Crisis Management Contact: The District shall designate a liaison and crisis management contact person for emergency contact with Michael's. By July 1<sup>st</sup> of each calendar year, and any time a liaison and crisis management contact changes, the District shall inform Michael's of the name(s), contact telephone number(s), email address(es), and address(es) of such management personnel.

## **SECTION 13: OPERATIONS PERSONNEL AND DRIVERS**

- 13.1 Administrative and Support Staff: Michael's shall maintain a facility 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.
- 13.2 Pre-Employment Screening: Michael's shall maintain an internal 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 Michael's in determining a candidate's suitability for assignment to District-related services.
- 13.3 Provision of Personnel: Michael's shall employ a sufficient number of qualified drivers and support personnel to assure the District of continuous, reliable, safe and on-time service.

- 13.4 Licenses: All drivers employed by Michael's 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 Michael's to transport District students. Michael's 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.
- 13.5 Prohibition: Michael's 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.
- 13.6 Fingerprinting of Employees and Agents: The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Michael's' services under this Agreement and Michael's certifies its compliance with these provisions as follows: "Michael's certifies that it has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Michael's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, or acting as independent contractors of Michael's, who may have contact with District pupils in the course of providing services under 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 the Education Code." Michael's 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.
- 13.7 Health Requirements: Each driver employed by Michael's 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. Michael's 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.
- 13.8 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.

- 13.9 Moral Character: Michael's recognizes that, for the protection of students, drivers, other contractors, and the District, Michael's' employees who have contact with the students and their families must be responsible and fit for the job. Michael's shall ensure that all of its personnel meet these qualifications. Michael's 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 Michael's 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.
- 13.10 Time Schedules: All drivers shall be provided and required to have an up-to-date area map and a timepiece with them while on duty so that they can maintain established route and time schedules.
- 13.11 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.
- 13.12 Evaluations: Drivers shall be evaluated by Michael's at least once each year 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 Michael's during the term of the driver's employment by Michael's, 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.
- 13.13 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. Unless Michael's provides additional and acceptable information to the District, and the District and Michael's mutually agree otherwise, Michael's 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 14: TRAINING REQUIREMENTS**

- 14.1 Training: Michael's 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; railroad crossing safety procedures; backing maneuvers; emergency procedures; special equipment instruction; evacuation procedures; seasonal weather conditions; student management; disability awareness and sensitivity; dealing with parents/guardians of students; relationships with school personnel and the general public; student discipline; and other pertinent information.

- 14.2 District Right to Review: The District shall have the right to review Michael's course content either during live training sessions and/or through review of written course materials.

## **SECTION 15: EQUIPMENT AND SUPPLIES**

- 15.1 Buses Legally Compliant and Maintained: All school buses supplied by Michael's in performance of this Agreement shall meet or exceed the standards established by the applicable state and federal laws and regulations. Michael's 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.
- 15.2 Bus Permit and Age: Michael's shall only use Transportation Charter Party ("TCP") and/or municipally permitted vehicles that meet all applicable regulations and laws relating to student transportation. Michael's 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. Michael's 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.
- 15.3 Bus Accommodations: All buses shall be equipped with individual seat belts. All vehicles shall also be equipped with radios/phones; fire extinguishers (as described in California Education Code Section 39838); and first aid and blood borne pathogen kits.
- 15.4 Radio Equipment: Michael's 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.
- 15.5 Global Positioning System: Michael's shall equip each vehicle with a fully functioning global positioning system (GPS) that Michael's may use to track and record the vehicle's position at any given time.

- 15.6 Appearance: All vehicles utilized by Michael's 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.
- 15.7 Inspection: Michael's 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. Michael's 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 Michael's, and Michael's 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 Michael's with another vehicle of the same size, type and capacity, and in proper condition.
- 15.8 Maintenance Facility: Michael's shall 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.
- 15.9 Electronic Database: Michael's shall supply and maintain a computerized database for electronic student tracking, see section 5.1, accessible by the District, that contains all pertinent student tracking information for each student served while being transported by Michael's.
- 15.10 Fuel: Michael's shall purchase at its own cost, inclusive of all fuel taxes, all fuel required for the operation of buses under this Agreement.
- 15.11 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. Michael's 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 Michael's to do so.

## **SECTION 16: PUPIL DISCIPLINE AND VANDALISM**

- 16.1 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 Michael's' terminal and to the pupil's school



principal and the District's designee. 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 Michael's 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 Michael's being required to transport such pupil. Further procedures and regulations for the administration of discipline shall be established cooperatively between the District and Michael's.

- 16.2 Parental Notification: If a determination is made that Michael's will no longer transport a student, upon written notification by Michael's to the District, the District shall immediately notify (by telephone and written confirmation) the parent(s) or guardian(s) of the student.
- 16.3 Vandalism: The District shall give Michael's 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. Michael's 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. The District may also provide reimbursement for any vandalism damage.

## **SECTION 17: ASSIGNMENT AND SUB-CONTRACTING**

- 17.1 No Assignment or Rights to 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.
- 17.2 No Sub-Contracting Without District Approval: Michael's 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 18: TERMINATION**

- 18.1 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.

- 18.2 Termination of Agreement for Default:

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.

- 18.3 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 Michael's 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 18.3, Michael's 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 19: DISPUTE RESOLUTION**

- 19.1 Dispute Resolution: Notwithstanding anything in this Agreement to the contrary, prior to the initiation of any litigation, disputes between the District and Michael's regarding this Agreement, including any alleged violation, misinterpretation, or misapplication of this Agreement, shall first be resolved using the dispute resolution process identified in this Section 19.1.

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 Michael's 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 Michael's 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 may proceed to exercise whatever rights it may have under this Agreement and the law. In addition, if Michael's is the party that initiated the dispute resolution process, it 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 litigation for equitable remedies such as injunctive relief while proceeding through the dispute resolution process in order to preserve the status quo.

## **SECTION 20: BREACH AND REMEDIES**

- 20.1 Material Breach: If Michael's, 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 Michael's resulting from said breach. Alternatively, the District may purchase such required insurance coverage, and without further notice to Michael's, the District may deduct from sums due to Michael's any premium costs advanced by the District for such insurance. These remedies shall be in addition to any other remedies available to the District.
- 20.2 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 21: STATUS OF MICHAEL'S AND TAXES**

- 21.1 Status of Michael's as Contractor: This Agreement is not one of employment. Michael's, in the performance of this Agreement, shall be and act as an independent contractor. Michael's 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. Michael's 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 Michael's' employees. In the performance of the work contemplated in this Agreement, Michael's 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.
- 21.2 Taxes: Michael's 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 22: SEVERABILITY**

- 22.1 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 23: EXTENSION AND MODIFICATION**

- 23.1 Changes to or Extension of the Agreement: This Agreement may be changed, amended or extended by written, mutual consent of the District and Michael's. 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 24: NOTICE TO PARTIES**

- 24.1 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 (3) days after mailing.

*Notices to the District shall be addressed to:*

Hitesh Haria  
Chief Operations Officer  
Oakland Unified School District  
1000 Broadway, 4<sup>th</sup> Floor  
Oakland, CA 94607  
Main: (510) 879-4252  
Email : hitesh.haria@ousd.org

*Notices to Michael's shall be addressed to:*

April J. Brown  
Chief Operating Officer  
Michael's Transportation Service, Inc.  
MTS Training Academy  
140 Yolano Drive  
Vallejo, CA 94591  
Main: (707) 643-2099 Direct: (707) 674-6013  
Fax: (707) 563-9550  
Email: aprilb@bustransportation.com

- 24.2 Address Change: The District or Michael's 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 25: ENTIRE AGREEMENT**

- 25.1 Entirety of Agreement: This Agreement sets forth the entire agreement between the District and Michael's concerning the subject matter hereof. There are no representations, either oral or written, between the District and Michael's other than those contained in this Agreement.

## **SECTION 26: COMPLIANCE WITH LAW; LICENSES AND PERMITS**

- 26.1 Legal Compliance: Notwithstanding any contrary provision in this Agreement, Michael's 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.
- 26.2 Certification Regarding Debarment, Etc.: Michael's 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 Agreement certifies that Michael's does not appear on the Excluded Parties List (<https://www.sam.gov/>).
- 26.3 Licenses and Permits: Michael's 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.
- 26.4 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, age, or other legally-protected status and therefore Michael's 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, Michael's agrees to require like compliance by all its subcontractor(s). Michael's 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, sexual orientation or other legally-protected class.

## **SECTION 27: PLACE OF CONTRACT AND CONTROLLING LAW**

- 27.1 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.

- 27.2 Venue: Michael's 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 28: AUTHORITY**

- 28.1 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.

**Michael's Transportation Service, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

(Print)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Oakland Unified School District**

By: \_\_\_\_\_

Name: James Harris

Title: President, Board of Education

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: Antwan Wilson

Title: Superintendent & Board Secretary

Date: \_\_\_\_\_

Approved as to Form



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Michael L. Smith  
Deputy General Counsel

Date: may 6, 2016