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OFFICE OF THE GENERAL COUNSEL



OAKLAND UNIFIED  
SCHOOL DISTRICT

Community Schools, Thriving Students

# Memo

**To** Board of Education

**From** Marion McWilliams, General Counsel

**Board Meeting Date** December 14, 2016

**Subject** **First American – OUSD Approval of the Independent Contractor Agreement for Transportation Services**

**Action Requested** Approval by the Board of Education of the Independent Contractor Agreement for transportation services to special education students as provided in the student's Individualized Education Plan (IEP) or alternative arrangements with the family for the period of July 1, 2016 through June 30, 2018.

**Summary** First American provides transportation services to special education students as provided in the student's IEP or alternative arrangements. Drivers have been trained to work with special education students. Services will be provided from July 1, 2016 to June 30, 2018.

**Fiscal Impact** Resource – Transportation and Special Ed Fund

**Recommendation** **Approval of the Independent Contractor Agreement (attached) between the District and First American for transportation of special education students as provided in the student's IEP or alternative arrangements for the period of July 1, 2016 through June 30, 2018.**

**Attachments**

- Independent Contractor Agreement



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

Legislative File ID No. 16-2555

Department: Transportation

Vendor Name: First American

Contract Term: Start Date: July 1, 2016 End Date: June 30, 2018

Annual Cost: \$ Not to exceed \$300,000

Approved by: Operations; Programs for Exceptional Children

Is Vendor a local Oakland business? Yes ☐ No ☒

**Why was this Vendor selected?**

First American has been used for the past two years for transportation for Programs for Exceptional Students (PEC) and it has drivers who have been trained to support PEC students.

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

First American will provide transportation services to students within Programs for Exceptional Children as required by their Individualized Education Plan (IEP) or alternative arrangements.

Was this contract competitively bid? Yes ☐ No ☒

If No, answer the following:

1) How did you determine the price is competitive?

Pricing compared with other non-specialized vendors providing similar services.

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**
- ☒ **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:**



**Independent Contractor Agreement for the Provision of  
Transportation Services  
Between  
First American  
and  
Oakland Unified School District**

THIS INDEPENDENT CONTRACTOR AGREEMENT ("Agreement") is entered into as of July 1, 2016 between First American Cab Company ("Contractor") and Oakland Unified School District (the "District"), with the following facts.

- A. Certain student(s) of the District require transportation to and from school and/or other transportation services as requested by the District.
- B. The District will reimburse the Contractor for the provision of such services, in accordance with the terms and provisions of this Agreement.

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

**1. Contractor Services**

District may request, from time to time, that Contractor perform transportation services, which Contractor may agree to perform. To the extent accepted by Contractor, Contractor agrees to provide such transportation services and District agrees to pay Contractor in accordance with the provisions of this Agreement. The Contractor's services provided pursuant to this Agreement are sometimes referred to herein as the "Services."

**2. Term**

There term of this agreement shall commence on July 1, 2016, and shall terminate June 30, 2018. At the option of the Parties, the term may be extended by mutual agreement for an additional two year period.

**3. Fees for Services**

The Contractor shall invoice the District for the provision of the Services on a monthly basis and shall be paid therefore within forty-five (45) days after the District's receipt of the Contractor's invoice for the provision of the Services for the relevant month.

The Contractor and District may adjust the pay rates by mutual agreement in an amendment to this provision of the Agreement.

**4. Vehicles**

The Contractor agrees to supply, at its sole cost and expense, such vehicles, (the "Vehicles") as may be necessary to lawfully perform the Services. 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.

## **5. 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. The Contractor 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.

## **6. Accidents or Emergencies**

Contractor shall require that its employees and/or independent contractors or agents to notify CONTRACTOR'S dispatcher by phone or radio in the event of any traffic accident or medical emergency that involves a vehicle used in the performance of this Agreement. CONTRACTOR'S dispatcher shall promptly advise the appropriate authorities, parent/guardian (or emergency contact if parent/guardian is not available), and Oakland Unified designee of the accident or emergency.

OUSD Designee:

Rena Moore

Phone: 510-879-8181 (office); 510-689-4097 (cell)

Email: [rena.moore@ousd.org](mailto:rena.moore@ousd.org)

Tiwonnia Rougeau

Phone: 510-879-8181 (office); 415-902-7487 (cell)

Email: [tiwonnia.rougeau@ousd.org](mailto:tiwonnia.rougeau@ousd.org)

Kimberly Raney

Phone: 510-879-8181 (office); 951-536-9210 (cell)

Email: [Kimberly.raney@ousd.org](mailto:Kimberly.raney@ousd.org)

## **7. Contractors Personnel**

The Contractor shall, at its sole cost and expense, provide qualified and properly licensed personnel as required by laws and regulations and as deemed appropriate by the Contractor to perform the Services. While Contractor may use independent contractor drivers to provide Services under this Agreement, Contractor shall at all times remain responsible for the provision of Services under this Agreement. The Contractor expressly represents and warrants to the District that its personnel, including independent contractor drivers, are trained, tested and properly licensed to perform the Services.

The District may perform an audit of Contractor personnel files to assure compliance with requirements of this agreement. Contractor must produce requested documents to the District within five (5) business days of the request.

## **8. Contractors Insurance**



The Contractor shall at its sole cost and expense obtain and maintain in full force and effect during the term of this agreement general liability and automobile (common carrier) insurance issued by carrier(s) admitted in California, with minimum primary limits of One Million Dollars (\$1,000,000).

Additionally, the Contractor shall, at its sole cost and expense, obtain and maintain in full force and effect during the term of this agreement, umbrella or excess insurance coverage in an amount not less than Five Million Dollars (\$5,000,000), following the form of the underlying coverage. The Contractor shall also maintain Abuse and Molestation Insurance coverage with a minimum limit of Two-Hundred Fifty Thousand Dollars (\$250,000).

The District shall be named as an additional insured party of the policy or policies, and shall be furnished with a certificate of insurance (COI) requiring notice to District of at least thirty (30) days prior to cancellation of any such policy or policies (except 10 days for non-payment).

- a. **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. CONTRACTOR shall not permit its employees or agents to come into contact with students until CDOJ and FBI clearance is ascertained.

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

CONTRACTOR understands that OUSD does not permit drugs, alcohol, and/or smoking at any time in any buildings and/or grounds on OUSD property. CONTRACTOR shall not permit its employees, independent contractors or agents to smoke in vehicles used to transport OUSD students and will adhere to OUSD's drug free/smoke free policy. CONTRACTOR shall take reasonable steps to prevent its employees from exposing any pupil to impropriety of word or conduct. CONTRACTOR shall require that drivers comply with all safety laws and regulations, including but not limited to the prohibition against driving while 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.

## **10. Drug and Alcohol Testing**

The Contractor shall require that all employees and independent contractor drivers and other individuals who may come in contact with student(s) shall be subjected to pre-employment or pre-contract, just cause and on-going random drug and alcohol testing in accordance with the requirements of federal law. Contractor agrees to immediately dismiss any employee or independent



contractor driver who tested positive for drugs or alcohol in violation of applicable law, rule or regulation.

### **11. Reporting of Complaints**

The 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. The Contractor shall provide to the District a written monthly report listing said complaints and actions taken by First Student, if any, to resolve each complaint.

### **12. 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.

### **13. Assignment of Contractor's Rights**

Except as it relates to the hiring of independent contractor drivers, the Contractor shall have no right to assign its rights or obligations under this Agreement, it being understood that this is a personal services agreement.

### **14. Indemnity of the District**

The Contractor hereby agrees to indemnify defend and hold the District, its Board Members, employees, agents, officers and assigns, free and harmless from and against all claims, causes of action, liabilities, damages, expenses and costs (including, but not limited to, attorney fees and court costs) arising out of (a) any injury to any person or property sustained by the District and/or Contractor and/or any student(s), in connection with the provision of the Services, however caused, and (b) any injury to any person or property sustained by any person or entity which is caused or alleged to be caused by any act, neglect, fault or omission on the part of the Contractor in connection with the provisions of the Services, whether or not said injury or damage occurs on or off District property.

### **15. 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.

## **16. 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.

To District: Kimberly Raney, Transportation Director  
Oakland Unified School District  
1000 Broadway, 4<sup>th</sup> Floor  
Oakland, CA 94607  
[Kimberly.Raney@ousd.org](mailto:Kimberly.Raney@ousd.org)

To Contractor: Neema Sharma  
638 Eagle Ave  
Alameda CA 94501  
510-522-3999  
[Firstamericantransit@yahoo.com](mailto:Firstamericantransit@yahoo.com)

Notice of change of address shall be given by written notice in the manner detailed in this paragraph

## **17. Entire Agreement**

This Agreement and the attached proposal constitute its entire Agreement between the parties with respect to the provision of the Service and may not be amended except by a writing signed by each of the parties.

## **18. Waivers**

The waiver by either party of a breach or violation of any provisions of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of this Agreement.

## **19. Severability**

In the event any of the provisions, or portions, or portions thereof, of this Agreement is held to be unenforceable or invalid, by any court of competent jurisdiction, the validity and enforceability of the remaining provision or portion of it shall not be affected.

## **20. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion**



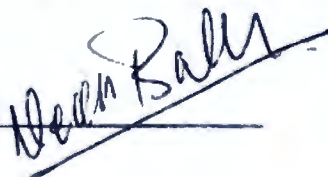
The Parties certify to the best of their knowledge and belief, that they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or CONTRACTOR according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, verifies that this vendor does not appear on the Excluded Parties List. <https://www.sam.gov/portal/public/SAM>

## 21. Counterparts

This Agreement may be signed in one (1) or more counterparts, each of which shall constitute an original but all of which together shall be one (1) and the same document.

IN WITNESS WHEREOF, the parties hereto agreed to be bound and have executed this Agreement.

1st American Transit LLC  
CONTRACTOR

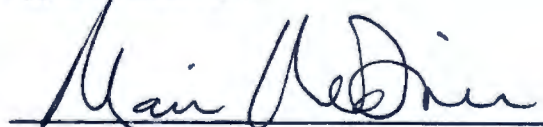


11/15/2016  
Date

NEERA SHARMA (PRESIDENT)  
Print Name, Title

  
President, Board of Education  
Oakland Unified School District  
Superintendent and Secretary Board of Education  
Oakland Unified School District

Approved as to Form

  
Marion McWilliams, General Counsel

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