

**FORM OF AGREEMENT**  
**PUPIL TRANSPORTATION SERVICES AGREEMENT**

This Agreement ("Agreement") is made July 1, 2015, in Marin County, California, between the San Rafael City School District (the "District") and First Student, Inc. ("Contractor"). The District and the Contractor may herein be singularly referred to as "Party" or jointly referred to as "Parties."

WHEREAS, the District desires to engage and the Contractor jointly agrees to provide student bus transportation services ("Services") by entering into this Agreement pursuant to the terms of California Education Code section 39800, *et seq.*, and all other applicable laws; and

WHEREAS, the Contractor agrees to perform the Services described in this Agreement in accordance with the standards of its profession, to District's satisfaction, and in accordance with this Agreement.

NOW, THEREFORE, the Parties agree as follows:

**1. GENERAL PROVISIONS**

**1.1. Communications and Procedures.** District and Contractor, through each Party's contact person and in communication and coordination with the other Party, will:

- 1.1.1. Personnel Directory. Establish a directory of each Party's personnel to contact for every type of communication relating to this Contract.
- 1.1.2. Communication Procedures. Establish procedures for all communications regarding the day-to-day implementation of this Contract to be confirmed in writing by the Parties.
- 1.1.3. Fieldwork Problem Procedures. Establish procedures to handle fieldwork to most effectively prevent problems and, if problems arise, to settle them as quickly and as close to the source of the problems as possible.
- 1.1.4. Operational Problem Procedures. Establish procedures to resolve disputes involving bus routes, schedules, public relations, and other operational problems relating to this Contract that may arise during the Contract Term.
- 1.1.5. Written Procedures Requirement. Agree and set forth in writing the procedures and items required in this section by no later than 30 days after the date this Contract is fully executed by the Parties and, thereafter by no later than July 1 of each succeeding year, any changes to any of the procedures or items shall be in writing and signed by each Party's contact person. If the Parties are unable to agree on any of the above procedures or items by the time deadlines stated here, District may unilaterally develop written procedures that shall be binding on Contractor.

**2. SCOPE OF WORK.**

**2.1. Generally.**

- 2.1.1. Contractor shall furnish all labor and equipment, including vehicles, personnel, fuel, tools and related equipment, materials and supplies, required to provide District with transportation services for persons designated by District to and from certain public

schools operated by District and other public agencies and to and from other points as directed by District, and to maintain and operate all vehicles and equipment safely and in a good and workmanlike manner and in accordance with this Contract and all applicable laws. Contractor shall provide transportation services with vehicles as required in this Contract and at such times and places as District shall specify.

2.1.2. District reserves the right to change school hours; adjust school start and ending times; change any aspect of or delete any established bus routes; add new bus routes; change, increase, or decrease the number and type of vehicles required; change any school site to which transportation services will be provided; and/or change the number of or particular students assigned to a vehicle or bus route.

2.1.3. If Contractor does not have the required vehicle(s) and/or trained personnel available or District determines that the needs or preferences of District and/or certain student(s) require transportation services provided by another company or entity, District, at District's discretion, own expense and without any notice, obligation, or liability to Contractor, may retain another company or entity to provide transportation services for District. Such retention and use of another company or entity shall not constitute or be deemed a breach of any provision of this Contract.

2.2. **License, Permits, and Certifications.** Contractor shall maintain in good standing throughout the term all licenses, permits, and certifications required by all applicable laws to perform services under this Contract, and shall enforce strict discipline and good order among its employees and shall not employ any person who is not qualified and trained to operate the required vehicles and equipment, and to handle students.

2.3. **Equipment Requirements and Maintenance.**

2.3.1. Estimated Number of Vehicles.

2.3.1.1. District anticipates that District will need transportation services as described in the document entitled Services attached hereto as **Exhibit "A"** and incorporated by reference.

2.3.1.2. The Parties shall communicate and coordinate regarding the particular routes, schedules, types and number of vehicles, and the students who Contractor will transport. Contractor shall maintain a supply of spare vehicles in sufficient quantity and safe condition to maintain uninterrupted services to District under this Contract, which quantity shall at all times throughout the term be equal to at least 10 percent of those vehicles assigned to established bus routes to assure that uninterrupted service can be provided in the event a vehicle suffers mechanical breakdowns or other problems. Stand-by vehicles shall meet the same equipment and capacity requirements as vehicles assigned to an established bus route.

2.3.2. Vehicle Requirements / Conditions of Vehicles. Throughout the term, each vehicle that Contractor uses to provide transportation services under this Contract shall comply with the following minimum standards:

2.3.2.1. 80-90 seat buses shall be 17 years old or newer as indicated by the year of manufacture.

2.3.2.2. 60-70 seat buses shall be 15 years old or newer as indicated by the year of

**manufacture.**

**2.3.2.3. Contractor will comply with all California requirements regarding the installation and use of seatbelts by students on school buses.**

**2.3.3. Other Requirements for Vehicles.** Contractor shall comply with each of the following requirements for each vehicle that Contractor uses to transport students under this Contract:

**2.3.3.1. Compliance with Applicable Laws.** Furnish certificates of compliance issued by the California Highway Patrol or other entities acceptable to District, certifying that all vehicles used to transport students pursuant to this Contract comply with all applicable laws.

**2.3.3.2. Vehicle Identification Number.** Assign an identification number to each vehicle (to be carried or marked by six inch numerals painted on the front cowl, right rear, and near the entrance door of each vehicle) and furnish District with the description of each vehicle and number on or before July 15 of each year. Except for identification signs stating the particular bus routes, Contractor shall not use any markings or lettering on any vehicle that identifies such vehicle with or as operated by District.

**2.3.3.3. Maintenance.** Keep and maintain all vehicles in good operating, running and mechanical condition, and in a clean and sanitary condition, adequate for the use and purpose for which the vehicles are intended and in compliance with applicable laws. Contractor shall make any or all vehicles available in Contractor's facilities for inspection by District or District's agents for a minimum of four inspections each calendar year. District may inspect vehicles at any time to determine whether Contractor is maintaining the vehicles in a clean, sanitary, and safe condition. These inspections may be conducted at Contractor's facilities or at a specific school site during a regular run. Date and times of inspections will not be posted in advance.

**2.3.3.4. Communication Devices.** Equip all vehicles used to provide transportation services under this Contract with an immediate means of communication to Contractor's base of operations by a two-way radio network system licensed by the Federal Communications Commission, and/or mobile phone. The wattage power of the base station and the mobile radio units shall be sufficient with 95 percent operability to a distance 10 miles beyond any boundary of Marin County from the transmitting tower. It is preferred that the frequency band be used solely for District. Contractor shall maintain spare mobile two-way radio units to insure that communications capability shall be readily available at all times. Radio units to be used in service for this Contract will operate on an 800 or 450 MHZ frequency. Contractor shall provide District and each public agency designated by District with one monitor at locations designated by District.

**2.3.3.5. Additional Equipment.** Equip all vehicles with, at a minimum, all components (1) required by law, (2) described in Exhibit "A" to this Agreement, or (3) agreed to by the Parties in writing.

**2.3.3.6. Other Equipment.** Provide all required, appropriate, or related supplies, equipment, and materials in compliance with laws applicable to vehicles used

to transport students in the State of California. Any equipment required by law or by a change in any applicable laws shall be made by Contractor at Contactor's sole expense.

2.3.4. Fuel and Other Purchases. Contractor will purchase, at its sole expense, and provide the fuel Contractor uses in providing transportation services to District under this Contract. Unless approved otherwise by District in writing, Contractor shall use only diesel and, with District's written pre-approval, non-gasoline fuel for any vehicles that will be used to transport students under this Contract. Unless pre-approved by District in writing, District is not obligated to and shall not pay or reimburse Contractor for any materials, supplies or other items relating to services provided by Contractor under this Contract. Contractor shall be solely responsible for the cost of all labor, equipment, materials, and supplies necessary and proper to provide services to District under this Contract.

2.3.5. Right to Demand Replacement Vehicles. Notwithstanding the foregoing, in the event that a vehicle does not perform to the reasonable satisfaction of the District, the District shall have the right to demand that vehicle be retired from service under this Agreement, and the Contractor shall thereafter replace it with a vehicle satisfactory to the District. The Parties Agree that a vehicle that cannot start or complete its scheduled route for two (2) trips during a one-month period is *presumptively* not performing to the reasonable satisfaction of the District, and that such presumption is conclusive of the issue.

#### 2.4. Contractor Staffing Requirements.

2.4.1. Number of Drivers. At all times during the Contract Term, Contractor shall provide adequate number and qualified and trained drivers to cover all Bus Routes and such other transportation services as District may need.

##### 2.4.2. Minimum Qualifications of Drivers.

2.4.2.1. Contractor shall employ only qualified drivers trained and licensed in accordance with applicable California and federal laws to operate the vehicles that will be used to provide transportation services under this Contract.

2.4.2.2. Contractor shall assign the same driver to the same Bus Route whenever possible.

2.4.2.3. Drivers shall be knowledgeable of the contents of this Contract, excluding rate information; any transportation rules provided by District; all applicable laws regarding operation of vehicles and transportation of students; and District policies and regulations.

2.4.2.4. Contractor shall instruct drivers regarding the rules and regulations applicable to safe driving on school grounds, and shall insure that such drivers exercise caution at all times.

2.4.2.5. All drivers shall be required to submit to controlled substance and alcohol testing as required by and in accordance with regulations of the United States Department of Transportation. Contractor shall adhere to District policy regarding drug and alcohol use. Contractor shall complete the certification attached hereto as Exhibit "C" and incorporated by reference.

- 2.4.2.6. Each driver shall have knowledge of the operation of the mobile two-way radio, and/or mobile phones and the federal regulations concerning their use.
- 2.4.2.7. All drivers shall be well groomed and in uniform with the name of Contractor imprinted (patch acceptable) on the front shirt pocket or sleeve area, so as to be easily visible. Contractor shall provide all drivers with an appropriate picture identification name badge with the driver's name and photograph displayed on it, which each driver shall wear at all times while on duty. Contractor shall require all drivers to have a time piece with them while on duty so that the drivers can maintain established scheduled times.
- 2.4.2.8. All drivers shall be trained and certified in cardiopulmonary resuscitation (CPR).
- 2.4.2.9. Contractor shall provide all drivers with training in car seat installation by a certified instructor. Additionally, when any student is identified as having specialized medical problems or needs, District will notify Contractor that the driver assigned to that student's Bus Route or Special Trip may require additional training to accommodate the student's condition.
- 2.4.2.10. All drivers and relief drivers shall participate in a safety program provided by Contractor. District shall be permitted to participate in scheduled driver safety meetings for the purpose of coordination and articulating District's transportation programs and needs.
- 2.4.2.11. Contractor shall be solely responsible for hiring and discharging Contractor's drivers and other personnel who are employed to carry out this Contract and such personnel shall be and remain the employees of Contractor at all times and shall have no employee status or rights with regard to District. Contractor shall not enter into any agreement or arrangement with any employee, person, group, or organization that will, in any way, interfere with Contractor's ability to perform to the full extent of this Contract. Contractor is solely responsible for the assignment and discipline of Contractor's employees and all other matters incidental to the performance of services under this Contract and the control of Contractor's employees. District shall have the right to require Contractor to remove any driver from operating a vehicle on a Bus Route or Special Trip who, in District's determination, is not qualified to safely operate a vehicle in accordance with District's standards and goals; however, District's delay in or failure to remove a driver shall not constitute evidence of any liability or responsibility on District's part.
- 2.4.3. Manager/Supervisor Staff. Contractor shall provide, at a minimum, the following management and supervisory staff:
  - 2.4.3.1. General Manager. To deal directly with District on all matters concerning the implementation and operation of this Contract.
  - 2.4.3.2. Dispatcher. To be used for dispatching and controlling Bus Routes and schedule implementation as set forth in the Bus Route Schedule or agreed upon otherwise by the Parties (this may be a shared responsibility of the General Manager).

- 2.4.3.3. Driver Trainer and Safety Program Specialist. Shall be certified by the California Department of Education as a School Bus Instructor and shall be qualified to train Contractor's drivers, both in the classroom and behind the wheel, as required by law and practical operating procedures.
- 2.4.3.4. Fleet Maintenance Supervisor. To be responsible directly to the General Manager for the safety and mechanical condition of Contractor's vehicles. Contractor must establish and maintain a complete and effective prevention maintenance program with complete and accurate maintenance and cost records on each vehicle, which records shall be available for District's inspection at all times.
- 2.4.3.5. Contact Person. Whenever a driver is on duty, there must be a Contractor contact available.
- 2.4.4. Standby Personnel. Contractor shall employ additional bus drivers and support staff required to cover absence of drivers and staff throughout the Contract Term. The number of substitute employees shall be at Contractor's discretion to assure that all established Bus Routes are covered at all times by qualified and trained drivers.
- 2.4.5. Fingerprinting and Criminal Background Check Certification.
- 2.4.5.1. Contractor shall require and ensure that each of its employees who will be operating or riding on any vehicle where any students will be present, will have been fingerprinted and criminal background checks completed, and that Contractor has completed, signed, and delivered to District the Fingerprinting Notice and Criminal Background Check Certification attached hereto as Exhibit "D" and incorporated by reference. Contractor shall apply for subsequent arrest notifications with the California Department of Justice in order for Contractor to receive subsequent arrest notices for Contractor and Contractor's employees, and shall provide District with proof of Contractor's application for subsequent arrest notifications and with an updated Fingerprinting Notice and Criminal Check Certification if there are any changes to the information Contractor previously provided. Contractor must immediately remove from performance of services under this Contract any of Contractor's employees who are convicted of or against whom a criminal proceeding is pending for a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).
- 2.4.5.2. Contractor shall indemnify, defend, and hold harmless District, the District Board of Education and their officers, employees, consultants, volunteers, and agents against any claims, demands, lawsuits, causes of action, actions, proceedings, damages, liabilities, judgments and expenses, including attorney's fees and costs, resulting from, arising out of, or caused by Contractor's failure to comply with this Subsection.
- 2.4.5.3. Contractor's obligations and liabilities under this Subsection to District are not limited to or by any insurance that Contractor maintains but apply to the fullest extent permitted by law without regard to whether Contractor's insurance provides coverage for the obligations and liabilities. The indemnity, defense, and hold harmless obligations in this Subsection shall survive the termination of this Contract.

- 2.4.6. **Tuberculosis Clearance Certification.** Contractor shall complete, sign, and deliver to District the Tuberculosis Clearance Certification or provide District with documentation satisfactory to District that each of Contractor's drivers who will provide services under this Contract has been examined and determined by a licensed physician or surgeon within four years of the Contract Effective Date to not have active tuberculosis. If during the Contract Term, any of Contractor's drivers who are providing services under this Contract are determined to have active tuberculosis, Contractor shall immediately remove such drivers from providing services under this Contract.
- 2.4.7. **Workers Compensation Certification.** Contractor shall complete, sign, and deliver to District the Workers Compensation Certification attached hereto as Exhibit "E" and incorporated by reference.
- 2.4.8. **Student Safety and Information.** To ensure student safety, all drivers shall personally check safety devices on all students. Contractor shall provide all drivers with training in car seat installation by a certified instructor.
- 2.4.9. **District Observation.** District reserves the right to observe any attendants or drivers at work to assess the interaction between students, attendants, and drivers. District does not accept any responsibility to supervise attendants or drivers.
- 2.5. Training and Safety Program.** Contractor shall comply with all California laws governing the safe operation of the vehicles required by this Contract and the training of personnel as it relates to the safety of students transported under this Contract. As required by California Education Code Section 39831.5, the Contractor shall provide at least once each school year instructions on, but not limited to, school bus safety, school bus evacuation, and emergency exit drills. These drills shall be held within the first four weeks of each school year. If unexpected problems develop to prohibit such scheduled drills during this time, a make-up drill shall be scheduled as soon thereafter as possible.
- 2.6. Student Discipline on Vehicles.**
- 2.6.1. Contractor shall maintain proper student supervision and monitoring for the safety of all persons aboard a vehicle. Contractor's driver shall be a reporting agent only and is not to perform acts of discipline upon any students.
- 2.6.2. Drivers shall maintain orderly conduct of students while students are riding on any vehicle operated by Contractor or while being escorted across any street, highway or road by driver.
- 2.6.3. Contractor will furnish Pupil Conduct Report as approved by District.
- 2.6.4. Contractor shall report any student behavior problems that develop on a vehicle through issuance of a District-approved Pupil Conduct Report to District site administrator for disciplinary action, and/or suspension or removal from riding on Contractor-operated vehicles.
- 2.6.5. Contractor's drivers and employees are not authorized to remove students from any vehicles.
- 2.6.6. District is responsible to inform students and parents of California laws regarding bus safety and behavior.

**2.7. Routing, Scheduling, and Operation of Vehicles.**

**2.7.1. General Requirements.**

- 2.7.1.1. Most students will be transported on a round-trip basis. The normal exceptions will be: (1) in case of illness in school, and (2) when parents transport their children to or from schools. District will attempt to notify Contractor of such situations as they occur.
- 2.7.1.2. Most students will be picked up at a District authorized bus stop location or their residence. To aid Contractor in maintaining a timely schedule, District expects Contractor to wait for any student who is late to a Bus Stop no more than three minutes beyond the established pick up time. Contractor shall be consistent in the time of pick up at each Bus Stop.

**2.7.2. Establishment and Scheduling of Bus Routes.**

- 2.7.2.1. **Development of Bus Routes.** Before Contractor commences any transportation services under this Contract, routes for transporting students shall be developed (individually "Bus Route" and collective "Bus Routes") and students shall be assigned to the Bus Routes.
- 2.7.2.2. **Bus Route Schedule.** Prior to July \_\_\_\_\_ 2015, and at least annually thereafter, and again on August \_\_\_\_\_ 2015, and at least annually thereafter, the Parties shall meet and confer to develop and agree upon a "Bus Route Schedule" that sets forth, at a minimum, the following information:
  - 2.7.2.2.1. A designation of the Bus Route by a number or sequence of numbers and/or letters.
  - 2.7.2.2.2. The starting and ending time of each run, and the sum of all times for all runs on the Bus Route rounded to the nearest quarter of an hour (15 minutes) ("Daily Bus Route Time"). The sum of all times for all runs on a Bus Route shall be considered consecutive for purposes of computing the Daily Bus Route Time despite the fact that the schedule for the Bus Route may require multiple, separate runs or trips in the morning and mid-day, and one or more runs in the afternoon. The Daily Bus Route Time shall be computed starting at the pickup time of the first Bus Stop on a run and ending at the drop off time of the last Bus Stop on that run. All times before and after each run, which shall include, but are not limited to, the time for a vehicle to travel from Contractor's facilities to the first Bus Stop or to travel from the last Bus Stop drop off on a run to Contractor's facilities, shall not be computed as part of the Daily Bus Route Time.
  - 2.7.2.2.3. The location of each pickup and drop-off of students along each Bus Route ("Bus Stop").
  - 2.7.2.2.4. The time that a vehicle is scheduled to arrive for pickup and drop-off of students at each Bus Stop.



- 2.7.2.2.5. The total cost for the Bus Route per day ("**Daily Bus Route Rate**"), which Daily Bus Route Rate shall be computed pursuant to the Rate Schedule attached hereto as **Exhibit "B"** and incorporated by reference, to be interpreted in accordance with the terms and conditions herein, including without limitation the supplemental Terms and Conditions attached hereto as **Exhibit "F"** and incorporated by reference. If there is a conflict between the terms Exhibit "F" of this Agreement and those of any other portion of this Agreement, the terms of the portion of this Agreement other than Exhibit "F" shall control.
- 2.7.2.2.6. The date on which the Bus Route Schedule becomes effective.
- 2.7.2.2.7. The signature of each Party's Contact Person listed on Page 1 of this Contract.
- 2.7.2.3. Routing and Scheduling. District shall be responsible, with Contractor's full cooperation, for all routing and schedule of Bus Routes.
- 2.7.2.4. District Responsibilities. Unless agreed to in writing by the Parties otherwise, District shall have the following responsibilities:
  - 2.7.2.4.1. Assign students to Bus Routes.
  - 2.7.2.4.2. Establish arrival and departure times at schools.
  - 2.7.2.4.3. Assign vehicle capacity to Bus Routes.
  - 2.7.2.4.4. Provide timely information with respect to minimum day schedule.
  - 2.7.2.4.5. Provide special instructions for students requiring special handling, treatment, and/or medication.
- 2.7.2.5. Dry Runs. To facilitate the development of Bus Routes and Bus Route Schedules, Contractor shall, prior to the opening of each school year and without charge, have each regularly assigned route driver accomplish two complete dry runs (practice runs without students) of his assigned route.
- 2.7.3. Changes to Bus Routes and Bus Route Schedule.
  - 2.7.3.1. District Initiated Changes. District, with notice to Contractor, may:
    - 2.7.3.1.1. Add or delete one or more Bus Routes at any time during the Contract Term. Contractor shall implement any such addition or deletion within 10 school days following Contractor's receipt of District's notice to do so.
    - 2.7.3.1.2. Add or delete a pickup or drop-off Bus Stop on any Bus Route. Contractor shall implement such addition or deletion within two school days following the receipt of notice from District to do so.
    - 2.7.3.1.3. Change the time of pickup and drop-off of students at any Bus

Stop, or the starting and ending time of any run, on a Bus Route. Contractor shall implement the change no later than the second school day after District notifies Contractor of the change.

2.7.3.1.4. Add, suspend, or delete transportation services for any student. Contractor shall implement such addition, suspension, or deletion of transportation services the second school day following Contractor's receipt of notice to do so from District.

2.7.3.2. **Contractor-Initiated Changes.** If at any time during the Contract Term, Contractor determines that transportation services can be improved by revising a Bus Route, scheduling, and/or vehicle assignments, Contractor shall confer with and seek District's written approval before implementing any changes to any Bus Route.

2.7.3.3. **Amendments to Bus Route Schedule.** Any change, deletion, and/or addition to any Bus Route or any related information shall be reflected in writing in a revised Bus Route Schedule, which revised Bus Route Schedule shall state an effective date and be signed by each Party's Contact Person or designee.

**2.8. Scheduling of Field Trips, Athletic Trips, and Trips for District-Sponsored Activities (collectively "Special Trips").**

2.8.1. Upon District's request and subject to availability of vehicles, Contractor shall provide transportation service for Special Trips. District shall provide notice to Contractor at least two business days before the scheduled Special Trip. If Contractor does not have the required vehicle(s) and/or personnel available at the time requested by District, an alternate time or date may be suggested by Contractor or District may retain, at District's own expense, another company or entity to provide transportation services for the Special Trip. Such retention and use of another company or entity shall not constitute or be deemed a breach of any provision of this Contract or other Contract Documents.

2.8.2. District may cancel any scheduled Special Trip by notifying Contractor in writing by no later than 10:00 a.m. on the business day before the date of the Special Trip. Upon such notice and cancellation, District shall not be obligated to pay Contractor for services for the Special Trip. If notice of cancellation of a Special Trip is not provided to Contractor within the time stated here, District shall pay to Contractor \$50.00 for each Special Trip that District cancels. District shall not be obligated to pay Contractor for hours of services for the cancelled Special Trip.

**2.9. Unscheduled School Closing.**

2.9.1. District shall not be obligated to pay for any services by Contractor on those days when schools and classes are closed to insure the health and safety of students or for any other lawful reason. The decision as to the need for closing a school at the start of the day or for early dismissal during the day shall be made by District or other public agency.

2.9.2. Contractor shall, taking into consideration the safety of operations, operate during inclement weather conditions and will provide for appropriate equipment and trained personnel, and will implement alternate vehicle routes, as necessary, and approved by District under such inclement conditions. Foggy day schedules shall be determined by

District or other public agencies and communicated to Contractor.

- 2.9.3. District shall notify Contractor of a cancelled Bus Route not less than one hour before the first scheduled pickup Bus Stop. If District fails to give Contractor this one-hour notification, District shall pay Contractor the driver(s)' actual time or minimum call-out time, whichever is less.

- 2.10. **Accident Reports and Citations.** All accidents or citations that involve Contractor's personnel while in operation pursuant to this Contract shall be reported to District. Accidents involving injuries to students or other persons shall be reported to District immediately after Contractor is notified of them. Contractor may deliver accident information by telephone but Contractor must provide to District a written report, which includes all pertinent information, as soon as reasonably possible after each accident, but in no event later than three business days after the accident.

- 2.11. **Record Keeping, Retention, Inspection, and Audit.**

- 2.11.1. Contractor shall maintain and retain accurate books and accounting records of all services provided under, for costs billed pursuant to, and all documents required of Contractor under this Contract for at least five years after the termination of this Contract. Upon District's request, Contractor shall make all such books, accounting records, cost billings, and documents available for review, audit, and/or copying by District or District's designee. If this Contract involves the expenditure of funds from the State of California in excess of \$10,000, this Contract is subject to the State Auditor's examination and audit for three years after final payment under this Contract at District's request or as part of any audit of District. The obligations of this Subsection shall survive termination of this Contract.

- 2.11.2. Contractor shall provide to District within five business days of District's request all pertinent books, records, reports and documents requested by District, including but not limited to the following:

- 2.11.2.1. Weekly report on all late or missed trips or runs on any Bus Routes, and stating the cause of the problem and corrective action(s) taken.

- 2.11.2.2. Notification of hazards, problems or obstacles observed by Contractor personnel along any Bus Routes or relating to the Bus Route Schedule.

- 2.11.2.3. Accurate trip records showing Bus Route number, bus number, type of trip, number of students carried daily, time of route/trip and miles traveled.

- 2.11.2.4. Copies of all California Highway Patrol, California Motor Carrier and Federal Department of Transportation vehicle inspection reports on Contractor's vehicles.

- 2.11.2.5. Monthly report of vehicles receiving preventative maintenance services.

- 2.11.2.6. Monthly report of vehicles receiving major repairs.

- 2.11.2.7. Monthly summary report of Special Trips, showing vehicle number, school elapsed time, mileage, District's authorization and District's cost.

- 2.11.3. District may carry out such monitoring, evaluation and auditing of any records required

by this Contract as District may deem necessary after written notice to Contractor.

- 2.12. Use and Handling of Confidential Records and Information.** To the extent Confidential Materials, as this term is defined in this Section, are provided to Contractor for its performance of this Contract, Contractor and its officers, employees and agents shall: (1) protect the confidentiality and maintain the security of the Confidential Materials; (2) not release, disseminate, or publish the Confidential Materials, except as required by law or a court order, as may be permitted under this Contract, or as District may authorize in writing; (3) not use the Confidential Materials for any purpose not related to the performance of this Contract; and (4) protect all Confidential Materials, including those materials saved or stored in an electronic form, by adequate security measures to ensure that they are safe from theft, loss, destruction, erasure, alteration, and unauthorized viewing, duplication, and use. "Confidential Materials" shall mean all documents and information that federal and/or California laws prohibit from being disclosed, or that are subject to privacy or other legal protections, including but not limited to, student and employee records and information. The obligations of this Section shall survive the termination of this Contract.
- 2.13. Required Documents.** At the same time as when Contractor delivers to District this Contract signed by Contractor, Contractor shall submit to District, at District's request and as applicable, all documents that District may require to establish the necessary process to make payment to Contractor.
- 2.14. Certification Regarding Debarment, Suspension, and Other Ineligibility:** If this Contract is funded, in part or in whole, with federal funds, Contractor shall comply with federal suspension and debarment regulations, including, but not limited to, regulations implementing Executive Order 12549 (29 C.F.R. Part 98).

**3. TERM OF CONTRACT; COMMENCEMENT OF WORK; AND TERMINATION OF CONTRACT.**

**3.1. Contract Term and Renewal.**

**3.1.1.** This Contract shall be in effect commencing on the Contract Effective Date of 8-01-2015, 2015 and shall continue in full force and effect to and including 7-31-2020, ~~2015~~ ("Contract Term") [MAXIMUM OF 5 YEARS], unless this Contract is terminated during the Contract Term pursuant to this Article.

**3.1.2.** Where this Contract terminates by expiration of the Contract Term, two one-year renewal options will be available to the Parties as follows:

**3.1.2.1.** The Parties may mutually agree in a writing executed by the Parties and pursuant to Education Code section 39803 to renew this Contract for a successive period of one year.

**3.1.2.2.** This one-year renewal option may be exercised by the Parties up to two times.

**3.2. Commencement of Services.** Contractor shall commence services under this Contract no later than the first day of school. Because District operates education programs on multiple school sites, some of which are on schools operated by school districts, the first day of school will generally be determined by the school district in which the education program is located. Before Contractor may commence any services, the Parties must execute the Contract and Contractor must provide the proof of insurance and of all other documentation required by the Contract Documents.

**3.3. Grounds for Termination – For Cause.** This Contract shall terminate upon expiration of the Contract Term. During the Contract Term, this Contract may be terminated pursuant to the following:

**3.3.1. Termination by District.** District may terminate this Contract upon Contractor's material breach of one or more provisions of the Contract Documents or based on any of the following grounds, and after District has provided Contractor with notice as required by herein below:

**3.3.1.1.** Contractor refuses or fails to perform services as required under any Contract Documents.

**3.3.1.2.** Contractor fails to comply with any term or condition of the Contract Documents.

**3.3.1.3.** Contractor refuses or fails to provide vehicles and personnel in quantities and with qualifications required to provide services required by the Contract Documents.

**3.3.1.4.** Contractor furnishes, operates, or uses vehicles that do not conform to the requirements of the Contract Documents.

**3.3.1.5.** Contractor refuses or fails to comply with laws applicable to the services required by the Contract Documents, or District's instructions.

**3.3.1.6.** Contractor materially breaches one or more provisions of the Contract Documents.

**3.3.2. Termination by Contractor.** Contractor may terminate this Contract upon District's material breach of one or more provisions of the Contract Documents and after Contractor has provided District with notice as required by Section 3.3.3 below.

**3.3.3. Notice of Termination.** A Party intending to terminate this Contract pursuant to this **Grounds for Termination – For Cause** Section shall provide the breaching Party with written notice at least 30 days ("**Termination Notice Period**") before the effective termination date and provide the breaching Party with five business days after the date of receipt of the notice to terminate to cure ("**Cure Period**") unless the non-breaching Party shall agree in writing to an extension of the Cure Period before the expiration of the Cure Period. Upon expiration of the Cure Period and any mutually agreed upon time extension, if the breaching Party has not corrected the breach and provided written notice of completion of such corrective action to the non-breaching Party, this Contract shall terminate effective the day immediately following the expiration of the Cure Period without any further notice or actions by either Party.

**3.4. Additional Grounds for Termination.** Notwithstanding any provisions to the contrary in this Contract, this Contract shall terminate during the Contract Term pursuant to any of the following:

**3.4.1. Conviction or Criminal Proceeding Involving Serious or Violent Felony.** District, at District's sole discretion and upon written notice by District to Contractor, may terminate this Contract, effective on the date stated in District's notice of termination, if Contractor provides any driver or attendant who has a conviction of, or a pending criminal proceeding for, a violent felony listed in Penal Code section 667.5(c) and/or a

serious felony listed in Penal Code section 1192.7(c).

- 3.4.2. Contractor Noncompliance with Applicable Laws. District, at District's sole discretion and upon written notice to Contractor, may terminate this Contract effective on the date stated in District's written notice if Contractor, in performing services under this Contract, fails to comply with federal, state, local laws, and/or District policies that apply to Contractor's performance of services required by the Contract Documents.
- 3.4.3. Receivership or Bankruptcy of, or Inability to Pay Debts by, Contractor. District, at District's election and upon written notice to Contractor, may terminate this Contract effective on the date specified in District's notice of termination if Contractor shall: (1) file a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors; (2) apply for, consent to, or have an order, judgment, or decree entered by a competent court for, approval of a petition or appointment of a receiver, trustee, custodian, or liquidator of Contractor or all or a substantial part of Contractor's assets; (3) be unable to, fail to, or admit in writing to Contractor's inability generally to pay Contractor's debts as they become due; or (4) make a general assignment for the benefit of creditors.
- 3.4.4. Contractor Unauthorized Assignment or Transfer of Contract. Any assignment or transfer of this Contract by Contractor in violation of this Contract constitutes a material breach of this Contract and District, at District's sole discretion and upon written notice to Contractor, may terminate this Contract effective on the date stated in District's written notice.
- 3.4.5. Contractor Failure to Procure and Maintain Required Insurance. If Contractor fails to maintain any of the insurance required by this Contract, District, upon providing Contractor with written notice, may terminate this Contract effective on the date stated in District's written notice.
- 3.4.6. Non-Allocation of or Insufficient Allocated Funds. Upon written notice to Contractor, District may terminate this Contract effective on the date stated in District's notice if, during the Contract Term, District and/or other government agencies and/or grant or funding entities from whom District receives or is to receive funds to pay for this Contract: (1) reduce or eliminate some or all funds to pay for this Contract, (2) fail to or determine not to appropriate or allocate funds for future payments under this Contract, or (3) fail or determine not to allocate funds in an amount sufficient to make future payments under this Contract.
- 3.4.7. License, Certification, or Permit. District, at District's sole discretion and upon written notice to Contractor, may terminate this Contract effective on the date stated in District's written notice if Contractor's license, certification, or permit required to provide services under this Contract has been revoked, repealed, suspended, or placed on probation by any governmental or accrediting agency.
- 3.5. **Rights and Obligations upon Termination.** Upon termination of this Contract, the following shall apply and shall survive termination of this Contract:
  - 3.5.1. Generally. Any terms or conditions that by their nature extend beyond the termination of this Contract shall survive the termination of this Contract and remain in effect thereafter until they are fulfilled.
  - 3.5.2. Termination by District For Cause. If District terminates this Contract pursuant to the

**Grounds for Termination – For Cause Section.** District may secure the services required by the Contract Documents from any other company or entity. If the cost to District to secure such services exceeds the cost under this Contract, the excess cost shall be charged to and collected from Contractor. This recovery is in addition to and not in limitation of any other rights or remedies available to District to recover damages or seek other remedies from Contractor under this Contract or applicable laws.

3.5.3. **Payment.** Upon termination of this Contract, Contractor shall be paid only for services that Contractor performed in accordance with this Contract before the effective date of termination and for which Contractor has submitted an invoice and documentation as required by District. District shall not be obligated to pay Contractor for any services that Contractor has not performed or has not performed in accordance with the Contract Documents, and District shall have no further liability to Contractor, whether pursuant to contract, law, or equity.

3.5.4. **Return of District-Provided Records and Information.** At District's request, all documents, records, data, information, and materials and other items that District provided to Contractor related to this Contract shall be returned to District no later than 30 days after the effective date of termination of this Contract or the date of District's request, whichever is earlier.

3.6. **Force Majeure.** No Party shall be liable for any failure or delay in performing this Contract if a Force Majeure Event caused the failure or delay and the Party seeking relief under this Section has provided the other Party with written notice of the occurrence of the Force Majeure Event, except that a failure to pay any amount due under this Contract shall not be excused by a Force Majeure Event where the required services have been performed in accordance with this Contract. A "Force Majeure Event" shall mean events or circumstances that are beyond a Party's reasonable control and occurring without the Party's fault or negligence, and which by the Party's exercise of due diligence could not reasonably have been avoided and was not avoided, which events or circumstances, include, but are not limited to, acts of God, such as tornadoes, lightning, earthquakes, hurricanes, floods, or other natural disasters; terrorist attacks; wars; strikes; lockouts; riots; explosions; or governmental acts or order, including sanction, embargo, and import or export regulation.

3.7. **Suspension of Services.** Despite any provisions to the contrary in the Contract Documents, District shall have the right to suspend, delay, or interrupt any or all services at any time during the Contract Term upon written notice provided to Contractor at least 10 business days before the suspension, delay, or interruption begins. Such written notice shall state the beginning date and ending date of the suspension, delay, or interruption ("Suspension Period"). Unless the Parties agree in writing otherwise, the following shall apply upon District's exercise of its right under this Section: (1) Contractor shall not be entitled to any damages or additional compensation relating to, resulting from, or arising out of District's exercise of its right under this Section or the Suspension Period; and (2) Contractor shall resume performance of the Services on the next business day following the ending date of the Suspension Period.

4. **PAYMENT AND PAYMENT SCHEDULE.** As full consideration and compensation for Contractor's performance of the services required by this Contract, District shall pay Contractor in accordance with this Article.

4.1. **Amount of Compensation to Contractor.** District shall pay Contractor in accordance with the Bus Route Schedule, the Rate Schedule, and in accordance with this Payment and Payment Schedule Provision as they may be amended from time to time during the Contract Term. Time spent for transportation services under this Contract shall be calculated based on the amounts

stated in Contractor's Bid Form and as awarded by District, and in accordance with the following Subsections. Contractor agrees that the rates to be paid by District shall not exceed the rate(s) paid by other public agencies within Marin County, California and if lower rates are extended to other public agencies, those same rates shall be offered to District.

4.1.1. **Bus Routes.** District shall pay Contractor the Daily Bus Route Rate applicable to that Bus Route for each school day that Contractor actually performs transportation services on that Bus Route.

4.1.2. **Special Trips.** Time spent for transportation services for *each* Special Trip shall be calculated as follows: (1) for picking up students, the total time commencing the time a vehicle departs from the first pick-up stop of students and continuing until the time the vehicle arrives at the destination specified by District; and (2) the total time commencing at the time a vehicle departs from the specified destination and continuing until the time the vehicle arrives at the last drop-off stop of students (collectively "Special Trip Time"). For purposes of calculation under this **Special Trips** Section, time shall be computed to the nearest quarter hour (15 minutes). To the extent possible before the start of a Special Trip, the Parties shall agree upon the terms and conditions for the Special Trip, which agreement shall include, at a minimum, a description of the Special Trip, the estimated time of travel involved, and the total cost of the Special Trip computed based on the Special Trip Rates stated in Contractor's Bid Form.

4.1.3. **Lunch, Break, Other Leaves, and Layover.** District is not obligated to pay Contractor for any time spent by Contractor's employees for lunch, break, or other leaves before, during, or after a Bus Route or Special Trip and any such time shall not be included in the Daily Bus Route Time or Special Trip Time.

4.2. **Invoice Required of Contractor.** Contractor shall submit to District, each calendar month, a detailed invoice setting forth, at a minimum, a description of and the total cost for each Bus Route or Special Trip for which Contractor is requesting payment. Upon receipt of an invoice and if District has any objections to it and/or requires additional information or supporting documentation, District shall notify Contractor in writing and Contractor shall provide District with the required additional information and/or supporting documentation within five business days of Contractor's receipt of District's notice. Contractor shall include accurate monthly student counts in each monthly invoice to District. Contractor shall also provide District with year-end reports that include all accounting information as specified by District.

4.3. **Payment Schedule and Payment to Contractor.** District shall pay Contractor the amount due under an invoice within 30 days of District's receipt and approval of an invoice. Contractor's acceptance of final payment under this Contract shall constitute and operate as a release of all claims and liability by Contractor against District for any additional compensation or payment relating to any and all labor, services, equipment, supplies, and materials provided or performed under this Contract. However, District's final payment shall in no way relieve Contractor of Contractor's obligations under this Contract or for deficient work discovered after final payment.

4.4. **Rate Adjustments.** The prices set forth in the Bid Form which the District shall pay the Contractor may be adjusted on July 1 of each contract year at least one year after the date of this Agreement pursuant to the following method of rate adjustment, provided the Contractor submits to the District in writing their request for rate adjustment no later than June 1, of that contract year.



4.4.1. Any rate adjustment shall be indexed to the United States Bureau of Labor Statistics' Consumer Price Index for All Urban Consumers (CPI-U) for the San Francisco-Oakland-San Jose, CA Metropolitan Area issued in March of each year covered by the term of this Agreement for the preceding annual period.

4.4.2. Notwithstanding any other provision to the contrary, any upward or downward rate adjustment shall not exceed three percent (3%).

**4.5. Liquidated Damages upon Contractor's Refusal or Failure to Perform Required Services.**

4.5.1. Assessment of Liquidated Damages. Except for the first two (2) school days of each academic semester, Contractor's refusal, failure, and/or delay in performing the services as required by the Contract Documents shall subject Contractor to liquidated damages.

4.5.2. Amount of Liquidated Damages. The actual occurrence of damages and the actual amount of damages that District would suffer if the services are not performed in accordance with the Contract Documents are dependent upon many circumstances and conditions that could prevail in various combinations and from the nature of the case, making it impracticable and extremely difficult to fix the actual damages. Damages that District would suffer if Contractor refuses, fails, or delays performance of the required services include, but are not limited to, cost incurred to provide alternative transportation services; disruption of the regular and/or special education programs of District, and participating school districts; costs of administration; and the loss suffered by school districts and students who use the transportation services that Contractor is required to provide under the Contract Documents. Assessment of liquidated damages under this Section shall in no way relieve Contractor of its obligations to provide spare vehicles and drivers sufficient to cover all interruptions in service to District due to failure of equipment or lack of personnel. Accordingly, the Parties agree that the amount stated below shall be the amount of damages that District shall directly incur upon Contractor's refusal, failure, and/or delay in performing the services as required by the Contract Documents:

4.5.2.1. Missed Entire Bus Route. If Contractor fails or refuses to perform services for an entire Bus Route, Contractor shall pay to District, for each day that such services are required, an amount equivalent to the **ONE TIMES (1X) the Daily Bus Route Rate applicable to the Bus Route ("Missed Entire Bus Route Charge")**, in addition to forfeiting any right to collect the **Daily Bus Route Rate applicable to the Bus Route for that particular day**. For purposes of assessing liquidated damages under this Section, when a vehicle is late by 30 minutes or more, Contractor will be considered to have missed the entire Bus Route.

4.5.2.2. Missed Portion of Bus Route. If Contractor fails, refuses, and/or delays to perform services for only a portion of a Bus Route or Contractor is late by more than 15 minutes on the Bus Route due to Contractor's fault, Contractor shall pay District an amount equivalent to the **ONE QUARTER TIMES (0.25X) the Daily Bus Route Rate applicable to the Bus Route ("Missed Portion Bus Route Charge")**, in addition to forfeiting any right to collect the **Daily Bus Route Rate applicable to the Bus Route for that particular day as prorated based on the Daily Bus Route Time that Contractor has not performed in comparison to the Daily Bus Route Time that Contractor performed**. Delayed bus runs that are not Contractor caused (i.e. traffic accident, weather or other

similar predicament) will not be charged. The Contractor will be required to notify District within 24 hours of this type of delay.

4.5.2.3. Missed Entire Special Trip. If Contractor fails or refuses to perform services for an entire or any portion of a Special Trip, Contractor shall pay to District an amount equivalent to the **ONE TIMES (1X) the total costs for the Special Trip ("Missed Special Trip Charge")**, in addition to forfeiting any right to collect the cost of the missed special trip.

4.5.2.4. Missed Portion of Special Trip. If Contractor fails, refuses, and/or delays to perform services for only a portion of a Special Trip or Contractor is late by more than 15 minutes on the Special Trip due to Contractor's fault, Contractor shall pay District an amount equivalent to the **ONE QUARTER TIMES (0.25X) the cost of the Special Trip ("Missed Portion Special Trip Charge")**, in addition to forfeiting any right to collect the cost of the Special Trip for that particular day as prorated based on the Special Trip Time that Contractor has not performed in comparison to the Special Trip Time that Contractor performed. Delayed bus runs that are not Contractor caused (i.e. traffic accident, weather or other similar predicament) will not be charged. The Contractor will be required to notify District within 24 hours of this type of delay.

4.5.2.5. Mitigation Incentive. Notwithstanding the foregoing provisions, in the event that a delay is caused by an inoperable bus, the District will, no more than once a week, waive imposing a Missed Entire Bus Route Charge, Missed Portion Bus Route Charge, or Missed Special Trip Charge if Contractor, within five (5) minutes of the time that the inoperable vehicle is scheduled to arrive for pickup and drop-off, notifies the District of the delay by telephone at (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_, promises to provide an operable equivalent bus within 30 minutes of the time that the inoperable bus was scheduled to arrive for pickup, and actually provides an operable equivalent bus within 30 minutes of the time that the inoperable bus was scheduled to arrive for pickup.

4.5.2.6. Missed Students. If any student is not picked up and/or dropped off for a Bus Route or a Special Trip due to Contractor's fault, Contractor shall, on its own time and at its own expense, pick up or drop off the missed student in a timely manner. If Contractor fails or refuses to do so, this shall be deemed a **Missed Portion Bus Route Charge** and liquidated damages will be assessed accordingly.

4.5.3. Deduction from Payments Due to Contractor. If Contractor becomes liable for liquidated damages as indicated herein, District, in addition to all other rights and remedies under this Contract and applicable laws, shall have the right to deduct and retain from any payment due to Contractor an amount equivalent to the liquidated damages that District assesses pursuant to this Section.

4.5.4. The Contractor shall report every incidence of delay, missed route, or missed students to the District within twenty (20) minutes of occurrence in a manner and format acceptable to the District. This is a zero tolerance standard of performance

## 5. INSURANCE.

**5.1. Required Insurance.** Contractor, at its sole cost and throughout the Contract Term, shall procure and maintain in effect each insurance listed in this Section. All required insurance, and self-insurance if self-insurance will be provided, must contain coverage that complies, at a minimum, with the following requirements:

- 5.1.1. Commercial general liability insurance with limits of not less than \$10,000,000 per occurrence for broad form property damage, and bodily injury, personal injury, and products and completed operations coverage of the same limits as the policy limits, with a general aggregate of not less than \$20,000,000. This insurance shall include blanket contractual liability and shall not exclude coverage for child molestation. This insurance shall be endorsed to include the District and its officers, employees, agents and volunteers as an additional insured.
- 5.1.2. Workers' compensation insurance as statutorily required by the State of California and employer's liability insurance with limits of not less than \$1,000,000.
- 5.1.3. Commercial automobile liability insurance covering all owned, non-owned, and hired vehicles with a limit of no less than \$50,000,000 per accident for bodily injury (\$5,000,000 per person) and \$1,000,000 for property damage. Policy should include an Uninsured/Underinsured Motorist Coverage at \$10,000,000 Million per occurrence (\$1 Million per person) per accident.

**5.2. Conditions Applicable to Required Insurance.**

- 5.2.1. Insurer Rating. The insurance required above, if it is provided through insurer(s), shall be provided by insurer(s) that are admitted by the State of California to transact insurance and have an A.M. Best rating of at least A-VII or higher. District, in its sole discretion, may waive this requirement.
- 5.2.2. Proof of Insurance and Notices. Contractor shall provide proof of the required insurance to District before commencing any services, including copies of all required endorsements required above. If the required insurance is provided through insurer(s), the following shall apply: (1) the insurance shall be endorsed to require that each insurer mail a written notice to District no later than 30 days before the effective date of any cancellation, non-renewal, or reduction of coverage of the insurance; (2) upon District's request, Contractor shall provide District with a certified copy, or other proof satisfactory to District, of any or all of the required insurance; and (3) Contractor shall provide District with proof of renewal of the required insurance, including all required endorsements, at least 15 days before the insurance expires.
- 5.2.3. Contractor's Insurance Primary. Contractor's insurance shall be endorsed to state that District's insurance coverage is in excess of Contractor's insurance coverage and will not contribute with Contractor's insurance with respect to any claims, demands, lawsuits, causes of action, actions, proceedings, damages, liabilities, judgments and expenses, including attorney's fees and costs, arising out of, resulting from, or caused by the act or omission of Contractor and/or Contractor's governing body, officers, employees, or agents.
- 5.2.4. Deductible or Self-Insured Retention. Any deductibles or self-insured retentions applicable to the above-required insurance shall be specifically approved by District before their application. Contractor shall be solely responsible for payment of any deductibles or self-insured retentions for insurance that Contractor is required to procure under this Contract.

- 5.2.5. **Claims-Made Policies.** If any of the above-required insurance is written on a claims-made basis, Contractor shall provide an extended reporting period (i.e., tail coverage) for the coverage and limits specified in this Section available for District commencing on the effective termination date of this Contract and extending for four years from the effective termination date of this Contract.
- 5.2.6. **Procurement by District in Event of Contractor Failure.** If Contractor fails to provide any of the insurance as required above, District may, but is not obligated to, procure and maintain such insurance. If District elects to procure any of the above-required insurance, District shall provide Contractor with written notice of this election at least 10 business days before District procures the insurance. After providing Contractor with the 10-business day notice and if District procures any of the above-required insurance pursuant to this Subsection, Contractor shall be responsible for the full cost of such insurance and shall reimburse such cost to District no later than 10 business days from the date of the invoice from District. If Contractor fails or refuses to do so, District may deduct the amount incurred to procure the insurance from any payment due to Contractor under this Contract.

## **6. INDEMNIFICATION, DEFENSE, AND HOLD HARMLESS.**

- 6.1. **Indemnity Obligations.** Excepting only such claims, demands, lawsuits, causes of action, actions, proceedings, damages, liabilities, judgment and expenses, including attorney's fees and costs (collectively "Loss") that are caused by District's fault or negligence in which case District shall be responsible therefore only to the extent of and in proportion to District's liability, Contractor shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless District and its officers, employees, and agents (collectively "District Personnel") from and against any Loss related to this Contract, including but not limited to, injuries to or death of any person; damage, loss, loss of use, or destruction of property of District or any third party; and compensatory damages, statutory and/or regulatory fines and penalties, and/or extra-contractual liability. While students are under the supervision of Contractor or riding in any vehicle operated by Contractor, the students shall be considered Contractor's agents for the purpose of this Section, and as such, Contractor shall be responsible for and owe a duty to defend, indemnify, and hold harmless the District Personnel and each school district or public agency on or to which site Contractor provides transportation services for any demands, claims, causes of action, actions, lawsuits, or liabilities arising or occurring out of any act or omission of the students or that are made by the students.
- 6.2. **No Limitation by Insurance and Survival.** Contractor's contractual and equitable indemnity obligations and liabilities are not limited to or by any insurance that Contractor maintains but apply to the fullest extent permitted by law without regard to whether Contractor's insurance provides coverage for the obligations and liabilities. Contractor's contractual and equitable indemnity obligations and liabilities shall survive the termination of this Contract.

## **7. DISPUTE RESOLUTION.**

- 7.1. **Meet and Confer.** The Parties shall meet and confer in good faith to resolve any disputes between them regarding or relating to this Contract, including the alleged breach, interpretation, or application of this Contract.
- 7.2. **Mediation.** If the Parties are unable to agree upon a resolution during the meet-and-confer process, the Parties shall submit the dispute to a mediator, with each Party to pay one-half of the mediator's fees and costs. Each Party shall bear its own attorney's fees and costs that it may

incur to participate in the mediation.

- 7.3. Handling of Matters during Dispute.** During any dispute, District's decision, for the time being, shall prevail, and Contractor shall perform this Contract as directed by District without prejudice to a final determination of the dispute. During a dispute regarding payment under this Contract, District shall pay Contractor the amount that is undisputed and due to Contractor; if a disputed amount is finally determined to be due to Contractor, District shall pay such amount to Contractor within 30 days of the final determination. Except for an action to obtain injunctive relieve to preserve the status quo and/or prevent irreparable injury or harm pending the completion of the meet-and-confer required by this Article, a Party may not commence a civil action regarding or relating to this Contract until after compliance with this Article.

## **8. ADDITIONAL PROVISIONS.**

- 8.1. Entire Agreement and Amendment.** This Contract constitutes, and is a complete and exclusive statement of, the Parties' agreement pursuant to Code of Civil Procedure section 1856. Except as specifically provided in this Contract otherwise, this Contract shall be amended or modified only by a writing executed by the Parties.
- 8.2. Applicable Law, Venue, and Interpretation.** This Contract is to be construed according to its fair meaning and not strictly for or against any Party, and in accordance with California laws without giving effect to California's conflict of law provisions. All claims, disputes, and lawsuits arising out of or in connection with this Contract shall be resolved or adjudicated in the appropriate state or federal court for Marin County, California, provided that nothing in this Contract constitutes a waiver of immunity to suit by District.
- 8.3. Execution by Facsimile or in Counterparts.** The Parties may sign this Contract in counterparts such that their signatures may be on separate pages. A copy, facsimile or an original of this Contract, with all signatures appended together, shall be deemed a fully executed agreement. Signatures transmitted by facsimile or other electronic means shall be deemed original signatures.
- 8.4. Independent Contractor.** Contractor is retained as an independent contractor. Contractor and its officers, employees, and agents are not officers, employees, or agents of District. Contractor shall not represent or hold out itself or any of its officers, partners, employees, or agents to be an employee or agent of District. Contractor shall be solely responsible for paying and shall pay all federal, state and local income tax, social security tax, workers' compensation insurance, state disability insurance, and any other taxes or insurance under federal, state, or local law. Contractor and its principals, officers, employees, and agents are not eligible to receive from District workers' compensation, medical, indemnity or retirement benefits. This Contract shall not be construed to create a partnership or joint venture between the Parties.
- 8.5. Non-Discrimination.** Contractor shall not discriminate against any of its prospective or active employees based on race, color, ancestry, national origin, sex, religious creed or any other protected status, and shall comply with applicable federal and California laws, including but not limited to, the California Fair Employment and Housing Act.
- 8.6. Notices.** Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail. Any notice by email shall be effective upon acknowledgment of receipt, if so requested.

- 8.7. Assignment and Transfer.** Contractor shall not assign or transfer any of Contractor's rights or obligations under this Contract, including by operation of law or change of control or merger, without District's prior written consent.
- 8.8. Waiver.** Any failure by a Party to comply with any covenant, term, or condition of this Contract may be waived only in writing by the Party in whose favor a covenant, term, or condition runs. A Party's failure to insist upon strict compliance with or to enforce any covenant, term, or condition of this Contract shall not constitute a waiver of, or estoppel with respect to that covenant, term, or condition. A Party's waiver of any covenant, term, or condition of this Contract shall not be deemed or constitute a waiver by that Party of any other provision of this Contract, and such waiver shall also not constitute a continuing waiver unless the Party making the waiver expressly agrees to a continuing waiver in writing.
- 8.9. Severability.** If a court of competent jurisdiction holds any provision of this Contract void, illegal, or unenforceable, this Contract shall remain in full force and effect and shall be interpreted as though such invalidated provision is not a part of this Contract. The remaining provisions shall be construed to preserve the Parties' intent and purpose in this Contract, and the Parties shall negotiate in good faith to modify any invalidated provisions to preserve each Party's anticipated benefits under this Contract.
- 8.10. Provisions Required by Law Deemed Inserted.** Each provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein, and this Contract shall be read and enforced as though it were included herein.
- 8.11. Advertising.** A Party shall not use the other Party's name or logo in any descriptive or promotional literature or communication of any kind without the other Party's prior written consent.
- 8.12. Binding Effect and Third Party Benefits.** This Contract is for the benefit of and shall be binding on the Parties and their respective predecessors, successors, governing bodies, principals, officers, employees, agents, representative, and assigns (if such assigns are made in accordance with this Contract). Nothing in this Contract creates any contractual relationship between any Party and any third party or gives any third party any claim or right of action against any Party.
- 8.13. Cumulative Rights and Remedies.** Unless specifically provided in this Contract, no right or remedy in this Contract provided to any Party is exclusive of any other remedy or right, and each and every right or remedy shall be cumulative and in addition to any right or remedy provided under this Contract, or now or hereafter existing at law or in equity.
- 8.14. Headings.** The headings in this Contract are provided for the convenience of the Parties and in no way define, limit, extend or describe the scope or intent of this Contract or of any of the provisions of this Contract. If any conflict or inconsistency exists between any heading and any provision, the provision, and not the heading, shall govern and control the construction of this Contract.
- 8.15. Piggyback Clause.** For the term of the Contract, and any mutually agreed extension(s) pursuant to this request forbid and subsequent contract, other school districts, community college districts, public corporations or agencies, including any county, city, town or public corporation or agency within the State of California, may purchase item(s) at the same price and upon the same terms and conditions pursuant to Section 20652 and/or 20118 of the Public Contract Code. The District waives its right to require other districts and agencies to draw their warrants in the favor of the District, as provided in said code sections.

Indicate selection (both parties must initial):

Piggyback Provision is granted:   X   \_\_\_\_\_  
Piggyback Provision is granted for the following areas: \_\_\_\_\_  
Piggyback Provision is not granted: \_\_\_\_\_

Accepted and agreed on the date indicated below:

Dated: \_\_\_\_\_, 2015

\_\_\_\_\_ School District

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

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

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

Dated:   January 20, 2016  , 2015

\_\_\_\_\_ First Student \_\_\_\_\_, Inc.

By: 

Print Name:   Elizabeth Sanchez  

Print Title:   Senior Vice President