

Started Service
in 1982

PHOENIX-TALENT SCHOOL DISTRICT #4
AGREEMENT
PUPIL TRANSPORTATION SERVICE

THIS AGREEMENT, made and entered into this 15 day of May, 2009, by and between the PHOENIX-TALENT SCHOOL DISTRICT #4, Jackson County, Oregon, State of Oregon, hereinafter referred to as "District," and FIRST STUDENT, INC., hereinafter referred to as "Contractor."

AGREEMENT:

In consideration of the mutual terms, covenants and conditions herein contained, it is agreed by and between the parties hereto as follows:

1. Term: The term of this Agreement shall be for a three (3) year period, beginning July 1, 2009 and ending June 30, 2012, with the option to extend by mutual consent for three (3) additional three (3) year periods (or as allowed by Oregon law) subject to all terms, conditions and specifications of this Agreement. In order to extend this Agreement, a request in writing by either party shall be given to the other no later than January 30 in the year of the Agreement's expiration.

2. Scope: Contractor shall, during the period herein set forth, provide, operate and maintain the required number of school buses with drivers to transport conveniently and safely any and all students designated by District to be served under the provisions of this Agreement. Such transportation shall be provided for each and every day that school is convened and in accordance with bus routes and schedules submitted by Contractor to District and approved by District. District reserves the right to revise or change, by providing reasonable notice, any and all routes to best suit its needs at any time before or during the school year. At the option of District, Contractor shall, during the period of this Agreement, provide transportation for students or other authorized personnel as may be required by District on field trips, excursions, athletic activities, or any other purpose designated by District.

In furnishing the Pupil Transportation Service under this Agreement, Contractor agrees to comply with and observe all the provisions of the State of Oregon Motor Vehicle Code and all other applicable laws, rules and regulations prescribed by the State of Oregon, the Oregon Department of Education, and any other state or federal agency, and the Board of Education of the Phoenix-Talent School District #4. District shall provide Contractor with any applicable District policies pertaining to the services provided herein.

3. Faithful Performance Bond: Within ten (10) days of the execution of this

Agreement, Contractor shall furnish to District a faithful performance bond in an amount of 100 percent of the annual value of this Agreement. The cost of said bond shall be born by the Contractor. Said bond shall be secured by a surety company satisfactory to District and licensed in the State of Oregon to engage in the business of acting as surety and shall be maintained in full force and effect during the full term of this Agreement.

4. Equipment: Contractor shall keep all equipment used in the transportation of students in strict accordance with the State Minimum Standards for School Buses, and such equipment shall be maintained in good mechanical order at all times to pass the State School Bus Inspection. Said buses shall also be kept in a clean and sanitary condition and open to inspection, examination and approval by District and the Board of Directors at all times. Any installation or modification of equipment required by a change in law or regulation shall be made by the Contractor at Contractor's expense within such time period as provided by the law or regulation. Any additional installation or modification requested solely by District and not required by law or regulation shall be made as soon as reasonably possible by Contractor, and District shall pay as an additional contract cost Contractor's expenses to make such installation or modification.

During the term of this Agreement, Contractor agrees to replace buses so that no bus older than twelve (12) years is in regular use on a route.

5. Routing and Scheduling: In the designation and selection of routes, District shall be limited to operation of equipment on highways, roads and streets that are owned and maintained by the State or any of the various cities, towns or counties located in the District. However, where the safety of children is involved, District at its option may specify that Contractor shall operate over private roads which are maintained in a condition equal to that of the maintenance provided for public roads.

Contractor will prepare all bus routes and schedules and will submit them to District for approval by August 1 of each year. District at its discretion may revise or change any and all routes and the number of buses required thereunder to best suit its needs at any time before or during the school year. Any such revision shall be deemed an ordinary part of this Agreement. It is the expectation of both the parties that all scheduling shall be made in keeping with the safety of school children so as to deliver students within a reasonable time prior to the opening of the various schools and so as to return them to their respective bus stops within a reasonable time after the close of the school day. Contractor shall cooperate with District and maintain a good public relations program with the community and news media so that any pertinent items affecting the transportation program or the patrons of District can be brought to the attention of the public.

Contractor will provide a computerized routing package to be implemented and functional during this Agreement. District will assure that a District employee is trained and

maintains the District routing data base. Contractor will assure that one or more employees is trained and maintains the routing data base.

Handicapped students shall be routed home direct to school and from school direct to home without changing buses, except upon approval of the District representative.

When appropriate, as directed by the District representative, routes shall be modified so that some handicapped students riding regular routes shall be "last on" in the morning pickup and "first off" in the afternoon return.

District reserves the right to provide alternate transportation service, outside this Agreement, for handicapped children. Each situation and child will be evaluated individually.

District reserves the right to provide alternate transportation service outside this Agreement if said service was never provided by District vehicles.

During inclement weather, District has the right to alter bus routes or cancel bus service for that day.

6. Time Requirements: All students are to be delivered to their respective schools between five (5) and twenty (20) minutes prior to the start of class. No student shall be on a bus, for home-to-school transportation, for more than one (1) hour either going to or coming from their school.

7. Standby Buses: Contractor shall keep enough standby equipment available to assure that it can provide uninterrupted service in the event of mechanical breakdowns. (This shall be a minimum of 15% of the Regular and Special Education fleet).

8. Drivers: Contractor shall permit subject school buses to be operated only by trained and competent drivers who hold valid chauffeur's licenses and school bus drivers licenses issued by the State of Oregon. District policy shall govern and control all student conduct on buses. Said drivers will report matters in strict accordance with District policy. In no case will a driver eject a student from a bus for misbehavior, unless there is an extreme emergency endangering the safety of other students. Contractor shall report any vehicle accidents or injuries which may occur during its performance under this Agreement.

If federal, state or local authority shall henceforth change the qualifications, training or examinations required for school bus drivers from those presently required for school bus drivers, then Contractor shall provide such additional qualifications, training or examinations for the school bus drivers servicing District at Contractor's expense.

9. Laws and Regulations: During the entire term of this Agreement, Contractor

shall comply in every respect with District policy, all laws, rules and regulations of federal, state and local governing bodies affecting or regulating the transportation of school children, including but not limited to the State of Oregon Motor Vehicle Code and the rules promulgated by the State Department of Education.

10. Safety Program: Contractor is responsible for the safety of its bus passengers and shall administer a satisfactory safety program. Said program shall include, but not be limited to, regularly scheduled safety meetings for Contractor's personnel. A driver supervisor shall ride with every driver at least once each semester for the purpose of observing their driving practices with respect to safety, mechanical operation, and conformance with applicable laws, rules and regulations, including adherence to published time schedules.

11. Hold Harmless Clauses: Contractor, while performing the requirements for transportation herein, shall hold harmless, indemnify and/or defend District, its Board of Education, its officers and employees from every claim or demand which may be made by reason of:

- A. Any injury to person or damage to property sustained by Contractor or by any person, firm, or corporation employed directly or indirectly by it upon or in connection with its performance under this Agreement, however caused.
- B. Any injury to person or damage to property sustained by any person, firm or corporation caused by any act, neglect, default or omission of Contractor or any person, firm or corporation directly employed by it or in connection with its performance.
- C. Contractor's hold harmless and indemnification agreement herein set forth shall extend to and include all activities occurring while equipment is being operated by Contractor.

Contractor, at its own expense and risk, shall defend any legal proceeding that may be brought against District, its officers, employees or its Board on any such claim or demand and satisfy any judgment that may be rendered against District, its officers, employees or its Board except to the extent such claim is solely caused by the negligent acts or omissions of District, its officers, employees or its Board.

12. Insurance: Contractor shall furnish within ten (10) calendar days after the execution of this Agreement and maintain on file continuously at the District office, insurance satisfactory to District and as set forth below during the contract period. Not less than thirty (30) days before new or renewed coverage is required it shall furnish Certificates

of Insurance for each policy of liability coverage and for Workers' Compensation coverage. Certificates shall provide that a thirty (30) day prior notice of cancellation will be given to District.

- A. Public Liability and Property Damage Insurance shall be maintained to protect Contractor and, as an additional insured, District, its governing Board, its officers, its agents and its employees from any claim for damages for personal injury or death, and from damage to property, which may arise from operations of Contractor under this Agreement or any amendment or extension thereof. Such insurance shall have a combined single limit (CSL) of Five Hundred Thousand Dollars (\$500,000) with excess coverage of at least Ten Million Dollars (\$10,000,000).
- B. Workers' compensation insurance shall be maintained as required by law and as will protect Contractor from claims which may arise from its operations under this Agreement or any amendment or extension thereof.

13. Compensation: Prior to the tenth of each month in which services are rendered, Contractor shall submit an itemized statement showing all of the buses in home-to-school operation, the total daily hours and mileage of each route and the total days each bus is used. For purposes of verification, District shall have access to all of Contractor's trip and mileage records used in determination of the above charges. In consideration for service received, District agrees to pay Contractor on or before the first day of the month following receipt of the above billing. All billings shall be submitted on a monthly basis.

In the event of a school closure which would result in the operation of school for less than 167 days in any one fiscal year, District shall pay Contractor an overhead and fixed cost charge in lieu of the regular home-to-school rate for all days that school is closed for less than 167 days, as shown in Exhibit "A."

14. Purchase of Fuel: Contractor agrees to pay for all fuel with the exception that a diesel fuel price cap is set at \$2.00 per gallon. The cost of diesel fuel in excess of \$2.00 per gallon will be borne by both Contractor and District on a 50/50 basis whereby District will pay 50% of the cost of diesel fuel above the \$2.00 base price and Contractor will pay 50% of the cost of diesel fuel above the \$2.00 base price. The excess fuel costs shall be charged to District on a monthly basis in the normal billing practices.

15. Rates: Costs for school years 2009-2010 are set forth in Exhibit A, attached hereto, which rates shall be subject to adjustment as provided in Section 16 below. District and Contractor agree that the prices contained in Exhibit A do not reflect equipment requirements which may be imposed at some future date under state law, such as seat belts or three point lap belts for all students being transported on a vehicle. District has been advised

by Contractor that as of the effective date of this Agreement, retrofitting of a school bus fleet to accommodate seat belts has not been approved by the school bus manufacturers, so that any seat belt requirements would impose additional financial requirements on Contractor to meet any enacted state law requirement. In the event the state imposes a seat belt or three point lap belt requirement on school bus transportation, the parties will negotiate in good faith to determine the most effective way to meet the state requirements, which may include compensation to Contractor related to retrofitting or replacement of deployed fleet under this Agreement.

16. Adjustment of Rates: Compensation for all services provided under the terms of this Agreement may be adjusted annually, effective July 1. Any request for adjustment of rates must be supported by detailed proof of cost increase in serving this Agreement and limited to the proven change, but in no case may any adjustment exceed the annual change in the Consumer Price Index, U.S. City Average, All Urban Consumers as published by the U.S. Department of Labor, Bureau of Labor Statistics (Base Period 1982-84 = 100%). However, for the 2009-2010 school year, Contractor agrees that in no event can this adjustment exceed 2.5%. Adjustments to be computed for the twelve (12) month period of January 1 through December 31 on a percentage basis to apply to the Agreement rates effective the following July 1.

Verbal rate adjustment request information shall be communicated by Contractor to District by February 15. Written rate adjustment request information, including a copy of the CPI covering the above period, shall be delivered by Contractor to District by March 15.

17. Unscheduled Closing of Schools and Cancellation of Special Trips: District shall not be obligated to accept or pay for service herein agreed to be furnished by Contractor on those days when, by direction of the Superintendent or his designated representative, any District school or schools are closed to insure the health or safety of the pupils or for any other lawful reason, and such closure reduces in part or whole the normal transportation service. District agrees to notify Contractor no later than 6:00 a.m. on such days of school closures.

District further agrees to notify Contractor of canceled special bus trips not less than two (2) hours prior to the first scheduled pickup per trip.

If District fails to give Contractor two (2) hours notice prior to the first scheduled pick up, District shall pay Contractor the driver's actual time or minimum call-out time of one (1) hour whichever is less.

18. Termination:

A. Emergency: District may terminate this Agreement immediately upon delivery of written notice to Contractor in the event District, School

Board or Superintendent reasonably believes that the health, safety or welfare of its pupils is so endangered as to necessitate immediate termination.

- B. For Cause: District may terminate this Agreement thirty (30) days after written notice is given to Contractor that Contractor is failing to comply with any specific terms or conditions set forth in this Agreement, or should District reasonably determine that Contractor is in any other way unfit, unqualified or unable to perform all of the transportation needs of District under this Agreement. Contractor shall have the thirty (30) day period to cure such defect or defects, and if unable to cure them then District shall have the right to terminate immediately upon written notice.
- C. Nonappropriation: District shall not in any way be held responsible for its inability to continue this Agreement due to nonappropriation of funds for the service. District may terminate this Agreement in the event funds are not available as determined by the District Board.

In the event of termination for cause or emergency, District shall provide a hearing if Contractor so requests before District's School Board. Such hearing shall take place within thirty (30) days after District gives notice of termination and the decision of the School Board shall be final and binding on the parties. Upon any termination for cause or emergency, District will have the right to contract for school transportation services upon and after the effective date of the termination.

19. Acquisition of Buses:

- A. Upon cancellation or normal expiration of this Agreement, District may buy or lease from Contractor any or all regular service and standby buses which are then being used by Contractor. The price for sale and/or lease of any said buses shall be determined by District and Contractor by appraisal as set forth herein below, and the various methods by which District may acquire or use said buses shall be any or all of the following as determined at the sole discretion of District:
 - (1) Outright purchase of any or all of the buses; and/or
 - (2) Purchase of any or all of the buses on a conditional sales contract over a period or periods of up to five (5) years, and said periods to be in the sole discretion of District; and/or
 - (3) Lease or lease-purchase, at District's sole discretion, of any or

all the buses over a period or periods of up to five (5) years, any said periods to be in the sole discretion of District.

- B. In the event District exercises the said option to so purchase, lease or lease-purchase any or all of Contractor's buses, the value of said buses shall be determined by appraisal by three appraisers, one to be selected and paid by District, one to be selected and paid by Contractor, and the third by the two said appraisers with payment for the third appraiser to be mutually shared by the parties hereto. The value of each vehicle shall be established by majority vote of the three appraisers.
- C. During the term of this Agreement, Contractor shall supply a white transit style bus with coach style seating, or a suitable replacement for that vehicle, which shall be decaled with District's chosen logo.

20. Force Majeure: It is agreed by the parties that in the event Contractor is unable to provide transportation services herein specified because of acts of God, fire, riot, war, picketing of Contractor, strikes against Contractor, labor disputes with Contractor, or any other similar conditions, District shall excuse Contractor from performance hereunder, and shall have the right, but not be required, to take over the operation of such buses that Contractor is prevented from running with such school employees or other persons as District may deem appropriate until Contractor is able to resume operation.

If neither District or Contractor operates the buses, District is not obligated to any payments. District shall pay to Contractor for such buses used, the same amount indicated in this Agreement less all expenses and costs incurred by District. Contractor shall not be released from contractual obligation because of the above mentioned conditions until satisfactorily established that the nonperformance is not due to the fault or neglect of Contractor.

21. Personnel: For the purposes of this Agreement and the interpretation thereof, it is agreed that the transportation of school children is an unusual and specialized function. It is the essence of this Agreement that the students be transported to and from school regularly, promptly, safely and without interruption or incident, and that the interests of the children in such transportation shall take precedence over the interests of either Contractor or its drivers. It is the primary intention of Contractor to operate its affairs so that District will be assured of this continuous and reliable service. It is recognized that for the protection of the children, drivers and all other persons coming in contact with the children must be of stable personality and of highest moral character. District places upon Contractor and Contractor agrees to accept the full responsibility of assuring such qualities in personnel. Contractor shall be responsible for personnel checks of all drivers through the State of Oregon procedures.

The responsibility for hiring and discharging personnel in respect to all of the

foregoing shall rest entirely upon Contractor, and Contractor agrees that it shall enter into no agreement or arrangement with any employee, person, group or organization which will intentionally interfere with Contractor's ability to comply with this requirement. Contractor further agrees that District or its Superintendent shall have the right to require that any specific employee of Contractor not furnish service to District under this Agreement.

Contractor's full-time personnel shall include a Contract Manager, Dispatcher and Tech in Charge. The District shall have the right to approve the Contract Manager at all times.

22. Arbitration: The parties hereto mutually agree that any disagreements regarding stated provisions or required negotiations, or other provisions not specifically covered, and for which no mutual agreement can be reached, shall be settled by arbitration. Within thirty (30) days after written notice of disagreement is served by one party on the other, each shall select one arbitrator, and these two shall select a third within fifteen (15) days. If three arbitrators are not appointed within this 45 day period, then either party shall have the right to apply to the Jackson County Oregon Circuit Court for resolution of the disagreement.

Both parties shall agree to the settlement of differences as reached by a majority of the appointed arbitrators which shall be binding. The cost of arbitration shall be equally shared by the parties.

23. Independent Contractor Status: The parties to this Agreement intend that the relationship between them created by this Agreement is that of employer/independent contractor. No agent, employee or servant of Contractor shall be or shall be deemed to be the employee, agent or servant of District. None of the benefits provided by District to its employees are available from District to the employees, agents or servants of Contractor via this Agreement. Contractor will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants and subcontractors during the performance of this Agreement. Should District be required by reason of this Agreement to make any payments or benefits referred to herein. Contractor shall reimburse District for such payments or benefits.

24. Signs and Advertising: Contractor shall not place or post any signs, insignia or other like material on any of the buses, the leased premises or on service personnel without the prior written approval of District.

25. Assignments or Subcontracting: Contractor shall not assign, transfer or subcontract any of its rights, burdens, duties or obligations set forth herein without the prior written consent of District.

26. Inspections: District retains the unrestricted right to inspect Contractor's buses, records, maintenance and operational procedures and driver training, as well as other areas

pertaining to compliance with contractual terms and/or required methods of transporting pupils.

27. Performance: Failure by District at any time to require performance by Contractor of any provision herein will in no way affect District's rights hereunder to enforce the same, nor shall any waiver by District of any breach be held to be a waiver of any succeeding breach, or a waiver of this non-waiver clause.

28. Savings Clause: Contractor and District agree that, in the event any provisions specified herein are finally held or determined to be illegal or void as being in contravention of any applicable law, the remainder of this Agreement shall remain in full force and effect.

29. Modification: This Agreement may be varied, modified or altered by the mutual consent of the parties hereto. No alteration, modification or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

30. Notice: Any notice which may be required under this Agreement shall be mailed to the District at P.O. Box 698, Phoenix, Oregon 97535, and to Contractor to the attention of Region Vice President at 201 NE Park Plaza Dr #240, Vancouver, WA 98684 with a copy to First Student, Inc., 600 Vine Street Suite 1400, Cincinnati, OH 45202 attention General Counsel. Notice shall be deemed given when deposited in the United States mail, certified or registered, addressed as provided in this paragraph with postage fully paid. Provided further, that in the event of an emergency termination under paragraph 18A of this Agreement, District shall also hand deliver notice of such termination to a representative of Contractor.

31. Costs and Attorney's Fees: If, by reason of any default or breach on the part of either party in the performance of any of the provisions of this Agreement, a legal action is instituted, the losing party agrees to pay all reasonable costs and attorney's fees at trial and upon appeal as may be determined by the Court.

IN WITNESS WHEREOF, said Contractor has executed this Agreement by its authorized representative and District has executed this Agreement by its Superintendent, on the day and year first above written.

CONTRACTOR

PHOENIX-TALENT SCHOOL DISTRICT #4

By: Mark Elmer

By: B. By

Its: Region vice president
FIRST STUDENT, INC.

Its: Superintendent

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**AMENDMENT AND EXTENSION TO THE PHOENIX-TALENT SCHOOL DISTRICT
No. 4 PUPIL TRANSPORTATION SERVICE AGREEMENT**

This Second Amendment and Extension Agreement hereinafter ("Agreement") is made effective as of the 1st day of July, 2018 by and between First Student, Inc. ("Contractor") and the Phoenix-Talent School District No. 4 ("District").

WHEREAS, District and Contractor (the "Parties") entered into a Pupil Transportation Service Agreement in May of 2009 and the parties have fulfilled their obligations to each other;

WHEREAS, the above referenced Pupil Transportation Service Agreement was amended and extended in 2015 and said term of the Amendment and Extension to the Phoenix Transportation Service Agreement has ended;

WHEREAS, the Parties wish to continue the terms, conditions and obligations found in the Amendment and Extension to the Phoenix-Talent Transportation Service Agreement;

NOW THEREFORE, the Parties now agree to amend the Amendment and Extension to the Phoenix-Talent Transportation Service Agreement as follows:

1. **Extended Term:** The Term of this Agreement shall be for a three (3) year period extending to and ending on June 30, 2021.
2. **Adjustment of Rates:** Year one (1) transportation rates are outlined in Exhibit A. Years two (2) and three (3) shall be in accordance with the original agreement.


This Amendment supersedes all oral negotiations and prior and contemporaneous writings with respect to the subject matter hereof and is intended by the parties as the final expression of the Agreement with respect to the terms and conditions set forth herein and as the complete and exclusive statement of the terms agreed to by the parties. If there is any conflict between the terms, conditions, and provisions of this Amendment and those of any other agreement or instrument, the terms, conditions and provisions of this Amendment shall prevail. Except as expressly modified, amended or supplemented herein, the Agreement is hereby reaffirmed and ratified by the Parties in its entirety.

IN WITNESS WHEREOF, the parties hereto have affixed their respective signatures as of the date first indicated above.

PHOENIX-TALENT SCHOOL DISTRICT No. 4

FIRST STUDENT, INC.

Sign Name: 

Sign Name: 

Print Name: BRENT BARRY

Print Name: Kim Worster

Title: Superintendent

Title: Sr. Vice President

Exhibit A

Phoenix-Talent School District #4		
Transportation Rates		
July 1, 2018 - June 30, 2019	Increase =	2.0%
	17/18	18/19
Regular Home-To-School Rates per Day		
3 Hour Base Rate (per route, per day)		
67-84 Passenger	302.49	308.54
42-66 Passenger	299.76	305.76
Excess Rate (per hour)	27.42	27.97
Special Education (Home-To-School)		
3 Hour Base Rate (per route, per day)		
14-23 Passenger	280.93	286.55
14-23 Passenger w/lift	280.93	286.55
Excess Rate (per hour)	27.42	27.97
Bus Aide (per hour)	19.08	19.46
Non-Home-To-School Trips		
Hourly Rate	34.24	34.92
Activity & Field Trips		
Hourly Rate	34.24	34.92
Optional Equipment		
Stop Arm Cameras, Per month (10 months/year)		598.61
Minimum Operating Days Requirement		
For Days operated under 167 days (per bus per day)	194.08	197.96

Facility Lease

2018 -2019 School Year, per month 12 months	3,500.00
2019 -2020 School Year, per month 12 months	3,750.00
2020 -2021 School Year, per month 12 months	4,000.00