



NEW HAVEN PUBLIC SCHOOLS

Operations Memorandum

To: New Haven Board of Education Finance and Operations Committee
From: Michael J. Pinto, COO & Philip Penn, CFO
Date: June 29, 2020
Re: **First Student Amendment (Covid-19)**

Contractor Name: First Student

Contractor Address: 140 Middletown Ave., New Haven, CT 06513

Is the contractor a Minority or Women Owned Small Business? N/A

Renewal or Award of Contract/Agreement? Amendment

Total Amount of Contract/Agreement and the Hourly or Service Rate:

The invoices for the remainder of the 2020 fiscal year, shall be reduced by an aggregate amount of \$1,507,967.99

Contract or Agreement #:

21547 – Regular & Special Education Bus Transportation

21548 – Out of Town & Special Education Bus Transportation

Funding Source & Account #:

Regular & Special Education Bus Transportation

Acct # 190-47100-56601

Out of Town & Special Education Bus Transportation

Acct # 190-49400-56602

Acct # 190-49400-56607

Key Questions: (Please have someone ready to discuss the details of each question during the Finance & Operations meeting or this proposal might not be advanced for consideration by the full Board of Education):

1. **What specific service will the contractor provide:**

The contractor provides transportation for students in and outside the district, to and from school.

2. **How was the contractor selected? Quotes? RFP? Sealed Bid or Sole Source? Please describe the selection process including other sources considered and the rationale for selecting this method of selection:**

N/A

- 3. If this is a renewal with a current vendor, has the vendor's performance been satisfactory under the existing contract or agreement?**

First Student is the contract provider for student transportation. This amendment is made pursuant to the Governor's Executive Order 7R. The order requires the district to evaluate contracts to determine whether amendment is necessary to more accurately reflect the actual costs incurred by the contractor incurred during Covid-19 shutdown.

- 4. If this Contract/Agreement is a Renewal has cost increased? If yes, by how much?**

The contractor and the City entered into good faith negotiations regarding amendment to the contract due to the Executive Order 7R. This amendment, pursuant to Executive Order 7R, reduces the overall contract price by \$1,507,967.99. First Student has signed the attached amendment attesting that the costs reasonably reflect actual costs incurred.

- 5. If this Contractor is New has cost for service increased from previous years? If yes, by how much?**

N/A

- 6. Is this a service existing staff could provide? Why or why not?**

N/A

AMENDMENT NO.1 TO NHPS REGULAR AND SPECIAL ED BUSING AND NHPS
SPECIAL ED AND OUT OF TOWN BUSING AGREEMENTS BY AND BETWEEN THE
CITY OF NEW HAVEN AND FIRST STUDENT INC.

This agreement made this _____ day of June, 2020, is by and between First Student, Inc. (hereinafter referred to as the “Contractor”), and the City of New Haven (hereinafter referred to as the “City”).

WHEREAS, the City and the Contractor entered in to two agreements for the provision of bus transportation services to the Department of Education of the City of New Haven (hereinafter referred to as “NHPS”), dated as of June 21, 2019: one contract name NHPS Regular and Special Ed Busing and one contract name NHPS Special Ed and Out of Town Busing (hereinafter referred to collectively as “Contract”); and

WHEREAS, the contract term for each agreement is from July 1, 2019 to June 30, 2023; and

WHEREAS, on March 10, 2020, Governor Ned Lamont issued a declaration of public health and civil preparedness emergencies, proclaiming a state of emergency throughout the State of Connecticut as a result of the coronavirus disease 2019 (COVID-19) outbreak; and

WHEREAS, as a result of the state of emergency, NHPS cancelled all classes and school related activities effective March 13, 2020; and WHEREAS, on March 31, 2020 the Governor issued Executive Order 7R regarding, in part, the preservation of student transportation services and special education providers; and

WHEREAS, on April 14, 2020 the State of Connecticut Department of Education, issued Frequently Asked Questions Regarding Executive Order 7R, providing additional guidance regarding the application of Executive Order 7R to existing agreements for the provision of student transportation services; and

WHEREAS, in accordance with Executive Order 7R, the City with agreement of NHPS determined that the Contracts require amendment to more accurately reflect the actual costs incurred during the duration of the public health and civil preparedness emergencies; and

WHEREAS, the Contractor and the City entered into good faith negotiations regarding amendment to the Contract; and

WHEREAS, Contractor provided reasonable documentation of the fact that it is charging only the actual and reasonable cost of sustaining wage and health insurance payments for active employees and/or fleet while also engaging best efforts to avoid unnecessary costs, and such documentation is made exhibit A hereto and attested to herewith; and

WHEREAS, Contractor has represented, affirmed, and attested that (a) it has sustained wage and health insurance payments for all active employees, and (b) any employees furloughed, laid off, or otherwise separated from employment have been rehired or otherwise restored to active employment; and

WHEREAS, Contractor billing practice includes the issuance of multiple invoices each month for services rendered under the contracts;

NOW THEREFORE, It is hereby agreed:

1. Contractor's March invoices will be reduced by the agreed amount of \$178,688.56;
2. Contractor's invoices for the remainder of the 2020 fiscal year, ending June 30, 2020, shall be reduced by an aggregate amount of \$1,329,279.43; with said reductions applied pro rata to each of the invoices issued or to be issued for the months of April, May, and June 2020;
3. In the event Contractor receives any government payment or compensation, other than invoiced amounts under the Contract, whether under the CARES Act or any other existing or future government economic stimulus plan, such payment shall be applied to further reduce Contract billings in an amount to be separately negotiated and agreed, with the terms "government payment or compensation" and "government economic stimulus plan" used by way of example and description and not limitation;
4. In the event the Contractor receives any reduction in its premiums for liability insurance of any type, in place to cover liabilities relating to its operations for the New Haven Public Schools, the Contractor shall provide a credit to the New Haven Public Schools representing a pro rata share of the savings for its New Haven operations;
5. This amendment is limited to amounts contracted and billed for fiscal year 2020 and, in the event the public health and civil preparedness emergencies continue thereafter, into fiscal year 2021, into the 2020-2021 NHPS school year, and potentially longer, City and Contractor understand and agree that the Contract is subject to further amendment in accordance with Executive Order 7R;
6. All terms of the Contract remain in full force and effect, except for the express terms stated herein.

This Amendment, together with the Contract and all Contract Documents specified therein, constitute the entire agreement between the parties.

In witness whereof, the parties have executed two (2) counterparts of this Amendment as of the day and year first written above.

FIRST STUDENT, INC.
By MICHAEL TAVIUS
Its AREA GENERAL MANAGER
Duly Authorized

CITY OF NEW HAVEN
By Yesenia Rivera
President, New Haven Board of Education
Duly Authorized



WITNESS:



Attestation:

I, MICHAEL, Trujillo, having been duly sworn, hereby attest, affirm, and swear to the accuracy of the representations herein and in the documentation provided and attached hereto as Exhibit A.

[Signature]

First Student,

By MICHAEL Trujillo

Its ACM

Duly Authorized

State of Connecticut:

County of New Haven:

On this the ____ day of June, 2020, before me, _____, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand. _____

- Notary Public Date _____ My Commission Expires: _____
- Commissioner of the Superior Court

Paul DeMaio
Senior Location Manager
First Student
140 Middletown Avenue
New Haven, CT 06513

Dear Mr. DeMaio:

As we discussed in our call yesterday, Governor Lamont's Executive Order 7R directs us to negotiate amendments to our agreements "to more accurately reflect the actual costs incurred during the duration of the public health and civil preparedness emergencies." We are required to negotiate amendments promptly, and "with terms that are consistent with the goals of:

- (a) sustaining continuity of service when school resumes;
- (b) making payments to transportation providers so that they may compensate their active employees and provide them health insurance; and
- (c) requiring the contracted company to attest and provide reasonable documentation of the fact that it is charging only the actual and reasonable cost of sustaining wage and health insurance payments for active employees and/or fleet while also engaging best efforts to avoid unnecessary costs.

We understand that you have committed to providing us with information and documentation of your "actual and reasonable cost of sustaining wage and health insurance payments for active employees and/or fleet" as well as your "best efforts to avoid unnecessary costs."

We look forward to receiving your financial information, continuing to work with you during this unprecedented public health emergency, and to comply with Governor Lamont's order to promptly negotiate amendments.

Very truly yours,

Michael J. Pinto

Atty. Michael J. Pinto
Chief Operating Officer
New Haven Public School

Relevant Text of Executive order 7R:

“...the municipality with agreement from the board of education, **determines** that a contract related to student transportation... requires amendment to more accurately reflect the actual costs incurred during the duration of the public health and civil preparedness emergencies, **all parties shall promptly negotiate amendments to such contracts with student transportation providers... with terms that are consistent with the goals** of:

(1) **sustaining continuity of service** when school resumes;

(2)(b) to make **payments** to transportation providers so that they may **compensate their active employees and provide them health insurance**; and

(3) requiring the contracted company to **attest and provide reasonable documentation** of the fact that it is **charging only the actual and reasonable cost of sustaining wage and health insurance payments for active employees and/or fleet while also engaging best efforts to avoid unnecessary costs**. Such continued compensation and health insurance for staff or others providing special education and transportation services and employees shall be continued to the greatest extent practicable - whether full-time or part-time - at rates commensurate to those paid and provided immediately prior to the declaration of these public health and civil preparedness emergencies, whether or not services are actually or immediately rendered. Nothing in this provision shall allow for contracted companies to be enriched beyond the actual and reasonable costs incurred for the purposes set forth above.