

# PROFESSIONAL SERVICES AGREEMENT

City Manager's Office  
701 Laurel St., Menlo Park, CA 94025  
tel 650-330-6620



Agreement #: 002653

## AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND FIRST STUDENT (in the amount \$5,000 or less)

THIS AGREEMENT made and entered into at Menlo Park, California, this 28 day of March, 2019, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY," and FIRST STUDENT, hereinafter referred to as "FIRST PARTY."

It is agreed between the CITY and FIRST PARTY as follows:

### 1. SERVICES TO BE PERFORMED BY FIRST PARTY

In consideration of the payment by CITY to FIRST PARTY, as hereinafter provided, FIRST PARTY agrees to perform all the services for the City of Menlo Park as set forth in Exhibit "A," Scope of Services, attached hereto.

### 2. AGREEMENT TERM

The term of this agreement shall be from May 24, 2019 to May 24, 2019 unless mutually agreed upon by CITY and FIRST PARTY in writing.

### 3. COMPENSATION AND PAYMENT

In consideration of the services rendered in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A," CITY shall make payment to FIRST PARTY in the manner specified herein and in Exhibit "A." This compensation shall be based on the rates described in Exhibit "A." Payments shall be monthly for the invoice amount or such other amount as approved by CITY. City shall have the discretion to approve the invoice and the work completed statement. CITY shall have the right to receive, upon request, documentation substantiating charges billed to CITY. CITY shall have the right to perform an audit of the FIRST PARTY's relevant records pertaining to the charges. In the event that the CITY makes any advance payments, FIRST PARTY agrees to refund any amounts in excess of the amount owed by the CITY at the time of agreement termination. CITY reserves the right to withhold payment if the CITY determines that the quantity or quality of the work performed is unacceptable. In no event shall total payment for all services under this agreement exceed \$1,600 unless mutually agreed upon in writing by the CITY and FIRST PARTY.

### 4. RELATIONSHIP OF THE PARTIES

FIRST PARTY agrees and understands that the work/services performed under this agreement are performed as an Independent Contractor and not as an employee of the City of Menlo Park and that FIRST PARTY acquires none of the rights, privileges, powers or advantages of City employees.

## 5. INSURANCE AND INDEMNITY

### 1. General liability insurance:

FIRST PARTY, at its own expense, shall provide and keep in force, commercial general liability insurance insuring against liability for bodily injury and property damage arising out of its work in an amount of not less than one million dollars (\$1,000,000) for injury to, or death of one person in any one accident or occurrence, and in an amount of not less than one million dollars (\$1,000,000) for injury to, or death of more than one person in any one accident or occurrence, and in the amount of not less than one million dollars (\$1,000,000) per occurrence in respect to damage to property. CITY shall be named as an additional insured on Contractor's commercial general liability insurance policy FIRST PARTY shall provide CITY with a certificate of insurance coverage evidencing said coverage, including a copy of all declarations of exclusions, before commencing work.

### 2. Automobile liability insurance:

The FIRST PARTY shall maintain automobile liability Insurance pursuant to this agreement in an amount of not less than one million dollars (\$1,000,000) for each occurrence combined single limit or not less than one million dollars (\$1,000,000) for any one (1) person, and one million dollars (\$1,000,000) for any one (1) accident, and three hundred thousand dollars, (\$300,000) property damage. To the full extent permitted by law FIRST PARTY agrees to defend, indemnify and hold CITY, its employees, agents, officials, and officers, harmless from any and all claims, liability for damages caused by contractor's negligent performance of services under this agreement.

### 3. Professional liability insurance:

FIRST PARTY shall maintain a policy of professional liability insurance, protecting it against claims arising out of the negligent acts, errors, or omissions of FIRST PARTY pursuant to this agreement, in the amount of not less than one million dollars (\$1,000,000) per claim and in the aggregate. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.

### 4. Indemnity:

The FIRST PARTY shall defend, indemnify and hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants from all claims, suits or actions that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the FIRST PARTY brought for, or on account of, injuries to or death of any person or damage to property resulting from the performance of any work required by this agreement by FIRST PARTY, its officers, agents, employees and servants. Nothing herein shall be construed to require the FIRST PARTY to defend, indemnify or hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants against any responsibility to liability in contravention of Section 2782.8 of the California Civil Code.

## 6. NON-ASSIGNABILITY

FIRST PARTY shall not assign this agreement or any portion thereof to a third party without the prior written consent of CITY, and any attempted assignment without such prior written consent in violation of this Section shall automatically terminate this agreement.

## 7. TERMINATION OF AGREEMENT

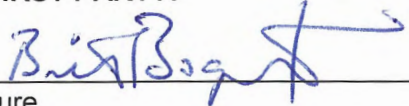
The CITY may, at any time, terminate this agreement, in whole or in part, for the convenience of CITY, by giving written notice specifying the effective date and scope of such termination. In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereinafter referred to as materials) prepared by FIRST PARTY under this agreement shall become the property of the CITY upon FIRST PARTY'S receipt of final payment and shall be promptly delivered to the CITY. Upon termination, the FIRST PARTY may make and retain a copy of such materials. FIRST PARTY shall be entitled to receive payment for work/services provided before termination of the agreement. Such payment shall be that portion of the full payment, which is determined by comparing the work/services completed to the work/services required by the agreement.

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| <p><b>8. WORKERS' COMPENSATION INSURANCE</b></p>   |
| <p>FIRST PARTY agrees and understands that the CITY does not provide workers' compensation Insurance to, or on behalf of, the FIRST PARTY for the work/services performed, but that said insurance is the sole responsibility of the undersigned.</p>  |
| <p><b>9. PAYMENT OF PERMITS/LICENSES</b></p>   |
| <p>FIRST PARTY shall obtain any license, permit, or approval if necessary from any agency whatsoever for the work/services to be performed, at his/her own expense, before commencement of said work/services or forfeit any right to compensation under this agreement.</p>   |
| <p><b>10. NON-DISCRIMINATION</b></p>   |
| <p>No person shall illegally be excluded from participation in, denied the benefits of, or be subjected to discrimination under this agreement on account of their race, sex, color, national origin, religion, age, or disability. FIRST PARTY shall ensure full equal employment opportunity for all employees under this agreement.</p>   |
| <p><b>11. RETENTION OF RECORDS</b></p>   |
| <p>FIRST PARTY shall maintain all required records for three years after the CITY makes final payment and all other pending matters are closed, and shall be subject to the examination and /or audit of the CITY, a federal agency, and the State of California.</p>  |
| <p><b>12. MERGER CLAUSE</b></p>  |
| <p>This agreement, including Exhibit "A" attached hereto and incorporated herein by reference, constitutes the sole agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the CITY. In the event of a conflict between the terms, conditions, or specifications set forth herein and those in Exhibit "A" attached hereto, the terms, conditions, or specifications set forth herein shall prevail.</p> |

SIGNATURE PAGE TO FOLLOW

This agreement is not valid until signed by both parties.

**FOR FIRST PARTY:**

  
Signature


Britt Bogust  
Printed name

59-2364035  
Tax ID#

2/18/2019  
Date

Charter Center Manager  
Title

**APPROVED AS TO FORM:**

  
William L. McClure, City Attorney

4/30/19  
Date

**FOR CITY OF MENLO PARK:**

  
Carmen Lo, Recreation Coordinator

3/28/19  
Date

**ATTEST:**

  
Judi A. Herren, City Clerk

5/1/19  
Date

# Thank you for Choosing First!

**First Student**  
Charter Bus Rental

First Student Charter Center

Normal Business Hours  
Phone Number 855-870-8747

Printed on FEB 04, 2019 at 16:33:58 CST

## Notice of Trip Confirmation

|   |                     |                                |   |   |                         |
|---|---------------------|--------------------------------|---|---|-------------------------|
| Belle Haven CDC<br>410 Ivy Dr<br>Menlo Park , CA 94025<br>US<br><br>ATTN: Kira Storms |                     | <b>Customer #</b>              | <b>Order Date</b>   | <b>Trip Date</b>  | <b>Trip Number</b>      |
|   |                     | 368229                         | 01/29/2019  | 05/24/2019  | 80357469                |
|   |                     | <b>Event</b>                   |   |   |                         |
|   |                     | SP400280 T052419 TR SLSMAT ZOO |   |   |                         |
|   |                     | <b>Comments</b>                |   |   |                         |
|   |                     |                                |   |   |                         |
| <b>Phone Number</b>   | <b>Fax Number</b>   | <b>PO/Contract</b>             | <b>Amount Paid</b>  | <b>Payment Method</b>   | <b>Payment Due Date</b> |
| 650-330-2272  | (650) 327-2323      |                                | \$0.00  | Check   | 05/19/2019              |
| <b>Bus#</b>   | <b>Charter Date</b> | <b>Vehicle Type</b>            | <b>Pick-up</b>  | <b>Destination</b>  |                         |
| 1   | 05/24/2019          | Large Conventional             | Belle Haven Child Development – 410 Ivy Dr, Menlo Park, CA, 94025, US<br>Service Start Time:<br>05/24/2019 09:00 AM | Oakland Zoo -- 9777 Golf Links Rd, Oakland, CA, 94605, US<br>Service End Time:<br>05/24/2019 2 :30 PM |                         |

Thank you for booking with First Student. Please review your confirmation for accuracy.

This notice of Trip Confirmation in conjunction with the attached Terms and Conditions govern your trip.

.....  
DETACH AND RETURN THIS PORTION WITH YOUR PAYMENT. KEEP UPPER PORTION FOR YOUR RECORDS.

Please make check or money  
order payable to First Student  
Inc and return your payment to  
the address provided.

|                  |            |
|------------------|------------|
| LOCATION NUMBER: | 22009      |
| CUSTOMER NUMBER: | 368229     |
| TRIP NUMBER:     | 80357469   |
| INVOICE TOTAL:   | \$1,541.78 |

22157 Network Place  
CHICAGO, IL 60673-1221

00000220090000368229008035746900001541789

# Thank you for Choosing First!

**First**  **Student**  
Charter Bus Rental

First Student Charter Center

Normal Business Hours  
Phone Number 855-870-8747

Printed on FEB 04, 2019 at 16:33:58 CST

## Notice of Trip Confirmation

| Customer #  | Order Date     | Trip Date          | Trip Number  |   |                  |
|---|----------------|--------------------|--|---|------------------|
| 368229  | 01/29/2019     | 05/24/2019         | 80357469   |   |                  |
| <b>Event</b>  |                |                    |  |   |                  |
| SP400280 T052419 TR SLSMAT ZOO  |                |                    |  |   |                  |
| <b>Comments</b>   |                |                    |  |   |                  |
|   |                |                    |  |   |                  |
| Belle Haven CDC<br>410 Ivy Dr<br>Menlo Park , CA 94025<br>US<br><br>ATTN: Kira Storms |                |                    |  |   |                  |
| Phone Number  | Fax Number     | PO/Contract        | Amount Paid  | Payment Method  | Payment Due Date |
| 650-330-2272  | (650) 327-2323 |                    | \$0.00   | Check   | 05/19/2019       |
| Bus#  | Charter Date   | Vehicle Type       | Pick-up  | Destination   |                  |
| 2   | 05/24/2019     | Large Conventional | Belle Haven Child<br>Development -- 410 Ivy Dr,<br>Menlo Park, CA, 94025, US<br>Service Start Time:<br>05/24/2019 09:00 AM | Oakland Zoo -- 9777<br>Golf Links Rd, Oakland,<br>CA, 94605, US<br>Service End Time:<br>05/24/2019 2 :30 PM |                  |

**TRIP DETAILS:**

| TRIP#    | Bus Number |
|----------|------------|
| 80357469 | 1 of 2     |

**SERVICE START DATE/TIME: 05/24/2019 09:00 AM**

**SERVICE END DATE/TIME: 05/24/2019 2 :30 PM**

**TRIP CONTACT: Kira Storms 650-330-2270**

**PICK-UP: Belle Haven Child Development -- 410 Ivy Dr, Menlo Park, CA, 94025, US**

**VIA:**

**DROP-OFF: Oakland Zoo -- 9777 Golf Links Rd, Oakland, CA, 94605, US**

**SERVICE LOCATION: SL12601 San Mateo**

**DAY OF TRIP/AFTER HOURS PHONE: 650-685-8245 / 650-922-2501**

**ITINERARY DETAILS:**

**Contact Kira Storms Cell 510-552-3290 / Carmen Lo 650-845-7675 PAX Count: 115 (96 3-5 Yrs Old / 19 Adults)**

**Pickup Location: Belle Haven Child Development -- 410 Ivy Dr Menlo Park CA 94025**

**Drop off Location: Oakland Zoo -- 9777 Golf Links Rd Oakland CA 94605 (Depart at 1:30 PM)**

**Return Location: Belle Haven Child Development -- 410 Ivy Dr Menlo Park CA 94025**

**TRIP DETAILS:**

| TRIP#    | Bus Number |
|----------|------------|
| 80357469 | 2 of 2     |

**SERVICE START DATE/TIME: 05/24/2019 09:00 AM**

**SERVICE END DATE/TIME: 05/24/2019 2 :30 PM**

**TRIP CONTACT: Kira Storms 650-330-2270**

**PICK-UP: Belle Haven Child Development -- 410 Ivy Dr, Menlo Park, CA, 94025, US**

**VIA:**

**DROP-OFF: Oakland Zoo -- 9777 Golf Links Rd, Oakland, CA, 94605, US**

**SERVICE LOCATION: SL12601 San Mateo**

**DAY OF TRIP/AFTER HOURS PHONE: 650-685-8245 / 650-922-2501**

**ITINERARY DETAILS:**

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**Return Location: Belle Haven Child Development -- 410 Ivy Dr Menlo Park CA 94025**

## Charter Service Terms and Conditions First Student

### USE OF OR PAYMENT FOR THE SERVICES SHALL BE DEEMED ACCEPTANCE OF THIS CONTRACT

These Terms and Conditions along with the Notice of Trip Confirmation (collectively, the "Contract") govern First Student's provision of the transportation services described in the attached Notice of Trip Confirmation (the "Services"). This Contract shall remain in effect for a period of one (1) year after the date it is signed by the Customer.

#### 1. Payment:

First Student requires payment at the time of booking. First Student accepts only the following forms of payment: MasterCard, Visa, American Express, Cashier's Check, Money Order or Personal Check made payable to "First Student." Checks returned from a bank (insufficient funds, stop payment, etc) will result in a \$30 fee.

If payment is made by credit card, the transaction will be done by a third-party PCI compliant vendor. Customer has the option of having its credit card information kept on file.

2. Notice of Cancellation: Customer shall give First Student notice of cancellation not less than forty-eight (48) hours prior to the scheduled departure time to receive a full refund. FAILURE TO GIVE SUCH NOTICE SHALL RESULT IN CHARGE OF A ONE HUNDRED DOLLAR (\$100.00) CANCELLATION FEE FOR EACH BUS RESERVED. CANCELLATIONS OCCURRING AFTER ARRIVAL OF THE BUS COULD RESULT IN INCREASED CANCELLATION FEES

3. Taxes; Additional Charges: Prices do not include taxes, parking fees, tolls or additional charges for (i) changes in the scope of Services that result in additional mileage or driver hours; (ii) damage to equipment caused by passengers; or (iii)

extra cleaning of the equipment due to the nature of Services or the conduct of the passengers (collectively, the "Additional Charges"). CUSTOMER AUTHORIZES FIRST STUDENT TO BILL ANY OF THESE ABOVE REFERENCED ADDITIONAL CHARGES TO THE CREDIT CARD ON FILE AND CUSTOMER AGREES TO PAY ALL SUCH CHARGES IN ACCORDANCE WITH THE CARDMEMBER AGREEMENT.

#### 4. First Student's Responsibilities:

- a. To use appropriately trained personnel to perform the Services safely and in a professional manner subject to the terms and conditions of this Contract.
- b. To issue a full refund to the Customer when the Services are cancelled by First Student.
- c. To notify the Customer of any taxes, tolls or Additional Charges that have been incurred and assessed to Customer in connection with the Services.

#### 5. Customer's Responsibilities:

- a. To comply with all rules and regulations and instructions of First Student relating to the Service.
- b. To pay all taxes, parking fees, tolls and Additional Charges incurred or assessed in connection with the Services.
- c. To pay for a single, non-smoking hotel room with private bath for each driver during multi-day charters.
- d. To give notice of cancellation to First Student not less than 48 hours prior to the departure time. Refund checks will be processed no earlier than ten (10) business days following receipt of customer's notice of cancellation.
- e. To sign a trip sheet upon the request of the driver when the Services have satisfactorily been performed.
- f. To indemnify, defend and hold harmless First Student from and against all claims, damages and expenses (including reasonable attorney's fees) arising out of the negligence or willful misconduct of the



Customer or any passengers and relating to or during the performance of the Services provided by First Student pursuant to this Contract.

6. DISCLAIMER:

THE SERVICES PROVIDED BY FIRST STUDENT ARE PROVIDED ON AN "AS IS", "WHERE IS" BASIS. FIRST STUDENT MAKES NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS, INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.

7. LIMITATION OF LIABILITY:

IN NO EVENT SHALL FIRST STUDENT BE LIABLE UNDER ANY LEGAL THEORY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, TREBLE OR CONSEQUENTIAL DAMAGES OF ANY KIND EVEN IF FIRST STUDENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR FIRST STUDENT COULD HAVE REASONABLY FORESEEN SUCH DAMAGES. FIRST STUDENT'S AGGREGATE LIABILITY SHALL NOT EXCEED THE AMOUNT OF FEES RECEIVED FROM THE CUSTOMER UNDER THIS CONTRACT.

8. Force Majeure: First Student shall not be liable to Customer for any delays or non-performance resulting from mechanical failure, road, traffic or weather conditions, labor difficulties, or any other causes or circumstances beyond First Student's control. All arrival and departure times are approximate and cannot be guaranteed.

9. Passenger Conduct: First Student may refuse to transport you or any of your passengers, or may remove you or any of your passengers from the bus at any point, for one or several reasons, including without limitation:

- . A passenger's conduct is disorderly, abusive or violent;
- . A passenger appears to be intoxicated or under the influence of alcohol or drugs,
- . A passenger attempts to interfere with the driver or the operation of the bus;
- . A passenger refuses to obey instructions from the driver;
- . A passenger engages in any action, voluntary or involuntary, that might jeopardize the safety of the bus or any of its occupants.

10. Prohibited Items: The following items and activities are prohibited at all times on First Student vehicles unless you have received prior written permission from the Company: (a) smoking; (b) decorations; (c) glass containers or kegs; (d) alcohol, drugs or other intoxicating substances; (e) flammable materials; butane operated grills or other combustibles; (f) guns, knives or any other weapons; and (g) animals.

11. Governing Law: The laws of the State of Delaware govern all matters, claims or causes of action (whether in contract or tort) arising out of this Contract, the transactions contemplated under this Contract, the actions or omissions of the parties arising from or related to this Contract, the rights and obligations of the parties under this Contract or the negotiation, execution or performance of this Contract without consideration of Delaware's conflicts of laws principles.

12. Dispute Resolution: The parties shall negotiate in good faith in an attempt to resolve any dispute that may arise under this Contract. Disputes that cannot be resolved by negotiation may be submitted to mediation using a mutually agreed upon mediator. If mediation is not successful, the parties may pursue their remedies as they choose.

13. Attorneys Fees: The undersigned agrees that First Student shall be entitled to all attorney fees and other costs associated

with recouping any amounts owed under this Contract.

14. Open Alcohol Containers: First Student will operate all charter trips in accordance with and limited by all governing state laws and regulations pertaining to open alcohol containers in vehicles. No minors will be permitted on a bus or in any other First Student vehicle where open container alcohol is present, unless accompanied by parent or legal guardian, and consumption of alcohol by a minor is specifically prohibited. Open container alcohol will not be permitted on any charter trip sponsored by a student organization, including but not limited to fraternities, sororities, sports clubs, dormitory organizations, etc. If governing state law permits open alcohol containers on buses or in any other First Student vehicles and Customer requests a charter with open alcohol containers and First Student grants permission for open alcohol containers on its buses or other First Student vehicles in accordance with paragraph 10 of this Contract, then all of the following shall apply:

- . Only adults of legal drinking age may consume alcohol on the bus;
- . Customer will be charged a non-refundable clean up fee, in addition to a refundable damage deposit. The damage deposit refund amount will be determined by the condition of the vehicle upon return. Dollar amount and details of the refundable damage deposit may vary by location; and will be communicated upon acceptance of agreement
- . No kegs or glass containers are permitted under any circumstances.

As stated in paragraph 10 above, First Student reserves the right to refuse to permit open container alcohol on any bus or in any other First Student vehicle at any time if there is any doubt as to whether a group or individual is of drinking age or if the group or any of its members violate any of the provisions of this Contract.

15. Miscellaneous: THIS CONTRACT CONSTITUTES THE FINAL AGREEMENT BETWEEN THE PARTIES. IT IS THE COMPLETE AND EXCLUSIVE EXPRESSION OF THE PARTIES' AGREEMENT ON THE MATTERS CONTAINED IN THIS CONTRACT. ALL PRIOR AND CONTEMPORANEOUS NEGOTIATIONS AND AGREEMENTS BETWEEN THE PARTIES ON THE MATTERS CONTAINED IN THIS CONTRACT ARE EXPRESSLY MERGED INTO AND SUPERSEDED BY THIS CONTRACT. THE PROVISIONS OF THIS CONTRACT MAY NOT BE EXPLAINED, SUPPLEMENTED OR QUALIFIED THROUGH EVIDENCE OF TRADE USAGE, COURSE OF PERFORMANCE OR A PRIOR COURSE OF DEALINGS. IN ENTERING INTO THIS CONTRACT, NEITHER PARTY HAS RELIED UPON ANY STATEMENT, REPRESENTATION, WARRANTY NOR AGREEMENT OF THE OTHER PARTY EXCEPT FOR THOSE EXPRESSLY CONTAINED IN THIS CONTRACT. THERE ARE NO CONDITIONS PRECEDENT TO THE EFFECTIVENESS OF THIS CONTRACT, OTHER THAN THOSE EXPRESSLY STATED IN THIS CONTRACT. In the event of a conflict between the terms of the Contract and any other document or agreement between Customer and First Student, the terms and conditions of this Contract shall control. If any portion of this Contract is found to be void or unenforceable, the remaining portions of this Contract shall remain in full force and effect.

16. Waivers: The parties may waive any provision in this Contract only by a writing executed by the party or parties against whom the waiver is sought to be enforced. No failure or delay (i) in exercising any right or remedy, or (ii) in requiring the satisfaction of any condition, under this Contract, and no act, omission or course of dealing between the parties, operates as a waiver or estoppels of any right, remedy or

condition. A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver once given is not to be construed as a waiver on any future occasion or against any other Person.

17. Amendments: The parties may not amend this Contract, except by written agreement that each party executes and that is identified itself as an amendment to this Contract.

18. No Jury Trials: THE PARTIES HEREBY WAIVE ANY RIGHT TO A JURY TRIAL ON ANY AND ALL PROCEEDINGS RELATED TO OR ARISING FROM THIS CONTRACT, THE SERVICES THAT FIRST STUDENT PERFORMS PURSUANT TO THIS CONTRACT, THE PERFORMANCE OR NON-PERFORMANCE OF EITHER PARTY'S OBLIGATIONS UNDER THIS CONTRACT OR ANY OTHER MATTER ARISING FROM OR RELATED TO THIS CONTRACT.

**CUSTOMER:**

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Date:  
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2163182