

HOLYOKE COMMUNITY CHARTER SCHOOL

Transportation Agreement

CSC #4084.2012

AGREEMENT FOR THE TRANSPORTATION OF PUPILS

This **AGREEMENT FOR THE TRANSPORTATION OF PUPILS**, hereinafter referred to as the "AGREEMENT", is made and entered into this 1st day of August, 2012, by and between **HOLYOKE COMMUNITY CHARTER SCHOOL** with a principal office located at 2200 Northampton Street, Holyoke, MA, hereinafter referred to as "CUSTOMER", and **DURHAM SCHOOL SERVICES, L.P.**, a Delaware limited partnership, with its principal office located at 4300 Weaver Parkway, Warrenton, Illinois 60555, hereinafter referred to as "CONTRACTOR."

1. Scope of Agreement. CONTRACTOR shall operate and maintain daily route school buses for the transportation of pupils using vehicles provided by CONTRACTOR.
 - a. CONTRACTOR shall provide (a) the daily service for CUSTOMER, and (b) such other transportation as may be specified by CUSTOMER.
 - b. The term "daily service," as used herein, is defined as all home-to-school and school-to-home transportation of any students of CUSTOMER that takes place at the beginning or end of the school day for such students.
 - c. The term "other transportation," as used herein, is defined as any transportation of students and CUSTOMER personnel other than daily service, including but not limited to transportation to and from extracurricular events.
2. Term. The term of this AGREEMENT shall be for a period of three (3) years beginning August 1, 2012 through July 31, 2015. This AGREEMENT shall be renewable for two (2) additional terms of one (1) year, at the option and mutual written agreement of both parties on or before April 30, 2015 and April 30, 2016, taking into consideration CONTRACTOR'S performance under this AGREEMENT and cost negotiations, and subject to applicable statutes and regulations. The option years will have rate increases equal to three percent (3%) each year.
3. Document Agreement. This AGREEMENT contains all the terms and conditions agreed upon by the parties. It supersedes any and all previous agreements, oral or written, between the parties, and no other agreement regarding the subject matter of this Contract, or any part thereof, shall have any validity or bind the parties.
4. Permits and Licenses. CONTRACTOR, its employees, and its agents shall secure and maintain valid permits, licenses, and certifications as required by law for the execution of this AGREEMENT.
5. Insurance. CONTRACTOR shall maintain insurance as set forth below during this AGREEMENT period and shall furnish a certificate of insurance for General and Auto Liability coverage and for Workers' Compensation coverage. CONTRACTOR shall furnish new Certificates of Insurance for liability coverage and for Workers' Compensation coverage within thirty (30) days following the placement of new or renewed coverage. Certificates shall provide that a thirty (30) day prior notice of cancellation will be given to CUSTOMER.

General and Auto Liability insurance shall be maintained to protect CONTRACTOR from any claims from damages for personal injury or death, and from damage to property, which may arise from operations of CONTRACTOR under this AGREEMENT. General and Auto Liability insurance shall each have a combined single limit of Five Million Dollars (\$5,000,000). Workers' Compensation insurance shall be maintained as required by law and to protect CONTRACTOR from claims, which may arise from its operation under this AGREEMENT.
6. Hold Harmless Agreement. CONTRACTOR shall hold harmless and indemnify CUSTOMER, its Governing Board, Officers, Agents, and Employees from every claim or demand which may be made

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by reason of any injury to person or damage to property sustained by any person, firm or corporation, to the extent that such injury or damage was caused by any negligent act or omission or willful misconduct of CONTRACTOR or of any person, firm, or corporation, directly or indirectly employed by CONTRACTOR upon or in connection with its performance under this AGREEMENT.

To the extent permissible by law, CUSTOMER shall hold harmless and indemnify CONTRACTOR, its Officers, Agents, and Employees from every claim or demand which may be made by reason of any injury to person or damage to property sustained by any person, firm or corporation, to the extent that such injury or damage was caused by any negligent act or omission or willful misconduct of CUSTOMER or of any person, firm, or corporation, directly or indirectly employed by CUSTOMER upon or in connection with its performance under this AGREEMENT.

7. Safety Program. CONTRACTOR shall provide formal safety instruction on a regular basis for all operating personnel assigned to this AGREEMENT.
8. Independent Contractor. While engaged in carrying out and complying with the terms and conditions of this AGREEMENT, CONTRACTOR is an independent contractor, and neither CONTRACTOR, its employees or its Agents shall be considered to be an Officer, Agent, or Employee of CUSTOMER.
9. Assignments. CONTRACTOR may assign or transfer any of its rights, burdens, duties, or obligations under this AGREEMENT to its parent company, affiliates, subsidiaries, or related legal entities. CONTRACTOR will advise CUSTOMER of such assignment or transfer.
10. Subcontracting. CONTRACTOR will not subcontract any of its rights, burdens, duties, or obligations under this AGREEMENT without the written consent of CUSTOMER, except on a short term, interim basis in the event of an emergency. Consent shall not be unreasonably withheld.
11. Force Majeure. CONTRACTOR shall be excused from performance hereunder during the time and to the extent that it is prevented from performing in the customary manner by an act of God, fire, flood, war, riot, civil disturbance, terrorism, epidemic, quarantine, strike, lockout, labor dispute, oil or fuel shortage, freight embargo, rationing or unavailability of materials or products, loss of transportation facilities, commandeering of equipment, materials, products, plants, or facilities by the Government, or any other occurrence which is beyond the control of CONTRACTOR.
12. Routing and Scheduling. Prior to the start of any service under this AGREEMENT, CUSTOMER and CONTRACTOR shall cooperatively establish routes and schedules conforming to the needs of CUSTOMER. If, at any time during the term of this AGREEMENT, it is determined by mutual consent that service may be improved by revisions to routing, scheduling, or bus assignment, CUSTOMER and CONTRACTOR shall plan and institute such changes jointly. CONTRACTOR shall have sufficient notice to review such changes and evaluate the safety considerations. All routes, schedules, and bus stops shall be established by CONTRACTOR on such basis as may be determined by it to be most efficient, but shall be approved by CUSTOMER and shall not be revised without mutual consent and authorization.
13. Contractor's Personnel. CONTRACTOR shall employ and assign for services under this AGREEMENT a sufficient number of regular and substitute drivers based on projected basic and supplementary transportation, taking into account the current driver absence rates. CONTRACTOR shall be solely responsible for hiring and discharging its employees. CUSTOMER shall have the right to request removal of any of CONTRACTOR's employees from providing services under this AGREEMENT provided that such request is made in writing with the reasons set forth and provided that such request does not violate any laws against discrimination.
14. Payments for Services. On or about the 15th of every month, CONTRACTOR shall provide CUSTOMER an invoice for services performed under this AGREEMENT. CUSTOMER agrees to pay the invoice amount by check, money order, or wire transfers within a reasonable time thereafter,

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not to exceed fifteen (15) calendar days after date of invoice. In the event CUSTOMER fails to pay CONTRACTOR the invoice amount within thirty (30) calendar days after date of invoice, CONTRACTOR may immediately suspend service and/or terminate this AGREEMENT without notice to CUSTOMER.

In the event any sums due and payable by CUSTOMER remain unpaid after thirty (30) calendar days from the date of invoice, a late charge of 1.5% per month of the outstanding balance will be assessed upon CUSTOMER'S account. CUSTOMER agrees to pay all actual fees and expenses CONTRACTOR incurs in collecting any outstanding balance, including attorneys' fees.

It is expressly understood between the parties that if CONTRACTOR suspends service or terminates this AGREEMENT in accordance with this provision, CONTRACTOR shall not be liable to CUSTOMER for any damages whatsoever. CUSTOMER shall indemnify and hold harmless CONTRACTOR for any claims, losses, costs, expenses or damages of any kind related to the suspension of service or termination of this AGREEMENT.

- 15. Adjustment of Rates. If, at any time during the term of this AGREEMENT, it is determined that a significant reduction/increase in service is to be instituted due to changes in school start/end times (bell schedules), mandated reduction/increase in routes, change in number of students or miles driven, or any other changes which significantly reduce or increase the existing service level(s) or CONTRACTOR'S cost of operations, CONTRACTOR and CUSTOMER agree to negotiate an adjustment to the rate schedules. The term "significant reduction/increase" as used herein is defined as any change of ten percent (10%) or more.
- 16. Equipment Requirements. All buses supplied under this AGREEMENT shall be approved school buses, as defined by applicable statutory or administrative codes.
 - a. Regular preventive maintenance shall be practiced on all buses. In addition, buses shall be cleaned inside and out as necessary.
 - b. Spare buses, either CUSTOMER or CONTRACTOR supplied, of appropriate sizes, and meeting all the above requirements, shall be located by CONTRACTOR at points close enough to CUSTOMER so they may be substituted for regularly assigned buses, if needed, without delay.
- 17. Fuel. Fuel shall be paid for and provided by CONTRACTOR.
- 18. Notices: Notices to either party to this AGREEMENT shall be in writing and shall be considered duly served and delivered if such notice is delivered by hand; mailed via the United States mail, certified, return receipt requested; or sent via overnight service. All such notices shall be addressed to:

CUSTOMER: Dr. Sonia Correa Pope
Director of Education
Holyoke Community Charter School
2200 Northampton Street
Holyoke, MA 01104
Telephone: (413) 533-0111

CONTRACTOR: Durham School Services, L.P.
Attn: Contract Administrator
4300 Weaver Parkway
Warrenville, Illinois 60555
Telephone: (630) 821-5400

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19. Discipline. CONTRACTOR will report serious or persistent misconduct on the part of students to the designated CUSTOMER employee. CUSTOMER shall then impose reasonable disciplinary measures upon the students in accordance with its discipline management program.
20. Choice of Law. This AGREEMENT shall be governed by the laws of the State of Massachusetts, Hampden County.
21. Severability. In the event any provision of this AGREEMENT is determined to be illegal or void, the remainder of this AGREEMENT shall remain in full force and effect.
22. Rate Schedule. In consideration of the performance on the part of CONTRACTOR of the terms of this AGREEMENT, CUSTOMER agrees to pay CONTRACTOR the rates set forth on attached Schedule A, incorporated herein, for pupil transportation services rendered.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the date written above.

DURHAM SCHOOL SERVICES, L.P.

**HOLYOKE COMMUNITY CHARTER
SCHOOL**

By: Durham Holding II, L.L.C.,
Its general partner

By: John A. Elliott
Name: John A. Elliott
Title: Vice President
Date: 5/7/13

By: [Signature]
Name: Dr. Sonia C. Hode
Title: School Director
Date: 6/26/13

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SCHEDULE A

Holyoke Charter Bus Rates
For regular school year and summer work

	2012 -13	2013 - 14	2014 - 15
Big Bus AM/PM Rate	\$ 254.30	\$ 260.66	\$ 267.18
Minibus AM/PM Rate	\$ 246.00	\$ 252.15	\$ 258.45
Wheelchair Bus AM/PM Rate	\$ 250.97	\$ 257.24	\$ 263.67
7-D Minivan AM/PM Rate	\$ 217.53	\$ 222.97	\$ 228.54
Monitor Rate AM/PM Rate (if requested)	\$ 22.25	\$ 22.81	\$ 23.38
Late Run Rate	\$ 103.50	\$ 106.09	\$ 108.74

Schedule A

Personnel Requirements:

Durham School Services agrees that no person under twenty-one years of age and only persons of sound moral character will be allowed to operate school buses while transporting students of the Holyoke Community Charter School. All drivers shall hold appropriate licenses under the statutes, rules and regulation of the Commonwealth of Massachusetts and those promulgated by the Federal Department of Transportation including but not limited to the drug and alcohol testing programs required by either the Federal and/or State regulatory agencies.

Durham School Services agrees to a comprehensive background check of their drivers, including driving record and criminal History Records (CORI) upon request these documents will be provided to the Director of the Holyoke Community Charter School.



To Dr. Sonia Pope
School Director
Holyoke Community Charter School

Dear Dr. Pope,

As you are aware, our parent company, National Express Corporation, has been engaged in a search for a new Chief Executive Officer for the past two months. It was announced yesterday that David Duke will join the organization as Chief Executive Officer in June 2011. Duke most recently was Senior Vice President of Sales at FirstGroup America.

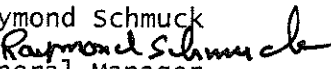
In the interim, industry veteran John Elliott will assume the role of CEO of National Express Corporation. Before he retired in 2008, Elliott served as President and Chief Executive Officer of Durham School Services.

We are excited to have David and John on board at National Express Corporation. Both are well-respected leaders in the industry who will further strengthen our successful outlook going forward. They will bring continuity to the organization, with a strong focus on customer service and getting back to the traditional values of what we do best, making sure students are picked up and delivered on time, safely and securely, every time.

Duke has nearly 25 years' experience in the transportation industry. Before joining FirstGroup America, he served as Senior Vice President of Durham School Services, where he was responsible for overseeing regional operations and business development. He is a member of the National School Transportation Association (NSTA) Board of Directors.

Elliott has achieved many accomplishments in his nearly 36 years in student transportation. In 2007, he was named "Contractor of the Year" by School Bus Fleet magazine and in 2006 received the NSTA Hall of Fame Award in recognition of his years of dedication and excellence in the industry. He also has been an active member of the NSTA board for more than 20 years.

Best Regards,

Raymond Schmuck

General Manager

AGREEMENT FOR THE TRANSPORTATION
OF PASSENGERS

THIS AGREEMENT, made and entered into this 6th day of June, 2009, by and between **HOLYOKE COMMUNITY CHARTER SCHOOL** hereinafter referred to as "**CUSTOMER**", and **DURHAM SCHOOL SERVICES, L.P.**, a Delaware Limited Partnership, hereinafter referred to as "**CONTRACTOR**".

WITNESSETH:

The CUSTOMER and the CONTRACTOR, for the consideration hereinafter named, mutually agree as follows:

1. Scope of Contract. The CONTRACTOR shall furnish, operate, and maintain one (1) or more school-type buses for the transportation of passengers at such times and places as may be specified by the CUSTOMER. Such transportation may be on any day or days during the term of the Agreement and is supplied on an "as-needed, as available" basis.
2. Term and Termination of Agreement. The term of the Agreement shall be for a three (3) year period beginning July 1, 2009 and ending June 30, 2012, unless terminated earlier for cause or by mutual consent of the parties hereto and a receipt of written notice if the other party breached any material term of this Agreement. Such notice of the breach and intent to terminate must be sent certified mail with signature return receipt to the other party. CUSTOMER may terminate this contract upon 10 days written notice in the event that the charter contract between the customer and the State of Massachusetts is revoked or not renewed.

This three year contract shall mirror and not exceed costs negotiated with the school bus contractor providing service to the Holyoke Public School District.

3. Permits and Licenses. The CONTRACTOR, its employees, and its agents shall secure and maintain valid permits and licenses that are required by law for the execution of this Agreement.
4. Insurance. The CONTRACTOR shall maintain insurance satisfactory to the CUSTOMER and as set forth below during the term of the Agreement and will be given to CUSTOMER.

General liability insurance shall be maintained to protect the CONTRACTOR and, as an Additional Insured, the CUSTOMER, its Governing Board, its Officers, its Agents, and its Employees from any claims for damages for personal injury or death, and from damage to property, which may arise from operations of the CONTRACTOR under this Agreement. Such insurance shall have a minimum combined single limit of Five Million Dollars (\$5,000,000.00).

Workmen's Compensation Insurance shall be maintained as required by law and as will protect the CONTRACTOR from claims that arise from its operation under this Agreement.

5. Hold Harmless Agreement. The CONTRACTOR shall hold harmless and indemnify the CUSTOMER, its Governing Board, its Officers, its Agents, and its Employees from every claim or demand that may be made by reason of:
 - a. Any injury to person or property sustained by the CONTRACTOR or by any person, firm, or corporation, employed directly or indirectly by CONTRACTOR upon or in connection with its performance under this Agreement, however caused;

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- b. Any injury to person or property sustained by any person, firm or corporation, caused by any act, neglect, default, or omission of the CONTRACTOR or of any person, firm or corporation, directly or indirectly employed by it upon or in connection with its performance under the Agreement; and
- c. Any liability that may arise from the furnishing or use of any copyrighted or uncopied composition, secret process or patented or unpatented invention, under this Agreement.

The CONTRACTOR at its own expense and risk shall defend any legal proceeding that may be brought against the CUSTOMER or the Board on any such claims or demands, and satisfies any judgment that may be rendered against the CUSTOMER or the Board therein.

- 6. Assignments or Subcontracting. The CONTRACTOR shall not assign, transfer, or subcontract any of its rights, burdens, duties, or obligations without the verbal consent of the CUSTOMER.
- 7. Independent Contractor. While engaged in carrying out and complying with the terms and conditions of the Agreement the CONTRACTOR is an independent contractor, and not an officer, agent, or employee of the CUSTOMER.
- 8. Force Majeure. CONTRACTOR shall be excused from performance hereunder during the time and to the extent that it is prevented from performing in the customary manner by an act of God, fire, flood, war, riot, civil disturbance, terrorism, epidemic, quarantine, strike, lockout, labor dispute, oil or fuel shortage, freight embargo, rationing or unavailability of materials or products, loss of transportation facilities, commandeering of equipment, materials, products, plants, or facilities by the Government, or any other occurrence which is beyond the control of CONTRACTOR, when satisfactory evidence thereof is presented to CUSTOMER.
- 9. Routing and Scheduling. Prior to the start of any service under this Agreement the CUSTOMER and the CONTRACTOR shall cooperatively establish routes and schedules conforming to the needs of the CUSTOMER.
- 10. Contractor's Personnel. All personnel assigned to perform under this Agreement shall be subject to continuous approval by the CUSTOMER and by the CONTRACTOR.

CONTRACTOR shall provide regular and continuous formal safety instructions for all operating personnel assigned to this AGREEMENT, who shall be required to attend regularly scheduled safety meetings at least four times per year. A driver training supervisor or trainer shall ride with every driver at least twice a year for the purpose of observing driving practices with respect to safety, evacuation, mechanical operation, handling of students and conformance with applicable laws, rules and regulations including adherence to published time schedules. CONTRACTOR shall provide a minimum of one (1) bus evacuation training annually at the CUSTOMER'S facility. CONTRACTOR shall withdraw from service any bus that has a known safety defect, until such unsafe condition is corrected.

In addition, CONTRACTOR affirms to meet and exceed all State and Federal D.O.T. requirements, including, but not limited to student management and the proper discharge of students in kindergarten through second grade to responsible care-givers.

- 11. Record Keeping and Accident Reports. The CONTRACTOR will be required to provide daily or other operational records deemed necessary by the CUSTOMER.

All reportable (as defined by law) accidents involving the CONTRACTOR'S equipment or personnel while operating for the CUSTOMER shall be reported to the CUSTOMER.

CONTRACTOR shall provide copies of driving records of drivers and monitors and shall furnish copies of criminal background checks on an annual basis as requested by CUSTOMER.

12. Payments for Services. On or about the first business day of each month the CONTRACTOR shall submit invoices in the form and number required by the DISTRICT for all services performed under this Agreement. Payment for such services will be made within a reasonable time thereafter, not to exceed ten (10) working days. In the event sums due and payable are not received within thirty (30) days, a late charge of 1.5% per month of the outstanding balance will be assessed upon the account. In the event such sums are not received within sixty (60) days, service may be discontinued until such time as the CONTRACTOR has received all sums due.
13. Equipment Requirements. All buses supplied under this Agreement shall be approved school-type buses, as defined by applicable statutory or administrative codes, and must, in addition, meet with the approval of the CUSTOMER.
14. Notices. Notices to either party to this Agreement shall be in writing and shall be considered duly served and delivered if such notice is delivered by hand; mailed via the United States mail, certified, return receipt requested or mailed via overnight mail service. All such notices shall be addressed to:

CUSTOMER: Dr. Sonia Correa Pope
Director of Education &
Board of Trustees Chairperson
of the Board – Anne Darcy
Holyoke Community Charter School
2200 Northampton Street
Holyoke, MA 01104
Telephone: (413) 533-0111

With a COPY to: Mr. Joseph Dougherty
Holyoke Community Charter School
2200 Northampton Street
Holyoke, MA 01040
Telephone: (413) 533-0111

CONTRACTOR: Durham School Services, L.P.
Attn: Contract Administrator
1431 Opus Place
Suite 200
Downers Grove, Illinois 60515
Telephone: (630) 435-8000

15. IN CONSIDERATION of the performance on the part of the CONTRACTOR of the terms of this Agreement, the CUSTOMER agrees to pay the CONTRACTOR the following sums for transportation services rendered. All prices are exempt from sales tax due to the nature of the CUSTOMER'S business.

BUS TYPE	2009-10	2010-11	2011-12
65+ Passenger Bus	\$231.15	\$238.09	\$245.23
Excess Hours Charge	\$ 33.63	\$ 34.64	\$ 35.68
20 Passenger Bus	\$223.60	\$230.31	\$237.22
Excess Hours Charge	\$ 33.63	\$ 34.64	\$ 35.68
Bus Monitor per Hour - 4 hour minimum/day	\$ 20.23	\$ 20.83	\$ 21.46

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date written above.

DURHAM SCHOOL SERVICES, L.P.

HOLYOKE COMMUNITY CHARTER SCHOOL

By: Durham Holding II, L.L.C.,
its general partner

By: *Robert Beal*

Name: *Robert Beal*

Title: *Controller*

Date: *6-15-09*

By: *Sonia Correa Pope*

Name: *Sonia Correa Pope*

Title: *School Director*

Date: *June 24, 2009*

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ADDENDUM NUMBER ONE

The **HOLYOKE COMMUNITY CHARTER SCHOOL**, hereinafter referred to as “**CUSTOMER**”, and **DURHAM SCHOOL SERVICES, L.P.**, hereinafter referred to as “**CONTRACTOR**”, mutually agree to amend the existing Agreement for the Transportation of Pupils dated August, 1 2012, hereinafter referred to as the “**Agreement**” as stated below:

1. Pursuant to the terms of the Agreement, Schedule A, the transportation rates for the 20152016 school year have been adjusted upward by 3% and shall be adjusted as follows:

SCHEDULE A

Holyoke Charter Bus Rates for regular school year and summer work

DAILY BUS RATE WITH 2 HR AM AND 2 HR PM MINIMUM	2014-2015	2015-2016
Big Bus AM/PM Rate	\$267.18	\$275.20
Minibus AM/PM Rate	\$258.45	\$266.20
Wheelchair Bus AM/PM Rate	\$263.67	\$271.58
7-D Minivan AM/PM Rate	\$228.54	\$235.40
Monitor Rate AM/PM Rate (if requested)	\$23.38	\$24.08
Late Run Rate	\$108.74	\$112.00
FIELD TRIP		
Driver Rate per hour	\$33.77	\$34.78
Waiting Rate per hour	\$33.77	\$34.78
Rate per Mile	\$5.32	\$5.48

2. This Amendment shall become effective August 1, 2015 and is agreed to by the undersigned parties.
3. All other terms and conditions of the Agreement remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date written above.

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DURHAM SCHOOL SERVICES, L. P.

**HOLYOKE COMMUNITY
CHARTER SCHOOL**

By: Durham Holding II, L.L.C.,
its general partner

By: _____
Name: David A. Duke
Title: President and CEO
Date: _____

By: 
Name: Dr. Sonia Pope
Title: School Principal Date: 8/18/15