

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 _____ day of July, 2017, by and between **HOLYOKE COMMUNITY CHARTER SCHOOL** with a principal office located at _____, hereinafter referred to as "CUSTOMER", and **DURHAM SCHOOL SERVICES, L.P.**, a Delaware limited partnership, with its principal office located at 4300 Weaver Parkway, Warrenville, 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 July 1, 2017 through June 30, 2020 with two (2) one (1) year options July 1 2020 – June 30 2021 and July 1 2021 – June 30 2022.
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 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.

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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, credit card, money order, or wire transfers within a reasonable time thereafter, 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.

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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. Liquidated Damages. District must notify the General Manager (of the Contractor location that performs the services) in writing (an email to the General Manager is an acceptable form of notice) within three (3) days of an occurrence giving rise to a liquidated damage claim for a bus that is greater than 15 minutes late for the arrivals or dismissals based on the school bell time. The AM arrival drop off time is between 7:50 and 8:00am and the PM dismissal time is 3:30pm. The anticipated arrival time for buses for the PM dismissal is 3:15pm with the grace period ending at 3:30pm. A bus not lined up for 3:30pm on a normal scheduled day will be considered late without prior approval. Failure to timely notify shall relieve Contractor of its obligation to pay liquidated damages for such occurrence. Notice must provide specifics regarding the occurrence, including a reference to the Route that was late by greater than 15 minutes as well as all information necessary for Contractor to review the claim. This Agreement does not provide for a District unilateral right to set-off and District cannot deduct the liquidated damages from payment due Contractor until Contractor has confirmed in writing (email is an acceptable form of writing) to the District that the claim and is appropriate. The Liquidated Damage may be an amount up to one hundred fifty dollars per late occurrence day (\$150.00). Traffic, weather, acts of God and incidents beyond CONTRACTOR'S control will not be enforceable late occurrences and subject to Liquidated Damages.
16. 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.

Notwithstanding anything else in this AGREEMENT to the contrary, in the event any federal, state, local or other government body's statutes, laws, rules, or regulations are enacted/promulgated, the impact of which will materially impact the method and/or costs of CONTRACTOR in connection with providing the services hereunder (e.g., the enactment of mandatory national health insurance for employees), in that event, upon written notice to CUSTOMER, CONTRACTOR may request a renegotiation of this AGREEMENT which shall be conducted in good faith. Such renegotiations shall include, but shall not be limited to, the payment schedule, duration of this AGREEMENT, levels of service, etc. Any modification to this AGREEMENT resulting from such renegotiations shall become effective on a mutually agreed-upon date.

17. Equipment Requirements. All buses supplied under this AGREEMENT shall be approved school buses, as defined by applicable statutory or administrative codes.
 - a. Large buses must have a capacity of seventy one (71) passengers or greater on a daily basis.

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- b. Regular preventive maintenance shall be practiced on all buses. In addition, buses shall be cleaned inside and out as necessary.
- c. 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.
- d. It is specifically understood between the Parties that prices under this AGREEMENT do not include modifications to vehicles that might at some point in the future be required by government agencies or CUSTOMER. If, during the term of this AGREEMENT, equipment modifications, including seat belts, are mandated, CONTRACTOR and CUSTOMER shall negotiate in good faith price increases related to such modifications. Such renegotiations shall include, but shall not be limited to, the payment schedule, duration of this AGREEMENT, levels of service, etc. Any modification to this AGREEMENT resulting from such renegotiations shall become effective on a mutually agreed-upon date.

18. Fuel. Fuel shall be paid for and provided by CUSTOMER.

19. 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: Holyoke Community Charter School
2200 Northampton Street
Holyoke, MA 01040
Telephone: (413) 533-0111

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

20. 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.

21. Choice of Law. This AGREEMENT shall be governed by the laws of the State of Massachusetts.

22. 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.

23. 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. The attached Rate Schedule was provided with the bid proposal. The language referring to rent was modified post bid opening to be for 12 months a year at \$1,000 per month.

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.

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

By: _____

Name: _____

Title: _____

Date: _____

**HOLYOKE COMMUNITY CHARTER
SCHOOL**

By: _____

Name: _____

Title: _____

Date: _____

SCHEDULE A

Durham School Services

May 21, 2017

FORM 3 REGULAR DAY TRANSPORTATION RATE

Holyoke Community Charter School
 Regular Day Transportation
 Per Bus

Daily bus rate with 2-hour AM and 2-hour PM minimum	2017-2018	2018-2019	2019-2020	Ext Year 1 2020-2021	Ext Year 2 2021-2022
Big Bus AM/PM Rate	\$291.95	\$300.71	\$309.73	\$319.02	\$328.59
Mini Bus AM/PM Rate	\$282.42	\$290.89	\$299.62	\$308.61	\$317.87
Wheelchair Bus AM/PM	\$291.95	\$300.71	\$309.73	\$319.02	\$328.59
7-D Minivan AM/PM Rate	\$272.42	\$280.89	\$289.62	\$298.61	\$307.87
Monitor Rate AM/PM Rate (if requested)	\$25.54	\$26.31	\$27.10	\$27.91	\$28.75
Late Run Rate	\$125.00	\$128.75	\$132.61	\$136.59	\$140.69
Field Trip					
Driver Rate per hour	\$36.89	\$38.00	\$39.14	\$40.32	\$41.53
Waiting Rate per hour	\$36.89	\$38.00	\$39.14	\$40.32	\$41.53
Rate per Mile	\$2.00	\$2.10	\$2.20	\$2.30	\$2.40

Pricing shown above assumes Durham will park the 10 route buses on-site, along with employee cars in the pre-measured southeast corner. Durham will pay rent to the Holyoke Community Charter School September through June each school year in the amount of \$1,000 each month. Durham will retain access and rights during July and August.

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Durham School Services

May 21, 2017

FORM 4 SCHOOL BUS TRANSPORTATION CONTRACT

Three-Year Contract with Two (2) One-Year Extensions

2017/2018 School Year

Regular Route Buses: *Estimated need: 10 buses for 180 days per year*
Price per bus per day: \$291.96 x 1,800 buses = \$525,535 Annual cost **

Field Trips & Athletic Events Buses:
Price per mile: \$2.00 Price per hour of waiting time: \$36.89

2018/2019 School Year

Regular Route Buses: *Estimated need: 10 buses for 180 days per year*
Price per bus per day: \$300.72 x 1,800 buses = \$541,301 Annual cost **

Field Trips & Athletic Events Buses:
Price per mile: \$2.10 Price per hour of waiting time: \$38.00

2019-2020 School Year Regular Route Buses:

Regular Route Buses: *Estimated need: 10 buses for 180 days per year*
Price per bus per day: \$309.74 x 1,800 buses = \$557,540 Annual cost **

Field Trips & Athletic Events Buses:
Price per mile: \$2.20 Price per hour of waiting time: \$39.14

YEAR 1 EXTENSION: 2020-2021 School Year Regular Route Buses:

Regular Route Buses: *Estimated need: 10 buses for 180 days per year*
Price per bus per day: \$319.04 x 1,800 buses = \$574,266 Annual cost **

Field Trips & Athletic Events Buses:
Price per mile: \$2.30 Price per hour of waiting time: \$40.32

YEAR 2 EXTENSION: 2021-2022 School Year Regular Route Buses:

Regular Route Buses: *Estimated need: 10 buses for 180 days per year*
Price per bus per day: \$328.61 x 1,800 buses = \$591,494 Annual cost **

Field Trips & Athletic Events Buses:
Price per mile: \$2.40 Price per hour of waiting time: \$41.53

* Actual billing will be based on the actual mix of buses run.

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** The annual costs above will be reduced by the \$10,000 in annual rent payments. See prior page for additional details.

