

AGREEMENT FOR THE TRANSPORTATION OF PUPILS

This **AGREEMENT FOR THE TRANSPORTATION OF PUPILS**, (this "Agreement"), is made and entered into this 17th day of July, 2022, (the "Effective Date") by and between **HOLYOKE COMMUNITY CHARTER SCHOOL** with a principal office located at 2200 Northampton Street, Holyoke, MA 01040, hereinafter referred to as ("Customer"), and **DURHAM SCHOOL SERVICES, L.P.**, a Delaware limited partnership, with its principal office located at 2601 Navistar Drive, Lisle, Illinois 60532, hereinafter referred to as ("Contractor"). Customer and Contractor are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

1. Term. The term of this Agreement shall be for a period of three (3) years beginning July 1, 2022 through June 30, 2025. This Agreement shall be renewable for two (2) additional terms of one (1) years, at the option and mutual written agreement of both parties, taking into consideration Contractor's performance under this Agreement and cost negotiations, and subject to applicable statutes and regulations.
2. Scope of Services. Contractor shall provide pupil transportation services to Customer which services shall include, but are not limited to, transporting students; providing equipment, storage and maintenance thereof; providing employees to perform such services; and administrative, supervisory and operational services required thereby ("Work") based on the assumptions and at the rates set forth on Schedule A and as otherwise described in this Agreement.
3. Change in Scope of Services. The following provisions shall apply in the event of the applicable reduction in service:
  - (a) Minimum Operating Days. This Agreement and Contractor's rates set forth hereunder contemplate a base term of three (3) years and a minimum of 180 operating days per school year in accordance with the regularly scheduled school year. Customer agrees to provide Contractor with reasonable written notice if Customer changes the school calendar such that the number of minimum operating days falls below 180 so that the parties may engage in good faith negotiations to adjust Contractor rates prior to the end of the then current school year. If the parties cannot reach an agreement, or if Customer does not provide Contractor with adequate notice of the reduction in school days, such that a renegotiation of rates prior to the end of the then current school year is impracticable, Customer agrees to pay Contractor in accordance with section (c) below.
  - (b) Reduction in Service. If the average daily number of routes, mid-day runs, shuttles or after school runs is changed by five percent (5%) or more from the original Scope of Work, Contractor, upon written notice to Customer, may request an adjustment to rates, which shall be conducted in good faith. If the parties cannot reach an agreement, Contractor may terminate the Agreement at the end of the applicable school year upon sixty (60) days written notice to Customer.
  - (c) Cancelled Operating Days. If Customer cancels any Work due to inclement weather (such as, but not limited to, snow, ice, flood, extreme cold/extreme heat), for health or safety reasons, or other emergency situations (including but not limited to pandemics, plagues, political unrest, executive / governmental orders etc.), such that the minimum operating days fall below 180, Customer agrees to pay a sum equal to fifty percent (50%) of the daily charges for each operating day cancelled.

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4. Payment for Services. On or about the first business day of each month Contractor shall submit invoices in the form and number required by Customer for all services performed under this Agreement.
  - (a) Payment for such services will be made in check, money order, or ACH or wire transfers within a reasonable time after receipt of invoice, not to exceed thirty (30) calendar days. Payment by credit card is accepted but requires an increase in the invoiced amount of two and one-half percent (2.5%) to cover processing fees.
  - (b) If Customer, acting in good faith, disputes the accuracy of all or part of any invoice, Customer must notify Contractor of such dispute within ten (10) days of the receipt of the invoice, including the specific line item subject to dispute and the reasons for the dispute. Notwithstanding such dispute, Customer shall pay all undisputed amounts in accordance with this Section 3. Except as set forth in this Section 3 or as otherwise specified in this Agreement, Customer shall have no further right to set-off.
  - (c) In the event undisputed sums due and payable are not received within thirty (30) calendar days of the date of invoice, a late charge of 1.5% per month or the maximum percentage allowed by law, whichever is less, of the outstanding balance will be assessed upon the account.
  - (d) In the event such undisputed sums are not received within sixty (60) days, service may be discontinued until such time as Contractor has received all sums due, and Customer shall hold Contractor harmless for any damages resulting from the discontinued service due to Customer's failure to pay.
5. Adjustment of Rates.
  - a. The rates are set forth in Schedule A.
  - b. Notwithstanding any contrary statements in this Agreement or in any documents incorporated herein by reference, in the event any federal, state, local or other government body's statutes, laws, orders, rules, guidelines, or regulations require material changes to the scope of work or the bid specifications of the Customer (such as major scheduling, routing, or enrollment changes or additions of special needs or physically handicapped children, which require added transportation equipment), Contractor, upon written notice to Board, may request a renegotiation of the Agreement which shall be conducted in good faith. Such renegotiations may include, without limitation, changes in rates, term, payment schedules, levels of service, and the types or number of vehicles to be used. Any modification to the Agreement resulting from such renegotiations shall become effective on a mutually agreed upon date. If the parties cannot come to an agreement, either party may terminate the Agreement upon thirty (30) days' notice.
6. Document Agreement. This Agreement contains all the terms and conditions agreed upon by the Parties and no other agreement, oral or otherwise, including Customer's Request for Proposal, regarding the subject matter of this Contract, or any part thereof, shall have any validity or bind the Parties. The complete Agreement consists of this Agreement and the Proposal of Contractor, which is incorporated herein by reference. In the event of any conflict between the terms of this Agreement and the Proposal, the terms of this Agreement shall govern.
7. 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.
8. 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.

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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.

9. 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.

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.

10. Safety Program. Contractor shall provide formal safety instruction on a regular basis for all operating personnel assigned to this Agreement.
11. 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.
12. 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.
13. 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.
14. 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.
15. 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.
16. Record Keeping and Accident Reports. Contractor will be required to provide access to any and all operational records related to the provision of services under this Agreement and kept in the ordinary

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course of business to Customer within 30 days of Customer's written request for such records. Customer shall maintain the confidentiality of Contractor's records. All operational records, including, but not limited to audio, digital and video recordings are, and shall be, the exclusive property of Contractor.

All equipment involved in an accident shall be reported as defined by law. Accidents involving Contractor's equipment or personnel while operating for Customer shall also be reported to Customer. If requested by Customer, pupil injuries not involving acceleration, deceleration, or movement of the bus may also be reported to Customer on forms provided by Customer.

17. Equipment Requirements. All buses supplied under this Agreement shall be approved school buses, as defined by applicable statutory or administrative codes within the state in which Customer operates.
  - a. Regular preventive maintenance shall be practiced on all buses.
  - 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.
  - c. 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. Pricing for alternate proposal (attached) includes a base fuel cost of \$3.50 per gallon of unleaded gasoline and \$4.50 per gallon of diesel fuel, inclusive of all applicable taxes. Any fuel costs above or below the stated base fuel cost per gallon will be a pass-through charge or credit to the District.
19. Termination of Agreement. If either Party refuses or fails to perform services as required as specified in this Agreement, or any separable part thereof, the other Party may, without prejudice to any other right or remedy, serve written notification upon it of intention to terminate and, unless within forty-five (45) days after service of such written notice of the condition or violation the party in breach shall cease and make satisfactory arrangements for the correction thereof, this Agreement shall, upon the expiration of the forty-five (45) days, cease and terminate.
20. 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  
Attn: Dr. Sonia Pope  
220 Northampton Street  
Holyoke, MA 01040  
Telephone: (413) 533-0111

CONTRACTOR: Durham School Services, L.P.  
Attn: Contract Management Specialist  
2601 Navistar Drive  
Lisle, Illinois 60532  
Telephone: (630) 821-5400

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21. 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.
22. Force Majeure. Contractor shall be excused from performance hereunder, and Customer shall not be allowed to levy any damages or penalties, liquidated or otherwise during the time and to the extent that Contractor is prevented from performing in the customary manner by an act of God, fire, flood, war, riot, civil disturbance, state of emergency, terrorism, epidemic, pandemic, governmental / executive order, 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, or renders Contractor's performance of this Agreement commercially impracticable, excessively difficult, expensive or harmful for Contractor's employees to perform.
23. Dispute Resolution. The parties agree to meet and confer in good faith on all matters and disputes under this Agreement. If a dispute is not resolved under the foregoing, and one Party informs the other in writing that it reasonably believes that the differences between the parties are not likely to be reconciled through further negotiation, then the parties agree to submit such dispute to binding arbitration under the Commercial Rules of the American Arbitration Association. Such arbitration will be held as promptly as possible in Massachusetts and will be conducted before a panel of three (3) members. Customer and Contractor shall each select one arbitrator, and the third arbitrator shall be selected by agreement of the other two arbitrators so chosen. The decision of a majority of the arbitration panel will be binding on the parties and may be submitted for enforcement to any court of competent jurisdiction. All costs and expenses associated with the arbitration shall be borne entirely by the non-prevailing party.
24. Choice of Law. This Agreement shall be governed by the laws of the State of Massachusetts.
25. 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.
26. Attorney's Fees. If any legal action is brought by either of the parties hereto, it is expressly agreed that the party in whose favor final judgment shall be entered shall be entitled to recover from the other party reasonable attorney's fees in addition to any other relief that may be awarded.
27. Wage Protection. In the event market conditions dictate that employee wage increases are necessary, including adjustments for hazard pay required due to a state of emergency or other governmental action or legislative mandate - the Customer agrees to enter into negotiations with the Contractor to mitigate the financial impact of any increased wages on the Contractor. In the event the Customer and the Contractor cannot come to a mutual agreement, the Contractor has the right to terminate the Agreement. The Contractor will provide the Customer with ninety (90) days written notice prior to termination.
28. Bus Parking. District will receive a monthly credit of one-thousand dollars \$1,000.00 from September through June of each contract year in exchange for Contractor right to park buses at District location.

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

**DURHAM SCHOOL SERVICES, L.P.**

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

By:   
Name: Dr. Sonia C. Pape  
Title: School Principal  
Date: 8-2-2022

**HOLYOKE COMMUNITY CHARTER  
SCHOOLS**

By:   
Name: Gary L. Waits, Jr.  
Title: President & CEO  
Date: July 19, 2022

Schedule A

**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	2022-2023	2023-2024	2024-2025	Ext Year 1 2025-2026	Ext Year 2 2026-2027
Big Bus AM/PM Rate	\$407.45	\$423.75	\$440.70	\$456.12	\$472.08
Mini Bus AM/PM Rate	\$394.16	\$409.93	\$426.33	\$441.25	\$456.69
Wheelchair Bus AM/PM	\$428.30	\$445.43	\$463.25	\$479.46	\$496.24
7-D Minivan AM/PM Rate	\$381.76	\$397.03	\$412.91	\$427.36	\$442.32
Monitor Rate AM/PM Rate (if requested)	\$147.51 <i>\$36.88 per hour above 4 hours</i>	\$153.41 <i>\$38.36 per hour above 4 hours</i>	\$159.55 <i>\$39.89 per hour above 4 hours</i>	\$165.13 <i>\$41.29 per hour above 4 hours</i>	\$170.91 <i>\$42.74 per hour above 4 hours</i>
Late Run Rate	\$174.46	\$181.44	\$188.70	\$195.30	\$202.14
<b>Field Trip</b>					
Driver Rate per hour	\$42.78	\$44.49	\$46.27	\$47.89	\$49.57
Waiting Rate per hour	\$42.78	\$44.49	\$46.27	\$47.89	\$49.57
Rate per Mile	\$2.47	\$2.57	\$2.67	\$2.76	\$2.86

*Pricing for alternate proposal includes a base fuel cost of \$3.50 per gallon of unleaded gasoline and \$4.50 per gallon of diesel fuel, inclusive of all applicable taxes. Any fuel costs above or below the stated base fuel cost per gallon will be a pass through charge or credit to the district*

## FORM 4 SCHOOL BUS TRANSPORTATION CONTRACT

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

### 2022/2023 School Year

**Regular Route Buses:** *Estimated need:* 10 buses for 180 days per year

Price per bus per day: \$407.45 x 10 buses = \$733,410.00 Annual cost

**Field Trips & Athletic Events Buses:**

Price per mile: \$2.47 Price per hour of waiting time: \$42.78

### 2023/2024 School Year

**Regular Route Buses:** *Estimated need:* 10 buses for 180 days per year

Price per bus per day: \$423.75 x 10 buses = \$762,750.00 Annual cost

**Field Trips & Athletic Events Buses:**

Price per mile: \$2.57 Price per hour of waiting time: \$44.49

### 2024-2025 School Year Regular Route Buses:

**Regular Route Buses:** *Estimated need:* 10 buses for 180 days per year

Price per bus per day: \$440.70 x 10 buses = \$793,260.00 Annual cost

**Field Trips & Athletic Events Buses:**

Price per mile: \$2.67 Price per hour of waiting time: \$46.27

### YEAR 1 EXTENSION: 2025-2026 School Year Regular Route Buses:

**Regular Route Buses:** *Estimated need:* 10 buses for 180 days per year

Price per bus per day: \$456.12 x 10 buses = \$821,016.00 Annual cost

**Field Trips & Athletic Events Buses:**

Price per mile: \$2.76 Price per hour of waiting time: \$47.89

### YEAR 2 EXTENSION: 2026-2027 School Year Regular Route Buses:

**Regular Route Buses:** *Estimated need:* 10 buses for 180 days per year

Price per bus per day: \$472.08 x 10 buses = \$849,744.00 Annual cost

**Field Trips & Athletic Events Buses:**

Price per mile: \$2.86 Price per hour of waiting time: \$49.57