

## **CONTRACT FOR STUDENT TRANSPORTATION SERVICES**

This Contract is made and entered into between Harlow's School Bus Service, Inc., a North Dakota corporation with offices at 300 W Broadway, Dickinson, ND 58601, 701.456.0003 (hereinafter referred to as "Harlow's" or "Contractor") and Dickinson Public School District, 444 4<sup>th</sup> Street West, Dickinson, ND 58601, 701.456.0002 (hereinafter referred to as "DPS"). This contract also includes DPS's Regional After School Program (RASP) currently located at Prairie Rose Elementary, 2785 10<sup>th</sup> Ave. W. Dickinson, ND 58601, 701.483.7700.

### **1. Contract Term**

This Contract shall commence on the date that this Contract is fully executed under authorization granted by the DPS Board at its meeting and will remain in effect July 1, 2016 until June 30, 2019 (the "Contract Term"), with option of an additional four (4) years. This contract with optional years included will follow academic years: 2016-2017 through 2022-2023 unless earlier terminated, as provided herein.

### **2. Termination**

Contractor may terminate this contract by written notice of termination in the event DPS fails to perform any obligation of DPS under this contract. Contractor will continue to provide transportation services no more than ninety (90) days from the date of the written notice of termination to DPS. DPS agrees to pay Contractor for transportation services under the payment schedule of this contract through the last day transportation services are provided by Contractor.

DPS may terminate this contract with ninety (90) days written notice of termination if any issue is brought to the Contractor and resolution of that issue cannot be agreed upon between DPS and Contractor within ten days or such longer period as DPS may authorize. Additionally, if funding from federal, state or other sources is not sufficient, as determined by the DPS Board, to allow for the continuation of services during the indicated term. If funding is deemed insufficient, DPS shall give six (6) months' notice to the contractor.

### **3. Insurance**

Contractor will be required to furnish, prior to the signing of the contract at least a five million dollars (\$5,000,000) single limit for bodily injury and property damage liability and such other insurance as required by the state of North Dakota, if any. The policy shall name DPS as an additional insured and provide that such coverage may not be cancelled or materially changed without thirty (30) days prior written notice to DPS.

### **4. Assignability**

Contractor shall not assign or transfer all or any part of its interest in the contract without the written approval of DPS.

### **5. Force Majeure**

Neither DPS nor Contractor shall be liable in damages or have a right to terminate this contract for any delay or default in performance hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, government restrictions or limitations, wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

## **6. General Management**

The Contractor shall provide for all driver(s), as well as the maintenance and management of the same, to operate school buses for DPS for the 2016-2019 school years. Contractor's designated supervisor shall be readily available for contact by DPS representatives to address issues or concerns that arise during the school year.

Rider discipline exercised by the Contractor will be guided by the DPS policies.

## **7. Use of Dickinson Bus Facilities**

Bus Shop and Bus Shelters: DPS will lease all bus shop and bus storage facilities to the Contractor for \$1.00 per year. The utility cost and all related maintenance of these facilities will be paid for by DPS. DPS buses will also be housed at said facility.

Contractor may utilize the facility to perform work upon non-DPS owned buses.

## **8. Routes**

All students (K-12) whose parents voluntarily abide by the policy arrangements of the transportation program and who live within those areas designated by DPS Board are eligible to receive bus transportation services. This may include special educational students. DPS reserves the right to offer space-available seating up to the legal passenger capacity of each bus to nonpublic school students who live along a DPS bus route. No child shall be picked up before 6:45 AM and students will be home by 4:50 PM each school day except for unavoidable or abnormal circumstances.

Prior to the start of the school year, the Contractor, working in cooperation with DPS's representative, shall establish routes, pickup points, and identify the students to be transported. Time schedules and routes will be arranged and adjusted as necessary by the Contractor after discussion with the designated representative of DPS. Pickup times will be established to allow delivery to each school no later than ten (10) minutes prior to its established starting time. An DPS representative will designate bus loading and unloading zones at school. Reasonable and infrequent late arrivals or departures resulting from unexpected delays and mechanical failure will not be considered a breach of contract.

Contractor will maintain contact with the drivers with a two-way radio system or another form of communication.

Contractor will maintain an accurate record of miles per bus per route, per day, for General School Transportation, as well as for Long Field Trips. The contractor will attempt to maintain accurate record of students at each scheduled pick-up and drop-off, per bus route, per day, for General School Transportation.

- Harlow's and DPS may implement use of Student Tracking system utilizing Z-Pass or similar program to track and monitor student ridership. As the student passes the Z Pass reader upon entering or leaving the school bus, the time, date and location is logged and transmitted to a secure database.

## **9. Vehicle and Maintenance Requirements**

Contractor will maintain at Contractor's expense maintenance services on buses to be used by Contractor to perform this contract. This may not include any maintenance expense(s) on buses if expenses occurred by a Non-Harlow's employee. Contractor will maintain the insurances on DPS buses pursuant to Section 3, above. All school buses shall be DOT certified, comply with North Dakota specifications.

DPS will provide Contractor with all buses to be used by contractor to perform this contract. Contractor will maintain insurance on DPS buses pursuant to Section 3, above. In the event a Contractor owned bus is used to perform under this contract, Contractor will maintain insurance on any such Contractor owned bus pursuant to Section 3, above.

All school buses used to transport students must meet the standards prescribed in Sections 39-21-27 and 39-21-27.1 of North Dakota Century Code. All route buses will be equipped with both a two-way radio system and a digital camera system (provided by BPS).

Fuel for buses used to perform this contract will be paid for by DPS using a fueling arrangement established by DPS and a local fueling station.

## **10. Driver Requirements**

**Qualifications:** Only drivers of the highest quality from the standpoint of safe operation and relationship with students shall be hired as bus drivers. All drivers will hold the appropriate license and endorsements as well sustain a US DOT Medical Examiners Certificate will operate DPS or Contractor's vehicles. All drivers must be qualified in accordance with Section 15.1-07-20 of the North Dakota Century Code and meet any and all other federal, state statutory and regulatory requirements. All drivers must pass a national criminal background check (HireRite) which includes fingerprinting as well as annual motor vehicle record (MVR) check.

**Training:** Contractor shall be responsible for training of drivers. Training includes but not limited to: laws, rules and regulations of school bus driving, pre-trip inspection procedures, regulatory requirements, bus driving techniques and accident procedure. Drivers will also be responsible for a working knowledge of the School Bus procedure guide as provided to each family explaining the discipline procedures and other general information regarding DPS transportation.

All drivers are required to attend mandatory three hour Bus Driver's Workshop required by the Department of Public Instruction. All new drivers hired after the fall workshop will complete required training supported by documentation prior to transportation of DPS students.

**Meetings:** Contractor shall conduct driver meetings on a regular basis or as requested by the contractor and/or DPS and all drivers shall attend.

**11. Activities and Field Trips**

Contractor agrees to provide transportation for student activities. Payment will be based on a per mile payment for longer trips (more than 20 miles) and a straight hourly rate for short trips (less than 20 miles). “Down time” shall begin at arrival at the destination and end at departure.

In the event of an overnight trip: DPS will pay for bus driver’s room and downtime. Meals for drivers will not be provided by DPS. DPS transportation personnel will work with Contractor’s management for timely advance scheduling of drivers and buses for all trips.

**12. Fees And Expenses**

**Invoice And Payment Terms:** Contractor will invoice DPS on the 15<sup>th</sup> and end of the month for services provided under this Contract. Payment from DPS is due and payable within fifteen (15) days of receipt of invoice. Trip sheets must be submitted by the Contractor to DPS in a timely manner.

**Fees:** The fees for Contractor’s services under this Contract (the “Fees”) will be pursuant to the following payment schedule, subject to the Cost Of Living Escalator and Government/ School Mandates provisions, Sections 14 and 15 respectively:

- General Transportation
  - Rural \$2.04 mile
  - Handicapped Busing \$200.00 (Summer)  
\$180.00 (During School)
  - Shuttle Bus Services \$166.00 per day per bus
  
- School Field Trips and Activity Transportation
  - Longer Trips Greater than 20 Miles \$1.67 mile
  - Shorter Trips Overage Cost (2 hour min) \$39.95 hour
  - Down Time, Per Hour, Per Driver: \$16.85 hour

**Cancellation Fees Due To Weather And Road Conditions:** If DPS is not required to make-up the cancelled school day, DPS shall pay Contractor for all cost incurred.

**13. Contractor Use of DPS Buses**

Contractor may use DPS owned buses, at a cost of \$109.00 per day, for non-DPS activities if DPS owned buses are available and not needed for DPS routes, activities, and field trips.

**14. Fuel**

Fuel for buses used to perform this contract will be paid for by DPS using a fueling arrangement established by DPS and a local fueling station.

**15. Option to Renew**

DPS and Contractor agree to meet by April 30, 2019, to renegotiate any extended years and rates to this Contract. This Contract may be renewed for an additional term of an additional four (4) years or as mutually agreed.

**16. Cost of Living Escalator**

Beginning on July 1, 2017, and for subsequent years of this contract, the route cost, field trip cost, activity cost and price per line item shall increase by the greater of 2.5% or annual Consumer Price Index (CPI) Urban as of June, measured by the U.S. Department of Labor, Bureau of Labor Statistics, by comparing the index of the previous June. (i.e. June 2017 compared to June 2016).

**17. Complying with Government and/or School Mandates**

If during the term of the contract there are any federal, state or local mandates: (a) requiring modification of Contractor's equipment or vehicles used to perform the contract, or, (b) which result in an increase in the business/operational cost of the Contractor during any one school contract year, then DPS and the Contractor will negotiate to determine which party will bear the cost of complying with such mandate(s), including the cost of implementing any mandate(s), and the Contractor's rate of payment(s) for services to DPS during the remainder of the contract term. If DPS and Contractor are unable to agree on a price adjustment to the contract due to such mandate(s), then either DPS or Contractor may terminate this contract with ninety (90) days written notice to the other. In the event no agreement can be reached, DPS and Contractor agree to cooperate to transition transportation services back to DPS, DPS agrees to pay Contractor at the rates otherwise set forth herein until the transition is complete, and neither DPS or Contractor will make a claim against the either for not completing the term of this contract.

**18. Indemnification**

Contractor agrees to indemnify and hold DPS, its governing board, officers, employees and promises to defend same from all claims or damage, penalties of any kind related to the operation and maintenance of the buses or any obligations under this contract.

DPS agrees to indemnify, defend and hold harmless Contractor, and all of its affiliated and related entities and governing board, officers, directors, employees, successors and assigns, attorneys, insurers, and representatives, individually and in their official capacity, from any and all claims, actions, damages and liability, including the cost of investigation, litigation expenses, appeal costs and attorney's fees, to the extent resulting from any claims or suits which result from any negligent or intentional action or omission of DPS and/or DPS's affiliates and related entities, employees, agents or representatives arising out of or relating to DPS performance or failure to perform any of its obligations under this Contract.

**19. Nondisclosure**

As used in the Contract, "Confidential Information" means any information disclosed by or relating to a party whether of a technical, business or other nature (including without limitation, all information relating to DPS students transported by Contractor, their families, and the employees of DPS that generally is not known to the public. Each party will not disclose Confidential Information of the other party without the prior written consent of that party, except as required by law. Each party will take all reasonable measures to avoid disclose, dissemination or unauthorized use of Confidential Information provided to it by the other party.

**20. Governing Law and Jurisdiction**

This Contract shall be governed and construed in accordance with the laws in the State of North Dakota, without regard to its principles of conflict of laws. The Parties consent to exclusive jurisdiction of the federal and state courts of the State of North Dakota in Burleigh County for all disputes arising out of this Contract.

Contractor shall comply with and be governed by the requirements of North Dakota Laws, rules and regulations, specifically Chapter 15.1-30 of the North Dakota Century Code. This will include Bureau of Criminal Investigation background checks on all school bus drivers.

**21. Arbitration Clause**

In the event a dispute shall arise between the parties to this contract, it is hereby agreed that the dispute shall be referred to United States Arbitration and Mediation for arbitration in accordance with United States Arbitration and Mediation Rules of Arbitration. The arbitrator's decision shall be final and binding and judgment may be entered thereon. In the event a party fails to proceed with arbitration, unsuccessfully challenges the arbitrator's award, or fails to comply with arbitrator's award, the other party is entitled of costs of suit including a reasonable attorney's fee for having to compel arbitration or defend or enforce the award.

**22. Relationship of Parties**

This Contract is not intended and shall not be construed to create an agency, partnership, joint venture, employment of franchise relationship between DPS and Contractor. The Contractor will not represent or hold itself out to be part of DPS or a partner or agent of DPS. The contractor shall not enter into any agreement on DPS's behalf or in DPS's name.

Contractor and DPS agree that the relationship of the Parties under this Contract is that of an independent contractor. Neither Contractor, nor any member, agent, employee, officer or official of Harlow's, shall be held or deemed in any way to be an agent, employee, officer or official of DPS.

**23. Severability**

If any portion of this Contract shall to any extent be declared unenforceable or illegal by a court of competent jurisdiction, the remainder of this Contract shall not be affected thereby and each portion and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

**24. Modification**

No waiver, alteration or modification of any of the provisions of this contract shall be binding upon any party unless in writing and signed by the authorized representative of the party against whom such waiver, alteration or modification is sought to be enforced. Each such amendment, waiver or discharge will be effective only in the specific instance and for the specific purpose for which given.

**25. Entire Contract**

This Contract shall constitute the entire contract between the Parties and supersede any prior understandings between the Parties with respect to the subject matter hereof.

**26. Notice**

All notices, requests, demands, waivers, consents and other communications (“Notices”) under this Contract (A) shall be in writing; shall be delivered (1) via hand delivery, (2) by facsimile or other electronic means, (3) by overnight air courier or (4) by Certified Mail, with return receipt requested; and (B) shall be directed to the party being notified at the following addresses (or at such other addresses as the Parties may designate in writing):

**For Contractor:**

Harlow’s School Bus Service, Inc.  
1021 South 23<sup>rd</sup> Street  
Bismarck, ND 58504  
Attn: Corporate General Manager  
Facsimile: 701.224.1127

**For DPS:**

Dickinson Public School District  
444 4<sup>th</sup> Street West  
Dickinson, ND 58601  
Attn: Superintendent  
Facsimile: 701-456-0035

**27. Headings**

The headings used in this Contract are for the convenience of the parties and for illustration only, and are not to be used for determining or interpreting any of the rights or obligations herein.

**ACCEPTANCE OF AGREEMENT**

The signatures below indicate acceptance of the terms and conditions of this Contract as described above. Upon signature, this Contract shall be binding on the Parties. This Contract may be executed in counterparts, each of which shall be deemed an original, which together, shall constitute one and the same Contract. A signed copy of this Contract delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Contract.

**ACCEPTED AND AGREED TO:**

**HARLOW’S SCHOOL BUS SERVICE, INC.**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ACCEPTED AND AGREED TO:**

**Dickinson Public School District**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_