

BISMARCK PUBLIC SCHOOL DISTRICT STUDENT TRANSPORTATION SERVICES CONTRACT

THIS CONTRACT is made and entered into by and between Harlow's School Bus Service, Inc. hereinafter referred to as "CONTRACTOR" and BISMARCK PUBLIC SCHOOL DISTRICT NO. 1, Bismarck, North Dakota hereinafter referred to as "BPS", under authorization granted by the Bismarck Public School Board during its meeting on January 10, 2022.

WITNESSETH:

WHEREAS, BPS and CONTRACTOR have reached an agreement regarding the terms and provisions of a contract whereby CONTRACTOR will provide transportation services to BPS; and

WHEREAS, the parties hereto desire to reduce their agreement regarding this contract to writing;

NOW THEREFORE intending that they and their respective successors and assigns be and are hereby legally bound, and in further consideration of the terms and conditions of this Agreement, the parties agree as follows:

1.0. Term of Agreement

1.01. Term. The agreement will commence on July 1, 2022 for a four year term ending June 30, 2026. The district plans to renew this contract for an additional 3 years pursuant to ND Century Code 15.1-30.

1.02. Payments. BPS is obligated only to pay such payments under this Agreement as may lawfully be made from funds available for BPS' then current fiscal year. In the event sufficient funds are not allocated to pay the payments required to be paid in the next occurring Renewal Term, this Agreement will be deemed to be terminated at the end of the then current Original Term or Renewal Term. BPS agrees to deliver notice to CONTRACTOR of such termination at least 90 days prior to the end of the then current Original Term or Renewal Term, but failure to give such notice will not extend the Term beyond such Original Term or Renewal Term.

2.0. Obligations of CONTRACTOR

2.01. Scope of Services. CONTRACTOR shall provide safe, efficient, reliable, and prompt transportation services for eligible BPS students. These services shall be provided in accordance with the policies, procedures, and parameters ascribed by BPS. The interests of students in such transportation shall take precedence over the interests of CONTRACTOR or its drivers. It shall be

the primary obligation of CONTRACTOR to conduct its activities so that students will be assured of continuous and reliable service.

2.02. Working Document. CONTRACTOR shall implement and enforce BPS administrative procedures as set forth in the Working Document which is attached hereto as Attachment 2.02 and incorporated into this Agreement. BPS administration will modify the Working Document as it deems necessary and appropriate throughout the Term of this Agreement. Any such modifications will be discussed with and mutually agreed upon by CONTRACTOR prior to implementation.

2.03. Responsibility for Hiring and Discharging. The responsibility for hiring, training, compensating, disciplining and discharging school bus drivers shall rest with CONTRACTOR. CONTRACTOR shall enter into no contract or arrangement with any employee, person, group or organization, which will in any way interfere with CONTRACTOR ability to comply with this Agreement. BPS may request that appropriate action be taken with respect to any driver whose performance or characteristics cause legitimate concern; however, determination of any appropriate sanctions or actions rests with CONTRACTOR, who shall be obligated to deal responsibly and responsively to such BPS requests.

2.04. Bus Routes. CONTRACTOR will be expected to develop bus routes that maximize the efficiency and effectiveness of service provisions. CONTRACTOR will provide the initial array of proposed bus routes to BPS for approval within thirty (30) days of the start of school for each school year covered by this Agreement unless circumstances require an extension, which will be known in advance. CONTRACTOR will provide BPS with route changes required as a result of new students or changed student placements within three (3) business days of notification of the change. All route changes will follow the mutually agreed upon Working Document protocol. All parents/guardians involved with route changes will be notified by CONTRACTOR. Notification should include information retaining to bus number changes, changes to stops, and/or changes to pick up/drop off times.

- a. Drop Off and Pick Up. Bus routes should be designed to arrive no earlier than fifteen (15) minutes before, but no later than five (5) minutes before, the scheduled starting times at each school. At the elementary schools, buses shall leave no earlier than five (5) minutes after school, but no later than ten (10) minutes after dismissal time. At the secondary schools, buses shall leave ten (10) minutes after the dismissal time. First trip buses for the afternoon shall be parked and ready to load at least five (5) minutes before dismissal. BPS will review the bus routes for consistency, BPS requirements and the best interests of BPS prior to CONTRACTOR operating any routes, including new routes.
- b. Deadhead Miles. Deadhead miles are all miles from bus storage to the first pickup point and from the last drop off point back to bus storage. BPS shall approve the location of the bus storage facility.

2.05. Field Trips and Student Activities. CONTRACTOR agrees to provide transportation for student activities on an as needed basis.

2.06. Equipment and Facilities

a. Vehicle Specifications. At the start of each school year covered under the terms of this Agreement, CONTRACTOR shall provide a list to the BPS Facilities and Transportation office of make, model, serial number, year of manufacture, capacity, and total mileage of each vehicle to be used to fulfill its obligations under this Agreement. This list must be accurate at all times during the contract period. Vehicle capacities must be a minimum of 47 students, this does not include special education buses. Inclusion of a vehicle on the list shall be a certification that the vehicle meets all applicable specification requirements, including certification that all required maintenance and inspections are complete and that the vehicle is in safe operating condition.

(1) Capacity listed on the nameplate of the bus is maximum capacity. Due to the difference in size of kindergarteners through high school students, maximum capacity does not necessarily state accurately how many students may ride the bus safely. Thus, BPS and CONTRACTOR will work together to determine capacity based on the grades and/or sizes of the students riding. The addition of additional students to routes will be determined by the equipment CONTRACTOR has available. CONTRACTOR will inform the Director of Facilities and Transportation of capacity issues so recommendations can be made to the Business and Operations Manager on approaching the School Board for additional routes due to bus capacity issues. It shall be the general practice to not register more students than 120% of the maximum capacity of each bus. Routing capacity assumption is: K-5th grade three (3) students to a seat, 6th–12th grade two (2) students to a seat.

(2) General Transportation school buses and at least two (2) spare school buses shall be outfitted with a five (5) Camera HDD system and stop arm camera.

b. Age of Route Vehicles.

All route vehicles used under the terms of this agreement are twenty (20) years of age or newer with the average age not to exceed twelve years.

For purposes of this section, Vehicle age is determined by subtracting the chassis year of the vehicle from the year of the Term. For example, a vehicle with a 2015 chassis year, at the beginning of a Term commencing on July 1, 2022 would be considered 7 years old. Vehicle ages will be calculated at the commencement of each Term. CONTRACTOR will provide BPS with a detailed fleet listing at the beginning of each Term stipulating that the listed vehicles meet the age criteria.

- c. **Vehicle Condition.** CONTRACTOR shall operate and maintain all vehicles serving BPS in a good, safe, and clean mechanical and operating condition in strict accordance with State and Federal specifications and the Working Document for school buses. CONTRACTOR shall be responsible for the payment of all operating expenses of each vehicle, including the cost of maintenance to keep each vehicle in good working condition, properly serviced and greased, and shall make all necessary repairs and replacements. BPS shall have first priority for use of the school buses associated with this Agreement, including use for field, athletic, and activity trips. All vehicles providing transportation services shall at all times be operated in accordance with all relevant Federal, State, and local government laws and regulations. CONTRACTOR shall provide, equip, operate, and maintain all vehicles providing services in strict accordance with all Federal, State, and any other local government minimum standards for school vehicles, and such additional requirements as set forth in this Agreement. Additionally, no vehicle shall be utilized to provide services that has failed to pass all mechanical inspections required by Federal, State, and local government laws and regulations. CONTRACTOR will be required to submit a fleet inventory report to BPS on an annual basis and provide notification each time a vehicle is added or removed from the fleet.
 - (1) All vehicles shall be maintained in a clean and sanitary condition and shall have good interior and exterior appearance and not affix any stickers or other unauthorized items to the interior or exterior of buses during the Term of this Agreement. During a pandemic, any PPE/sanitizing expense shall be covered and approved by the District.
 - (2) CONTRACTOR will inspect all buses prior to the beginning of the first daily trip or more often as required by BPS and to report any defect affecting safety and immediately report to authorized service personnel.
 - (3) CONTRACTOR will perform a complete interior inspection of each bus after each run and trip to ensure no students are left on board, drivers will use and display bus empty sign in the rear window of bus when no students are on board.
- d. **Vehicle Availability.** All school buses shall be available for services when required. CONTRACTOR should be aware that cold weather conditions are prevalent in

winter months and should make appropriate accommodations. Financial penalties may be levied in the event that a sufficient number of vehicles are unavailable for any given service day per route(s) not serviced.

- e. Spare Buses. A spare bus is defined as a vehicle available for replacement of a regular service bus for reasons of breakdown, maintenance, emergency, etc. CONTRACTOR shall maintain a minimum of 5 percent spare bus inventory including one (1) wheelchair accessible bus. Spare buses have no age requirement and shall pass mechanical inspections required by Federal, State, and local government laws and regulations.
- f. Safety and Communication Equipment. CONTRACTOR shall, at its expense throughout the life of this Agreement, provide two-way digital radio communication system on all buses, including spare buses. BPS has converted to digital radios for transportation communications. The two-way radio system shall comply with FCC requirements. The range of transmission shall be strong enough under all weather conditions to cover the entire District. The two-way radio system shall include private line monitoring/sending units. In addition, all buses shall be equipped with high intensity strobe lights.
- g. Bus Storage Facilities. CONTRACTOR will be required to provide bus storage facilities as follows: CONTRACTOR shall identify, in writing, the location of site (or sites) for bus yards at time of execution of this Agreement and updated at the time of any Renewal Term.
- h. BPS Inspections. At any time during the contract period, BPS reserves the right to inspect any and all buses, the facilities for maintaining the buses and the operational procedures utilized by CONTRACTOR.
- i. Fuel. Other than for purposes of fueling a motor coach and when fueling is required out-of-town, Federal tax-exempt fuel shall be used for all BPS transportation functions. BPS will purchase and store said tax-exempt fuel at the BPS Facilities & Transportation fueling station. All CONTRACTOR vehicles used in the performance of this Agreement shall fill fuel at the BPS Facilities & Transportation fueling station in accordance with the Working Document.
 - (1) BPS shall invoice CONTRACTOR for cost of fuel used on a semi-monthly basis (15th and end of the month) within ten (10) business days following completion of the services reflected on the invoice from CONTRACTOR. Payment from CONTRACTOR is due and payable within fifteen (15) days of the receipt of the invoice.

- (2) BPS may waive the requirement for on-site fuel, provided CONTRACTOR shall be responsible for any difference in price.

2.07. Standards of Performance

- a. CONTRACTOR Point of Contact. CONTRACTOR shall provide contact telephone numbers and email addresses to ensure timely access for BPS representatives from 30 minutes prior to the first scheduled student pickup in the morning to 30 minutes following the final scheduled student drop-off in the afternoon of each day that services are provided.
- b. Bus Operations. The routing plan shall at all times be performed as defined for each individual bus route in a timely and consistent manner, and within the policies, procedures, and parameters ascribed by BPS. CONTRACTOR shall ensure that drivers are familiar with their assigned routes. To facilitate this process, prior to the start of the school year CONTRACTOR shall have each regularly assigned route driver complete dry runs (practice without students) of his/her assigned route. Any initial route revisions to route timing or directions should be provided to BPS.

In accordance with BPS School Board Policy regarding school bus emergency evacuation drills, CONTRACTOR shall undertake the required drills for all students transported under the terms of this Agreement. BPS shall be informed of the times and dates of the evacuation drills at least three (3) days in advance. CONTRACTOR shall maintain suitable records of such evacuation drills each year and BPS shall receive copies of such records.

- c. Student Discipline. BPS has adopted policies and regulations for the conduct of students on the vehicles of CONTRACTOR. Such policies, rules, and regulations can be viewed on BPS' website. Said policies and regulations shall be enforced by CONTRACTOR and BPS. Violations of BPS rules and regulations for the conduct of students shall be reported to the BPS Transportation Office within twenty-four (24) hours of the infraction for processing (non-school days do not count). Student Conduct Reports are the responsibility of both the driver and monitor. BPS will make final determination on student discipline and penalties imposed on students. In no case should a driver eject a student from a bus for misbehavior. If there is an extreme emergency endangering the safety of other students, BPS officials are to be contacted immediately.
- d. Driver qualifications and information.
 - (1) Throughout the Term of this Agreement, CONTRACTOR shall provide all personnel including: Management, Drivers, Operations, Clerical, and Maintenance (collectively referred to as "Personnel") necessary for the provision of the transportation services under this Agreement. All

Personnel shall meet minimum required and appropriate licensing and certification requirements as may be required for their position by Federal, State, and local government laws and regulations, as well as policies, procedures, and parameters ascribed by BPS. No uncertified Driver may drive any bus provided under this Agreement.

- (2) All buses used by CONTRACTOR shall be operated at all times by qualified, competent, and prudent Drivers who meet all Federal and North Dakota Department of Transportation requirements. CONTRACTOR agrees to indemnify BPS and any administrator for any civil penalty assessed on account of non-compliance by any CONTRACTOR Personnel with Federal or State requirements. Each Driver shall be capable of carrying out all of the duties of a school bus driver in accordance with rules as may be issued by BPS and State Law, this includes substitute Drivers. CONTRACTOR shall maintain a list of all Drivers, including substitutes, that includes the Driver's school bus operator's license number and date of expiration, this list shall be sent to the Transportation Coordinator by September 15 annually and updated as needed.
- (3) It is recognized that for the protection of the children, drivers, monitors, and all other personnel coming in contact with the children must be of stable personality and of the highest moral character. BPS places upon CONTRACTOR, and CONTRACTOR agrees to accept, the full responsibility of assuring such qualities in its Personnel. CONTRACTOR agrees not to allow any Personnel to drive a school bus, whose moral character is not of the highest level or whose conduct might in any way expose any child to any impropriety of word or conduct whatsoever. Nor shall CONTRACTOR allow any person to drive a school bus who is not physically and/or emotionally capable of performing the essential functions of their job, with or without reasonable accommodation. No person who is serving a sentence in a penal or correctional institution shall be employed or work under this Agreement.
- (4) Upon initial employment and every second year thereafter, all Drivers shall have a complete physical examination with the exception of those Drivers with conditions that warrant yearly physicals (high blood pressure, diabetes, etc.) consistent with standards under applicable North Dakota law. Records of these Drivers shall be accessible for examination by, or submitted to, BPS upon request. Any applicant demonstrating evidence of alcohol or drug abuse shall be deemed unfit to provide services to BPS in this Agreement and be reported immediately to BPS.

- (5) All Drivers that transport BPS students are required to have a background check. No Driver will be allowed to transport BPS students until the background check is complete and approved by BPS. The cost of the background check shall be the responsibility of BPS. CONTRACTOR shall follow the protocol developed by BPS for obtaining a background check.
- (6) BPS may request the removal of any prospective or actual CONTRACTOR Personnel from performing any services under this Agreement. Such a request shall be made in writing and shall be substantiated as to the rationale for the request. CONTRACTOR shall make every effort to comply with any such request. Failure of a Driver to observe any and all regulations shall be deemed sufficient reason for the removal of said Driver from participation in the performance of this Agreement. CONTRACTOR shall record each time a Driver is convicted of a moving violation or fails to pass a substance abuse test. Serious moving violations including, but not limited to, reckless driving, substance abuse violations or convictions of felonies or misdemeanors shall be immediately reported to BPS.
- (7) After two months of employment, new Drivers will receive a performance evaluation by the Bus Manager or approved designee. Copies of the evaluation shall be retained by CONTRACTOR and available to BPS upon request. Once a year CONTRACTOR shall check the driving records of each Driver at the State Driver's License Division, or alternate approved resource, and shall submit such records to the BPS Transportation office.
- (8) The failure to operate vehicles in accordance with this Agreement by CONTRACTOR Drivers shall be deemed a material breach of this Agreement. When feasible, BPS must give ten (10) days' notice of the failure. This Agreement shall not be terminated if, upon receipt of the notice, CONTRACTOR promptly cures the failure within ten (10) days.
- (9) Continuity of Drivers and assignments is required. Failure to maintain reasonable continuity, monitored on a biannual basis. This agreement shall not be terminated if a corrective action plan is written and approved within a reasonable time. BPS reserves the right to determine what constitutes reasonable.

2.08. Reporting Requirements and Records.

- a. Reporting Requirements. CONTRACTOR shall provide to BPS, at any time on request, data and information required to support the tracking of CONTRACTOR performance under this Agreement. CONTRACTOR shall provide ridership information in order to assist BPS in complying with Department of Public

Instruction reporting requirements. This information will include vehicle inventory, route number, route type, vehicle license number, vehicle capacity, total runs per year, total rides per run, total rides per year, miles per run, and max ride time in minutes, this information shall be submitted to BPS by the last Friday of the month of June each year.

- b. Reporting of Accidents. CONTRACTOR shall immediately report all on-road incidents and accidents involving vehicles providing services to BPS students to the Transportation Coordinator as well as be responsible for notifying all parents/guardians of any student involved in traffic accidents while riding on a CONTRACTOR bus. CONTRACTOR shall record and track the cause, date, time, and severity for every on-road accident involving a vehicle providing services for BPS. The BPS Superintendent, or his/her designee, will be the sole spokesperson with media regarding any accident.
- c. Retention of Records. CONTRACTOR shall maintain maintenance, employment, permitting, and licensing records in connection with its services provided under this Agreement for a period of five (5) years and make such records available for inspection and copying by BPS or its designated agents upon request. Requests made for data will be compiled within a reasonable time frame, generally considered to be no more than three (3) school days.
- d. Public Records. Both parties understand that BPS is bound by the North Dakota Open Records Law. CONTRACTOR acknowledges that it is obligated to assist BPS in retaining and producing records that are subject to North Dakota Open Records Law, and that the failure to do so shall constitute a material breach of this Agreement, and that CONTRACTOR must defend and hold BPS harmless from liability under the law.
- e. Student Data. CONTRACTOR acknowledges that student data is protected by both Federal and State law. If BPS determines that CONTRACTOR has disclosed any student record information in violation of either Federal or State law, without prejudice to any other rights or remedies BPS may have, BPS shall be entitled to immediately terminate this Agreement without further liability.
- f. Ownership of Information. All information and any derivatives thereof, whether created by BPS or CONTRACTOR under this Agreement, remains the property of BPS and no license or other rights to such information is granted or implied hereby. This provision shall not apply to any intellectual property created and/or used by CONTRACTOR under the terms of this Agreement which intellectual property shall remain the property of CONTRACTOR.

3.0 Student Riders and Parents

3.01. Student Registration. BPS shall be responsible for student registration and provide CONTRACTOR with student information needed to establish routes. Registration will begin on or about May 15 of each year and have a cutoff date of the Friday proceeding July 15. Any students who register between the cut-off date and the first day of school will be added to a route no later than one (1) month after the start of school or the date of registration. New students to the area and SIT students (students in transition) will be routed as soon as reasonably possible.

3.02. Providing Bus Information. CONTRACTOR will be responsible for notifying all parents/guardians of route bus number, bus pickup/drop off times and pickup/drop off locations once school starts. CONTRACTOR shall be responsible for tracking the five (5) day no call/no show rule and let BPS know when to remove said student(s) from the registration list. CONTRACTOR will also be responsible for tracking students who want to begin transportation at a date later than the first day of school.

3.03. Parent Information. CONTRACTOR shall maintain the parent/guardian instant notification system, if a bus is running ten (10) or more minutes ahead of or behind schedule, the system will generate an email, text, or call informing the parent/guardian that the bus is either ahead of or behind schedule. CONTRACTOR shall be responsible for notifying all parents/guardians of any student involved in traffic accidents while riding on a CONTRACTOR bus. Any message sent to parents/guardians by CONTRACTOR shall also be sent to the BPS Transportation Department.

4.0 Student and Vehicle Tracking/Routing

4.01. Routing and Scheduling Software. BPS has authorized the use of Transfinder (or approved equal) for purposes of routing and scheduling school buses. BPS, at its expense, will house the Transfinder software on its sequel server and purchase necessary site licenses for BPS employees. CONTRACTOR, at its expense, shall acquire an adequate number of Transfinder licenses to perform under the terms of this Agreement. All CONTRACTOR Personnel utilizing Transfinder shall be properly trained on Transfinder.

4.02. Fleet GPS Tracking. CONTRACTOR, at its expense, shall obtain the software and equip all route vehicles used under this Agreement with a Global Positioning System (GPS) that will integrate with the Transfinder routing software. The GPS system must be capable of providing specific times for house or school pick-up or drop off occurrences. CONTRACTOR shall allow BPS, at BPS' expense, to purchase one or more additional licenses and allow BPS access to the GPS system.

4.03. Software, Maps and Map Updates. Except as otherwise set forth in this Agreement, any additional software, maps and/or map updates mutually agreed upon by the parties shall be set

forth in the Working Document including the allocation of any costs related to said software, maps and/or map updates.

5.0. Insurance

5.01. Required Insurance Coverage. CONTRACTOR agrees at its sole expense to procure and keep in force during the entire period of this Agreement automobile, general, and umbrella liability covering all operations, locations, vehicles and employees used in the performance of this Agreement. BPS shall be named as an additional insured under these policies. Such insurance must specifically include a provision to defend, indemnify, and hold harmless BPS. The minimum required limits of insurance are as follows or as mutually agreed upon:

\$5,000,000 single limit for bodily injury and property damage liability

\$50,000 no-fault insurance coverage

Minimum required coverage for uninsured motorist

\$10,000,000 Umbrella Liability

Workers' Compensation at Statutory Limits

5.02. Insurance Company. The insurance company must have a minimum Best Rating of A and be licensed to do business in the State of North Dakota. A certificate of insurance in favor of BPS must be provided. It must clearly show BPS named as an additional insured, and it must further provide that the policy shall not be canceled, non-renewed, or materially changed so as to affect the insurance described until sixty (60) days' notice of such action has been delivered to BPS.

5.03. Proof of Coverage. Before commencement of service, and annually thereafter no later than July 1, CONTRACTOR shall provide BPS with a certificate of insurance indicating the required coverage. Failure to maintain insurance at all times shall be a material default under this Agreement and shall entitle BPS to immediately terminate this Agreement without further liability.

5.04. Workers Compensation Insurance. BPS will not be responsible for any job-related injuries to CONTRACTOR employees.

5.05. Indemnification.

- A. To the extent permitted under North Dakota law and subject to available appropriations or liability insurance, BPS hereby agree to protect, defend, and indemnify CONTRACTOR and its respective officers, directors, shareholders, agents and employees harmless from and against i) any and all claims, demands, causes of action, suits, and/or judgments by third parties against CONTRACTOR, and ii) any costs or expenses of any nature whatsoever, incurred by CONTRACTOR.

- B. CONTRACTOR hereby agrees to protect, defend, and indemnify BPS, together with its officers, directors, and affiliates harmless from and against any and all claims, demands, losses, or expenses, of any nature whatsoever, including attorneys' fees, to the extent arising directly or indirectly from CONTRACTOR, except to the extent solely attributable to the negligence or willful misconduct of BPS.

6.0. Payment to CONTRACTOR.

6.01. Payment for Services. CONTRACTOR shall submit via email the CONTRACTOR Busing Template provided by BPS on a semi-monthly basis (15th and end of the month) within ten (10) business days following completion of the services provided under this Agreement. Payment from BPS is due and payable within fifteen (15) days of receipt of invoice.

- a. Activities/Field Trip Busing Reports. Field and Athletic/Activity trips that are invoiced by the mile shall include, miles driven multiplied by the approved activity or field trip rate. Fuel escalation charge shall be listed in the same manner. Field and Athletic/Activity trips that are invoiced by the hour shall include the number of hours charged multiplied by the approved rate for hourly activities. Copies of driver log sheets shall be on file for review. Each invoice is subject to audit and verification by BPS. Undisputed invoices shall be paid within fifteen (15) days of receipt.
- b. Vehicle Count Changes. CONTRACTOR acknowledges that throughout the term of this agreement BPS will be engaged in efforts to improve the efficiency of its transportation operation. CONTRACTOR further warrants that pricing provided on the Rate Form will not change if BPS increases or reduces the number of buses in use by 10 percent of the number of buses used on the last day of the previous school year. Any increase or decrease above 10 percent will result in a negotiation of any pricing change between BPS and CONTRACTOR.
- c. Payments to Constitute a Current Expense of BPS. The obligation of BPS to make the required payments hereunder will constitute a current expense of BPS, are from year to year and do not constitute a mandatory payment obligation of BPS in any fiscal year beyond the then current fiscal year of BPS. BPS' obligations will not in any way be construed to be an indebtedness or obligation of BPS in contravention of any applicable law.

6.02. Compensation Schedule. Compensation schedule shall only include price adjustments as listed under each category.

- a. General Transportation.
Fuel escalation expenses will follow 6.02.b.5

- (1) The rate paid by BPS to CONTRACTOR for general transportation shall be \$327.06 per route per day of service, subject to change.
- (2) \$5.87 per route shall be added for the 22-23 school year.
- (3) \$3.55 per route shall be added for the years after 22-23.

b. Activities/Field Trip Busing. The rate paid by BPS for activities/field trip busing shall be as follows:

- (1) School Bus \$ 2.92/mile (over 30 miles)
- (2) Rate per Hour \$76.09/hour (less than 30 miles)
(1.5 hour minimum)
- (3) Activity Bus \$3.20/mile (minimum 50 miles per trip)

i. Activity Bus is guaranteed at-least 12,800 miles per fiscal year.

- (4) Down time rate will follow the annual BPS down time rate which shall be determined annually when BPS has an approved salary schedule for the year plus approved associated benefits. Down time shall begin at arrival of destination and end at departure. Driver(s) will be required to stay on location with the bus in case of emergency. In the event of an overnight trip, BPS will pay CONTRACTOR the cost of room and meals for the bus driver consistent with BPS guidelines.
- (5) The price paid per mile for activities/field trip busing shall be adjusted effective the first day of the month following a change in the actual cost of fuel purchased by CONTRACTOR. An adjustment of one cent per mile shall be made for each five cent per gallon increase or decrease in the cost of fuel. In addition, an adjustment of \$0.45 per route per day shall be made for each five cent per gallon increase or decrease in the cost of fuel. The base price for purposes of this calculation shall be established at \$2.50 for gasoline and \$2.50 for diesel fuel, which includes State and Federal taxes minus any Federal or State reimbursements. Receipts indicating the most recent cost paid by CONTRACTOR for fuel purchases relating to this Agreement shall be submitted monthly to BPS to substantiate the adjustment.

c. Price Escalation. The amount of the adjustment shall be mutually agreed upon by both parties in April of each year.

- (1) For 23-24, the increase shall be no less than 3%.
- (2) For 24-25, the increase shall be no less than 2.5%
- (3) For 25-26, the increase shall be no less than 2.5%

- d. Weather and Road Conditions. When bus services are canceled due to inclement weather and/or road conditions, such cancellation shall result in payment for service actually rendered. If BPS is not required to make-up the canceled school day, BPS shall pay CONTRACTOR 75% of what would have been the charge, per bus, under this Agreement had that day's service been actually rendered.

7.0. Termination.

7.01. BPS' Termination for Breach and/or Default. BPS may terminate this Agreement for breach and/or default, in whole or in part, by written notice to CONTRACTOR if BPS' Superintendent or designee has a reasonable basis to believe that CONTRACTOR has:

- a. not satisfactorily resolved any term or condition;
- b. violated any applicable law or regulation;
- c. made any general assignment for the benefit of creditors;
- d. in BPS' sole opinion, become insolvent or in an unsound financial condition so as to endanger performance hereunder;
- e. become the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors; or
- f. a receiver, trustee, or similar official is appointed for CONTRACTOR or any of the Contractor's property.

7.02. Termination Due to Funding Limitations. BPS currently intends to continue the Term through the Original Term and the Renewal Terms and to pay the payments required herein. BPS reasonably believes that legally available funds in an amount sufficient to make all payments during the Original Term and the Renewal Terms can be obtained. In the event funding from State, Federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement, BPS' Superintendent or designee may, with ninety (90) day written notice and without liability for damages, terminate the Contract under any such new funding limitations and conditions.

7.04. CONTRACTOR Termination for Breach and/or Default. CONTRACTOR may terminate this Agreement for breach and/or default, in whole or in part, by ninety (90) day written notice to BPS if CONTRACTOR has a reasonable basis to believe that BPS has failed to perform, or otherwise breached, any term or condition of this Agreement.

- a. Continuation of Services. CONTRACTOR agrees to continue to provide transportation services during the ninety (90) day notice period and BPS agrees to

pay CONTRACTOR for transportation services under the payment schedule of this Agreement through the last day transportation services are provided by CONTRACTOR.

8.0. Independent Contractor.

8.01. Status as Independent Contractor. CONTRACTOR agrees and stipulates that in performing this Agreement, it is acting as an Independent Contractor, and that no relationship of employer and employee, partnership or joint venture is created by this Agreement. CONTRACTOR has exclusive control over work hours, location, and other details of such services, and BPS' sole interest is to ensure that said service shall be performed and rendered in a competent, safe, efficient, timely and satisfactory manner in accordance with the terms of this Agreement.

8.02. Payment of Taxes. CONTRACTOR has the sole obligation to provide for and pay any contribution or taxes required by federal, state or local authorities imposed on or measured by income. CONTRACTOR specifically covenants not to file any complaint, charge, or claim with any local, State or Federal agency or court in which CONTRACTOR claims to be or to have been an employee of BPS during the period of time covered by this Agreement and that if any such agency or court assumes jurisdiction of any complaint, charge or claim against BPS on CONTRACTOR behalf, CONTRACTOR will request such agency or court to dismiss such matter.

8.03. Fringe Benefits. CONTRACTOR further agrees that BPS is not to be charged with the obligation or responsibility of extending any fringe benefits such as hospital, medical and life insurance, or pension plans which may be extended to employees of BPS from time-to-time.

9.0. Dispute Resolution.

9.01. Mediation. Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to the commencement of a lawsuit. BPS and CONTRACTOR shall, within thirty (30) days of a request for mediation, seek to mutually agree upon a mediator. If the parties are unable to agree upon a mediator, the mediation shall be administered by the American Arbitration Association. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Bismarck, North Dakota, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. If BPS and CONTRACTOR are unable to reach an agreeable resolution through mediation, either party may commence litigation.

9.02. Applicable Law and Venue. This Agreement is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Agreement must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or forum non conveniens.

9.03. Costs of Enforcement. In any dispute arising under or relating to this Agreement, the prevailing party shall be entitled to recover the costs of adjudicating such disputes, including but not limited to reasonable legal fees and expenses incurred. For this purpose, the term "prevailing party" shall mean the party whose position is substantially sustained in the settlement or in the final judgment rendered in any litigation.

10.0. Miscellaneous.

10.01. Waiver. Any express waiver or failure to exercise promptly any right under this Agreement will not create a continuing waiver or any expectation of non-enforcement. Any waiver shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing and signed by an individual authorized to execute said waiver for CONTRACTOR and/or BPS.

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

10.03. School Board Discretion. The BPS School Board, in its sole and absolute discretion, has the sole and absolute power to interpret and/or adjust all matters arising out of this Agreement not specifically provided for herein. This interpretation and/or adjustment shall be final, conclusive, and binding on the parties hereto.

10.04. Material Terms. All the terms and conditions of this Agreement shall be deemed to be substantial and important covenants and any violation of any of them shall be deemed to be material and may operate as a cause for termination of this Agreement.

10.05. 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 BPS 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 BPS during the remainder of the contract term. If BPS and Contractor are unable to agree on a price adjustment to the contract due to such mandate(s), then either

BPS or Contractor may terminate this contract with one hundred and twenty (120) days written notice to the other. In the event no agreement can be reached, BPS and Contractor agree to cooperate to transition transportation services back to BPS, BPS agrees to pay Contractor at the rates otherwise set forth herein until the transition is complete, and neither BPS or Contractor will make a claim against the either for not completing the term of this contract.

The contract amounts may be adjusted by negotiation between Contractor and the School Board if mandatory employee health insurance is required by the federal government.

After the signing of this agreement, in the event of new laws, rules and regulations as required by State or Federal jurisdictions or in the event of exorbitant operational increases that would place new demands on the Contractor and would substantially increase the cost of this agreement, the Contractor has the right to renegotiate this agreement. The scope of renegotiations would be limited to the reasons specified in this paragraph.

10.06. Severability. It is understood and agreed that each provision of this Agreement is severable from and valid and binding regardless of the validity or invalidity of any other clause or clauses in this Agreement.

10.07. Modification. No Waiver, alteration or modification of any provisions of this Agreement 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.

10.08 Notice. All notices, requests, demands, waivers, consents and other communications hereunder shall be in writing, shall be delivered either in person, by other electronic means, by overnight air courier or by Certified Mail, return receipt requested, and be directed to the parties at the following addresses (or such other address as shall be given in writing by a party hereto).

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

If to CONTRACTOR, addressed to:
Harlow's School Bus Service, Inc.
Attn: Jacob R Iverson
Title: Sr. Vice President
Address: 1021 South 23rd Street, Suite A
City, State Zip: Bismarck, ND 58504

If to BPS, addressed to:
Bismarck Public School District
Attn: Darin Scherr
Business and Operations Manager
806 North Washington Street
Bismarck, ND 58501

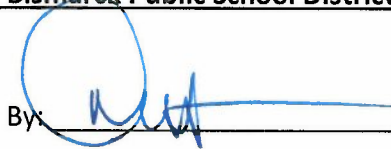
10.10. Entire Contract. This Agreement and any attached appendices constitute the sole and entire contract between the parties hereto and supersede any previous written or oral agreements. The provisions of this Agreement may be changed only by written agreement executed by both parties.

IN WITNESS WHEREOF the parties hereto, by their duly authorized representatives, have hereunto signed in his or her official capacity, intending that they and their successors and assigns be legally bound hereby, all as of the day and year written below.

Harlow's School Bus Service, Inc.

Bismarck Public School District No. 1

By: Jacob R Iverson

By:  _____

Title: Sr. Vice President

Title: Business and Operations Manager

Date: January 13, 2022

Date: 1/18/22