

**SHORT FORM OF AGREEMENT
FOR SCHOOL TRANSPORTATION SERVICES BETWEEN THE
TOWN OF FRAMINGHAM AND CONTRACTOR**

THIS AGREEMENT for School Transportation Services for the Years of 2016-2021, (hereinafter referred to as the "Project"), is made the 15th day of Aug 2016 by and between Durham School Services, L.P. a corporation duly organized under the laws of the Commonwealth of Massachusetts, with a usual place of business at 4300 Weaver Parkway Warrenton, IL 60555, hereinafter referred to as the "CONTRACTOR"), and the Town of Framingham, (hereinafter referred to as the "TOWN").

WITNESSETH that the CONTRACTOR and the TOWN, for the consideration hereinafter named, agree as follows:

ARTICLE 1: CONTRACT DOCUMENTS

The Contract Documents consist of the following, and in the event of conflicts or discrepancies among them, they shall be interpreted on the basis of the following priorities:

- (a) This short form of agreement for procurement between Town and contractor, including original signed and sealed Certificate of Corporate Authority
- (b) Invitation for bids, bid specifications, request for proposals or purchase description, including any addendum issued by the Town
- (c) Intentionally omitted
- (d) Performance bond in the form attached hereto as **Exhibit A**;
- (e) Intentionally omitted
- (f) Contractor's bid or proposal
- (g) Copies of all required bonds, certificates of insurance and licenses required under the contract,
- (h) The Summary of Conflict of Interest Law for Municipal Employees attached hereto as **Exhibit C**, as well as the acknowledgement of receipt of summary attached hereto as **Exhibit D** and confirmation of completion of online training.

EACH OF WHICH IS ATTACHED HERETO. These documents form the entire Agreement between the parties and there are no other agreements between the parties. Any amendment or modification to this Agreement must be in writing and signed by an official with the authority to bind the Town.

ARTICLE 2: SCOPE OF WORK

The CONTRACTOR shall furnish all materials, labor and equipment, and perform all work shown on the Contract Documents, and the CONTRACTOR agrees to do everything required by this Agreement and the Contract Documents.

ARTICLE 3: TERMS OF AGREEMENT

- (a) This Agreement shall be for a term of not more than 5 years, commencing on July 1, 2016 and ending on June 30, 2021, subject to annual appropriation.

ARTICLE 4: THE CONTRACT SUM

The CONTRACTOR agrees to provide to the TOWN items at the specific price points listed in the CONTRACTOR'S bid submission, for the duration of the contract, subject to price adjustments that are

expressly permitted by the Contract Documents. The TOWN makes no guarantee to purchase any minimum or specific quantity of goods or services under the provisions of this contract. The total value of the goods and services will not exceed the sum of \$ 29,150,309.00 (Twenty-Nine Million, One Hundred Fifty Thousand, Three Hundred Nine Dollars and no cents) without the issuance of a change order agreed to in writing by all parties.

ARTICLE 5: PAYMENT

The TOWN shall make payment in monthly installments within 30 days after receipt of an invoice delineating hourly vehicle usage. Payment due shall be based on the number of vehicles multiplied by the hourly rate per vehicle multiplied by the number of hours of transportation provided for the billing period, for each category of busing provided under the contract. The form and content of the monthly invoice shall be established by the School Department's Director of Finance.

ARTICLE 6: NON-PERFORMANCE

In the case of any default on the part of the CONTRACTOR with respect to any of the terms of this Agreement, the TOWN shall give written notice thereof, and if said default is not made good within such time as the TOWN shall specify in writing, the TOWN shall notify the CONTRACTOR in writing that there has been a breach of the Agreement, and thereafter the TOWN shall have the right to secure the completion of the work remaining to be done on such terms and in such manner as the TOWN shall determine, and the CONTRACTOR shall pay the TOWN any money that the TOWN shall pay another CONTRACTOR for the completion of the work, in excess of what the TOWN would have paid the CONTRACTOR for the completion of the work, and the CONTRACTOR shall reimburse the TOWN for all expenses incurred by reason of said breach. In case of such breach, the CONTRACTOR shall be entitled to receive payment only for work satisfactorily completed prior to said breach, less any retainage the TOWN is entitled to. The amount of any balance due the CONTRACTOR shall be determined by the TOWN and certified to the CONTRACTOR.

ARTICLE 7: TERMINATION

- (a) In addition to the provisions of Article 6 of this Agreement, the TOWN shall have the right to terminate this Agreement if funds are not appropriated or otherwise made available to support the continuation of this Agreement after the first year or for any successive year of the contract. The Town agrees to make reasonable efforts to obtain funding and all necessary authorizations, and to notify the CONTRACTOR promptly when it appears certain they will not be obtained. If partial funding sufficient for a clearly separable task or tasks should be made available, the parties may agree to perform their respective obligations relative to such tasks and amend the Contract accordingly.
- (b) The CONTRACTOR shall have the right to terminate this Agreement upon 90 days written notice if the TOWN fails to make payment within 30 days after it is due.

ARTICLE 8: NOTICE

All notices required to be given under this Agreement shall be in writing and shall be effective upon receipt by hand delivery or certified mail to:

Town of Framingham:
Department: Purchasing Department
Contact: Amy Putney

Title: Procurement Administrator
Email: alp@framinghamma.gov
Tel. #: 508-532-6040
Mailing Address: 150 Concord Street
Framingham, MA 01702

Contractor:

Company: _____
Contact: _____
Title: _____
Email: _____
Tel. #: _____
Mailing Address: _____

ARTICLE 9: INSURANCE

- (a) The CONTRACTOR shall, at its own expense, obtain and maintain general liability and auto/motor vehicle liability insurance policies protecting the TOWN in connection with any operations included in this Agreement. As proof of insurance, the CONTRACTOR shall provide Certificate(s) of Insurance specifically stating in the Description portion of the certificate:

“The Town of Framingham is named as additional insured in regards to General and Auto Liability on the policies noted above by contractual Agreement.”

Coverage amounts shall be in at least the amounts noted below, and may be obtained either through a single carrier or a combination of primary carrier and excess/umbrella coverage:

General Liability: At least **\$15,000,000** per occurrence, and,
at least **\$15,000,000** aggregate

Auto Liability: At least **\$1,000,000** bodily injury limit per person
\$15,000,000 bodily injury limit per accident and
\$1,000,000 property damage limit per accident

- (b) Intentionally omitted
- (c) The CONTRACTOR shall, before commencing performance of this Contract, provide insurance for the payment of compensation and the furnishing of other benefits in accordance with Mass. Gen. L. Ch. 152, as amended, to all employed under the Contract and shall continue such insurance in full force and effect during the term of the Contract.
- (d) All insurance coverage shall be in force from the time of the Agreement to the date when all work under

the Contract is completed and accepted by the TOWN. Certificates and any and all renewals substantiating that required insurance coverage is in effect shall be filed with the TOWN. Since this insurance is normally written on a year-to-year basis, the CONTRACTOR shall notify the TOWN should coverage become unavailable or if its policy should change. Any cancellation of insurance, whether by the insurers or the insured, shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and to the TOWN at least fifteen days prior to the intended effective date thereof, which date should be expressed in said notice.

- (e) The CONTRACTOR shall indemnify, defend, and save harmless the TOWN and all of the TOWN'S officers, agents and employees from and against all suits and claims of liability of every name and nature, including costs of defending any action, arising out of or resulting from any act, omission, or negligence of the, CONTRACTOR subconsultants and its and their agents or employees in the performance of the work covered by this Agreement and/or failure to comply with terms and conditions of this Agreement. The foregoing provisions shall not be deemed to be released, waived or modified in any respect by reason of any surety or insurance provided by the CONTRACTOR under the Contract.

ARTICLE 10: PERFORMANCE AND PAYMENT BONDS (IF APPLICABLE)

- (a) The CONTRACTOR shall furnish a **100% Performance Bond** from a surety company qualified to do business under the laws of the Commonwealth of Massachusetts which is satisfactory to the TOWN in the full amount of the Contract Price for the first year in the form attached as **Exhibit C**. The performance bond shall be renewed annually as set forth in the Contract Documents.
- (b) Intentionally omitted.

ARTICLE 11: SUBCONTRACTING OF WORK

The CONTRACTOR shall not subcontract any of the work that it is required to perform under this Contract to any corporation, entity or person without the prior written approval of the TOWN.

ARTICLE 12: PREVAILING WAGE RATES

Pursuant to Mass. Gen. Laws c. 71, §7A, the CONTRACTOR shall pay the prevailing wage as determined the Commissioner of Labor and Industries for each person employed under this contract. The CONTRACTOR shall create and maintain records evidencing compliance with this requirement for a period of not less than three years from the date of completion of the Contract.

ARTICLE 13: OWNERSHIP OF DOCUMENTS

Upon completion of the final payment to the CONTRACTOR, the TOWN shall be the owner of all plans, specifications, electronic data and computations created by the CONTRACTOR that relate to this Agreement. The TOWN agrees that the information contained therein was produced specifically for this Agreement and agrees to hold the CONTRACTOR harmless from any liability of the TOWN'S use of these documents in any future project not directly related to the subject matter of this Agreement.

ARTICLE 14: MATERIALS AND WORKMANSHIP

Intentionally omitted.

ARTICLE 15: GUARANTEE OF WORK

The Contractor agrees that the vehicles and equipment specified in the Contract Documents, as well as any modifications or enhancements made by the Contractor thereto shall be free from defects that interfere with the vehicle's or equipment's operational capability. The Contractor's obligation under this section shall be, without charge to the Town, to immediately correct any defects that are discovered. If the Contractor is unable to correct any such defect that prevents the vehicle or equipment from performing in accordance with such specifications and standards set forth in the Contract Documents, the Contractor shall provide a substitute vehicle or equipment as a replacement.

ARTICLE 16: GOVERNING LAW

The CONTRACTOR shall perform the work required under this Contract in conformity with requirements and standards of the TOWN and all applicable laws of the Commonwealth of Massachusetts, its political subdivisions, and the Federal Government.

This Agreement and performance thereunder are governed by the laws of the Commonwealth of Massachusetts and all other applicable by-laws and administrative rules, regulations and orders.

ARTICLE 17: BINDING AGREEMENT AND ASSIGNMENT OF INTEREST

This Agreement shall be binding upon the TOWN and the CONTRACTOR and the partners, successors, heirs, executors, administrators, assigns and legal representatives of the TOWN and the CONTRACTOR. Neither the TOWN nor the CONTRACTOR shall assign, sublet or transfer any interest in this Agreement without the written consent of each other, and such consent shall not be unreasonably withheld.

ARTICLE 18: MANDATORY ETHICS TRAINING

A summary of the Conflict of Interest Law is attached hereto as **Exhibit A** and must be distributed to all key employees of the Consultant (President, Vice President, Project Manager, and any other employees whose services are specifically required by this Agreement). Pursuant to Chapter 28 of the Acts of 2009, as amended, all key employees must complete online ethics training on the State Ethics Commission's website, www.mass.gov/ethics. Within thirty days of the date of this Agreement, each key employee must provide to the Town a signed acknowledgment of receipt of the summary of the Conflict of Interest Law, in the form attached hereto as **Exhibit B**, and a certificate of completion of the online training which must be printed at the completion of the training. In the event that the term of this Agreement extends for more than two years, all continuously employed key employees shall repeat the online training and provide the Town with a new certificate of completion within ninety days before or ninety days after the two-year anniversary of the date of this Agreement. Any new key employee who becomes employed by the Consultant after the date of this Agreement and whose services are specifically required by this Agreement must complete the online training and provide the Town with a certificate of completion within thirty days of the date on which his services commence pursuant to this Agreement. Satisfaction of these requirements is the sole responsibility of the Consultant and its key employees, and the Town shall have no liability for the Consultant's or its key employees' failure to meet these requirements.

IN WITNESS WHEREOF the parties hereto have executed copies of this Agreement the day and year first above written. *

*If a Corporation, attach to each signed copy of this Contract an attested copy of the vote of the Corporation on authorizing the said signing and sealing.

CONTRACTOR:

By: [Signature]
Title: LFO

[Signature]
Ed Gotgart
Chief Operating Officer Framingham Public Schools
Dated: 7/7/16

Corporate Seal:

[Signature]
Jennifer A. Pratt
Chief Procurement Officer
Dated: 7-6-16

Approved As To Form
[Signature]
Christopher J. Petrini, Town Counsel
Dated: 8/1/16

*Approved as to Funds Availability will be approved by
Council of officials Town of Framingham purchase order
for FY17 the amount amounts are added below*
[Signature]
Richard G. Howarth, Town Accountant

[Signature]
Robert J. Halpin, Town Manager
Dated: _____

Funding Source:

Requisition # _____

17063478
Org 67330000 Object 634402 Project _____ \$1,797,512
17003477
67330000 634404 \$313,003-

EXHIBIT C

Mandatory Training Requirements - Summaries and Online Training

Mandatory educational requirements under the Ethics Reform Bill

• Summary of the Conflict of Interest Law for Municipal Employees

By December 28, 2009, and on an annual basis thereafter, all current municipal employees must be provided with this summary of the conflict of interest law. Municipal employees hired after December 28, 2009, should be provided with the summary within 30 days of the date on which they commence employment, and on an annual basis thereafter. Every municipal employee is required to sign a written acknowledgment that he has been provided with the summary.

• Online Training Program

www.mass.gov/ethics - Under Education & Training Resources

By 12/28/09, and every 2 years thereafter, all current state, county and municipal employees must complete this training. Public employees hired after 12/28/09 must complete this training within 30 days of beginning public service, and every 2 years thereafter. This training is designed primarily for state employees. County and municipal employees should also use this training until it is revised with one tailored to them. Upon completing the program, employees should print out the completion certificate and keep a copy for themselves. Employees will be required to provide a copy of the completion certificate to the Town or City Clerk (municipal employees), their employing agency (appointed state and county employees), or to the Ethics Commission (elected state and county employees). Completing the single program will be considered by the Commission as meeting the Bill's training requirements until a second program is added. When multiple users attempt to complete the current training program using the same computer they may experience a problem accessing the beginning of the program. The user will need to open their internet browser, click on "Tools", then "Internet Options", select "Delete Cookies", then click "OK". The user will be able to click back on the Online Training module on the Commission's website and start at the beginning.

After you have completed the Online Training, print out the "State Ethics Commission Receipt", and return with the receipt on Page 9 of this packet "Conflict of Interest Law" .

Summary of the Conflict of Interest Law for Municipal Employees

This summary of the conflict of interest law, General Laws chapter 268A, is intended to help municipal employees understand how that law applies to them. This summary is not a substitute for legal advice, nor does it mention every aspect of the law that may apply in a particular situation. Municipal employees can obtain free confidential advice about the conflict of interest law from the Commission's Legal Division at our website, phone number, and address above. Municipal counsel may also provide advice.

The conflict of interest law seeks to prevent conflicts between private interests and public duties, foster integrity in public service, and promote the public's trust and confidence in that service by placing restrictions on what municipal employees may do on the job, after hours, and after leaving public service, as described below. The sections referenced below are sections of G.L. c. 268A.

When the Commission determines that the conflict of interest law has been violated, it can impose a civil penalty of up to \$10,000 (\$25,000 for bribery cases) for each violation. In addition, the Commission can order the violator to repay any economic advantage he gained by the violation, and to make restitution to injured third parties. Violations of the conflict of interest law can also be prosecuted criminally.

I. Are you a municipal employee for conflict of interest law purposes?

You do not have to be a full-time, paid municipal employee to be considered a municipal employee for conflict of interest purposes. Anyone performing services for a city or town or holding a municipal position, whether paid or unpaid, including full- and part-time municipal employees, elected officials, volunteers, and consultants, is a municipal employee under the conflict of interest law. An employee of a private firm can also be a municipal employee, if the private firm has a contract with the city or town and the employee is a "key employee" under the contract, meaning the town has specifically contracted for her services. The law also covers private parties who engage in impermissible dealings with municipal employees, such as offering bribes or illegal gifts.

II. On-the-job restrictions.

(a) **Bribes.** Asking for and taking bribes is prohibited. (See Section 2)

A bribe is anything of value corruptly received by a municipal employee in exchange for the employee being influenced in his official actions. Giving, offering, receiving, or asking for a bribe is illegal.

Bribes are more serious than illegal gifts because they involve corrupt intent. In other words, the municipal employee intends to sell his office by agreeing to do or not do some official act, and the giver intends to influence him to do so. Bribes of any value are illegal.

(b) **Gifts and gratuities.** Asking for or accepting a gift because of your official position, or because of something you can do or have done in your official position, is prohibited. (See Sections 3, 23(b)(2), and 26)

Municipal employees may not accept gifts and gratuities valued at \$50 or more given to influence their official actions or because of their official position. Accepting a gift intended to reward past official action or to bring about future official action is illegal, as is giving such gifts. Accepting a gift given to you because of the municipal position you hold is also illegal. Meals, entertainment event tickets, golf, gift baskets, and payment of travel expenses can all be illegal gifts if given in connection with official action or position, as can anything worth \$50 or more. A number of smaller gifts together worth \$50 or more may also violate these sections.

Example of violation: A town administrator accepts reduced rental payments from developers.

Example of violation: A developer offers a ski trip to a school district employee who oversees the developer's work for the school district.

Regulatory exemptions. There are situations in which a municipal employee's receipt of a gift does not present a genuine risk of a conflict of interest, and may in fact advance the public interest. The Commission has created exemptions, and is considering creating additional exemptions, permitting giving and receiving gifts in these situations. One commonly used exemption permits municipal employees to accept payment of travel-related expenses when doing so advances a public purpose. Other exemptions are listed on the Commission's website.

Example where there is no violation: A fire truck manufacturer offers to pay the travel expenses of a fire chief to a trade show where