

**MILWAUKEE BOARD OF SCHOOL DIRECTORS
BUSING CONTRACT**

This Contract is being entered into this 1st day of August 2019, by and between **Dairyland Buses, Inc.** (“Contractor”) and the Milwaukee Board of School Directors (“MPS”), a school district organized and operating pursuant to Wisconsin Statutes. This Contract is the result of an open competitive procurement, specifically Request for Bid (“RFB”) 5781. Contractor shall further be held to the “*General Specifications and Operating Procedures*”, (the “Specifications”), attached hereto as Appendix A and incorporated by reference.

1. SCOPE OF SERVICES

Contractor shall provide yellow bus transportation for school-sponsored field trips. General field trips are scheduled to various destinations by all MPS schools and some departments. Services must be provided in yellow buses only. Only vehicles meeting the age requirements listed on Appendix A under Section G-20 of the Specifications will be accepted for this blanket contract. Contractor will be required to provide the size vehicle necessary to accommodate all students, including, in some instances, students with orthopedic busing needs.

Field trips within the metro-Milwaukee area will generally be scheduled between the hours of 9:00 AM and 2:00 PM. The buses scheduled for field trips within metro-Milwaukee will not be required to stay with the group if the duration of the event is scheduled for more than 3 hours and said trip is an indoor trip. All outdoor field trips, defined as ‘trips without adequate facilities to utilize during inclement weather situations’ require the bus to stay with the group regardless of duration.

Field trips outside of the metro-Milwaukee area may also be scheduled outside of the hours of 9:00 AM and 2:00 PM. The buses may be required to stay with the group in these instances regardless of the event duration or if the trip is an indoor trip due to the location distance from the school.

Field trips for MPS field trips will occasionally take place with an earlier start and will require a pick-up before 9:00 AM and a return after 2:00 PM. The earliest pick-up required will be 8:20 AM, the latest return will be at 3:00 PM. Students need to arrive at the destinations by 9:00 AM at the earliest and depart at 2:30 PM at the latest.

Additionally, MPS field trips may occasionally require an orthopedically-equipped bus. Orthopedically-equipped buses shall accommodate no fewer than four wheelchairs and no fewer than six ambulatory students. Vendors capable of providing orthopedic busing should complete

The destinations listed in ¶ 3 of this Contract may not constitute all school field trip destinations that will be visited over the term of the Contract.

2. TERM

This Contract shall be in effect from August 1, 2019 through July 31, 2020, with the possibility of two one-year options to extend. MPS will base its renewal decisions on the following performance metrics to be rated by MPS personnel. Contractor must attain a minimum score of 90 points to be eligible for contract renewal; however, 90 points does not guarantee renewal.

Performance Metrics	Points
Customer Service/Responsiveness to Problem Solving	25
Safety (Timely reporting of incidents; vehicle accidents, incidents, breakdown)	30
Efficiency and Timeliness of Delivering Students by Time and Location required	30
Invoicing and Billing Process Followed	15
Total	100

No work shall commence before a Contractor receives a fully executed Contract and has been given approval to proceed. Any work performed by the Contractor prior to obtaining a fully-executed Contract with approval to proceed shall not be compensated pursuant to this Contract. Any continuation of the Contract beyond this term must be set forth in writing and signed by the original signatories to the Contract.

3. COMPENSATION

Contractor’s pricing for the term of the Contract shall be as follows:

District-Sponsored Field Trips With Pick-Up After 9:00 AM Yellow Bus – Drop and Go	
Destination	Flat Rate, Per Bus, Per Round Trip
MATC Mequon	\$140.00

District-Sponsored Field Trips With Pick-Up before 9:00 AM and/or Return after 2:00 PM Yellow Bus – Drop and Go	
Destination	Flat Rate, Per Bus, Per Round Trip
Junior Achievement	\$210.00

In the event this Contract is extended for additional term(s), this Contract is subject to the escalation/de-escalation clauses pursuant to section 4.3 of RFB 5781,

Total compensation under this Contract shall not exceed \$125,000.00.

The schools and departments utilizing the services will make individual encumbrances against this blanket contract. Contractor shall invoice the school or department utilizing the services according to the pricing set forth herein for each route.

A properly submitted invoice must include: the destination; the school(s) being served, and the flat rate as specified above. In the event the destination is one other than the specified above in the appendices to RFB 5781, the rate listed on the trip shall be honored. Deadhead to and from the terminal will not be paid. As a matter of practice, MPS attempts to pay all invoices in 30 days. It is mutually agreed that State Prompt pay law does not apply to this Contract.

Unless otherwise specified, MPS shall not pay invoices submitted more than 60 days after actual work. In the case of grant funding, no payments shall be made after grant close out. Final invoices must be marked as such.

4. TERMINAL OPERATIONS

The terminal location for Contractor is as follows:

3850 N. Holton Street
Milwaukee, WI 53212

5. NON APPROPRIATION OF FUNDS

This Contract is contingent upon the appropriation of sufficient funds by the State of Wisconsin and appropriate MPS officials.

6. NON-DISCRIMINATION

In the performance of work under this Contract, Contractor shall not discriminate in any way against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40) or sex. This prohibition includes but is not limited to employment; promotions, demotions and transfers; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. Contractor is required to include a similar provision in all subcontracts to this Contract. If MPS determines Contractor has violated this non-discrimination policy, MPS may terminate this Contract without liability for undelivered services or materials. MPS may also deem the Contractor ineligible to participate in future contracts with MPS.

7. INDEMNITY

Notwithstanding any references to the contrary, Contractor assumes full liability for all of its acts or omissions in the performance of this Contract, as well as the acts or omissions of its subcontractors. Contractor shall indemnify and hold harmless MPS, its agents, officers and employees against all liabilities, losses, judgments, decrees, costs, and expenses that may be claimed against MPS as a result of granting of this Contract to said Contractor, or that may result from the carelessness or neglect of said Contractor, its agents, or employees. If judgment is recovered against MPS in suits of law or equity for any reason, including by reason of the carelessness, negligence, or acts or omissions of the Contractor, against such persons, firms or corporations carrying out the provisions of the

Contract for the Contractor, the Contractor assumes full liability for such judgment, not only as to any monetary award, but also as to the costs, attorneys fees or other expenses resulting therefrom.

In accordance with applicable laws, MPS shall be responsible for defending and paying judgments on behalf of its officers, employees and agents while acting within the scope of their employment or agency for any claims that may arise out of MPS' negligence for acts, policies, or directives that affect the activities covered by this Contract.

8. DEFENSE OF SUITS

In the event any court action or administrative proceeding is brought against MPS or any of its officers, agents, or employees, for Contractor or its subcontractors' acts or failure in whole or in part to perform any acts required by this Contract, MPS shall tender its defense of any claim or action at law or equity to Contractor or Contractor's insurer, and upon such tender it shall be the duty of Contractor and Contractor's insurer to defend such claim or action without cost or expense to MPS, its officers, agents or employees. Contractor shall be solely responsible for the conduct and performance of the services performed under this Contract.

9. BACKGROUND CHECKS

Criminal background checks are required as set forth in G-09 of the Specifications.

10. INSURANCE AND PROOF OF FINANCIAL RESPONSIBILITY

Contractor understands and agrees that financial responsibility for claims or damages to any person, or to Contractor's employees and agents, shall rest with Contractor. Contractor and its subcontractors shall effect and maintain the insurance coverage set forth in G-13 of the Specifications. Contractor's indemnification obligation shall not be reduced in any way by existence or non-existence, limitation, amount or type of damages, compensation, or benefits payable under Workers' Compensation laws or other insurance provisions.

11. IRREPARABLE HARM

It is mutually agreed the breach of this Contract on Contractor's part shall result in irreparable and continuing damage to MPS for which money damages may not provide adequate relief. Therefore, the breach of this Contract on Contractor's part shall entitle MPS to both preliminary and permanent injunctive relief and money damages insofar as they can be determined under the circumstances. Provisions for Liquidated Damages are found in G-42 of the Specifications.

12. TERMINATION

For violations of or failure to adequately fulfill a contract, the Board may, within its sole discretion, terminate said Contract as set forth herein. When feasible, MPS must give 30 days' notice of the breach. The Contract shall not be terminated if, upon receipt of the notice, Contractor promptly cures the alleged violation within ten (10) days. In the event of termination, MPS will only be liable for the services rendered through the date of termination and not the uncompleted portion, or for any materials or services Purchased or paid for by Contractor for use in completing the Contract. Nothing in this Contract or any documents incorporated by reference shall prevent MPS from immediately terminating a Contract if the health, safety or welfare of MPS students is in imminent peril.

Additionally, it is understood that strict adherence to the provisions of this Contract, including, but not limited to, starting points, destinations and times of departure and arrival, are necessary to adequately fulfill this Contract. For violations of or failure to adequately fulfill a contract, the Board may, within its sole discretion, terminate this Contract. Failure to terminate shall not constitute a waiver of the Board's right to terminate for subsequent violations of or failure to adequately fulfill the Contract.

MPS further reserves the right to terminate this Contract without liability if it determines to bring transportation services in-house.

In lieu of terminating the entire Contract for a breach of contract, MPS may, in its sole discretion, reassign buses from Contractor to another contractor with available buses.

13. COMPLIANCE WITH APPLICABLE LAWS

Contractor shall comply with any and all applicable federal, state or local laws, rules and regulations, including such policies as may be enacted from time to time by MPS. Such statutes, rules and regulations of the federal government, the State of Wisconsin, and policies of MPS are incorporated herein by reference the same as if set out verbatim. If the statutes, rules and regulations should conflict with these terms, then it is understood that this Contract shall be deemed modified to conform to such statutes, rules and regulations.

14. INDEPENDENT CONTRACTOR

Contractor agrees and stipulates that in performing this Contract, it is acting as an Independent Contractor, and that no relationship of employer and employee, partnership or joint venture is created by this Contract. Contractor has exclusive control over work hours, location, and other details of such services, and MPS' 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 Contract.

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 covenant 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 MPS during the period of time covered by this Contract and that if any such agency or court assumes jurisdiction of any complaint, charge or claim against MPS on Contractor's behalf, Contractor will request such agency or court to dismiss such matter. MPS shall not be charged any obligation or responsibility whatsoever of extending any fringe benefits which may be extended to MPS employees, including any insurance, or pension plans.

Contractor further agrees that MPS 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 MPS from time-to-time and further agree to indemnify and hold harmless MPS and all its employees, officers and agents from any liability for personal injuries, including death, or for damage to or loss of personal property, which might occur as a result of the performance of the services provided for under this Contract.

15. ASSIGNMENT LIMITATION

This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns; provided, however, that neither party shall assign its obligations hereunder without the prior written consent of the other.

16. PROHIBITED PRACTICES

- A. Contractor during the period of this Contract shall not hire, retain or use for compensation any member, officer, or employee of MPS to perform services under this Contract, or any other person who, to the knowledge of Contractor, has a conflict of interest.
- B. Contractor hereby attests it is familiar with MPS's Code of Ethics, providing in pertinent part, "[a]n employee of Milwaukee Public Schools may not accept any gift or gratuity in excess of \$25.00 annually from any person, persons, group or any firm which does business with or is attempting to do business with MPS."
- C. No person may enter into this Contract for services that the MPS employee would otherwise perform as an employee.
- D. No current or former MPS employee may perform services on a professional services contract without the prior written consent of the MPS Chief Human Capital Officer or his/her designee.
- E. If the Contract is for apparel for \$5,000.00 or more, the Contractor agrees to provide only items manufactured by responsible manufacturers. Contractor is required to include a similar provision in all subcontracts to this Contract.

17. LIVING WAGE REQUIREMENT

Contractor shall comply with, and ensure its subcontractors performing work under this Contract comply with, Milwaukee Board of School Directors' Administrative Policy 3.09(17), which requires that employees be paid a "living wage."

18. NOTICES

Notices to either party provided for in this Contract shall be sufficient if sent by Certified or Registered mail, postage prepaid, addressed to the signatories on this Contract, or to their designees.

19. WAIVER

The waiver or failure of either Party to exercise in any respect any rights provided for in this Contract shall not be deemed a waiver of any further right under this Contract.

20. INTEGRATION / SEVERABILITY

This Contract and its exhibits and addenda, if any, RFB 5781 and Contractor's Response to RFB 5781 constitute the entire Contract among the Parties with respect to the subject matter hereof and supersede all prior proposals, negotiations, conversations, discussions and Contracts among the Parties concerning the subject matter hereof. No amendment or modification of any provision of this Contract shall be effective unless the same shall be in writing and signed by both Parties.

The District shall not be bound by any terms and conditions included in of Contractor's packaging, service catalog, brochure, technical data sheet or other document which attempts to impose any conditions at variance with or in addition to the terms and conditions contained herein.

If any term or provision of this Contract should be declared invalid by a court of competent jurisdiction or by operation of law, the remaining terms and provisions of this Contract shall be interpreted as if such invalid Contracts or covenants were not contained herein.

21. CHOICE OF LAW & FORUM

The state courts of Wisconsin shall be the sole forum for all disputes arising of this Contract. The validity, construction, enforcement and effect of this Contract shall be governed solely by the laws of the State of Wisconsin.

22. TIMING

Time is of the essence in this Contract.

23. CERTIFICATION REGARDING DEBARMENT OR SUSPENSION

Contractor certifies that neither Contractor or its principals; its subcontractors or their principals; the sub-recipients (if applicable) or their principals are suspended, debarred, proposed for debarment, voluntarily excluded from covered transactions, or otherwise disqualified by any federal department or agency from doing business with the Federal Government pursuant to Executive Orders 12549 and 12689. Contractor specifically covenants that neither the Contractor or its principals, its sub-contractors or their principals, or the sub-recipients (if applicable) or their principals are included on the Excluded Parties List System ("EPLS") maintained by the General Services Administration ("GSA").

24. FORCE MAJEURE

Terms are found in Section VII of the Specifications.

25. STUDENT DATA

Contractor acknowledges that student data is protected by both federal and state law. *See* Wis. Stat. § 118.125; 20 U.S.C. § 1232g(b); 34 C.F.R. § 99.1 *et seq.* If MPS 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 the MPS may have, MPS shall be entitled to immediately terminate this and every other existing Contract without further liability. Moreover, MPS may bar Contractor from future MPS contracts for varying periods up to and including permanent debarment.

Contractor agrees to maintain the confidentiality of any information regarding student riders which may be obtained from any sources associated with this service, other than information necessary to the performance of service, or the health and safety of the riders.

26. NON-DISCLOSURE

Absent prior written consent of the person listed in Section 3 or his/her designee, Contractor shall not: (1) disclose, publish, or disseminate any information, not a matter of public record, that is received by reason of this Contract, regardless of whether the Contractor is or is not under contract at the time of the disclosure; or (2) disclose, publish, or disseminate any information developed for MPS under this Contract. Contractor agrees to take all reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of the same information.

All information and any derivatives thereof, whether created by MPS or Contractor under this Contract remains the property of MPS and no license or other rights to such information is granted or implied hereby. For purposes of this Contract, "derivatives" shall mean: (i) for copyrightable or copyrighted material, any translation, abridgment, revision, or other form in which an existing work may be recast, transformed, or adapted; and (ii) for patentable or patented material, any improvement thereon.

Within ten business days of the earlier of receipt of MPS' written or oral request, or final payment, Contractor will return all documents, records, and copies thereof it obtained during the development of the work product covered by this Contract.

27. MPS LOGO/PUBLICITY

No Contractor shall use the MPS Logo in its literature or issue a press release about the subject of this Contract without prior written notice to and written approval of MPS' Director of Communication and Public Affairs.

28. ORDER OF PRIORITY

In the event of a conflict among the documents constituting this Contract, the order of priority to resolve the conflict shall be: 1) this Contract; 2) the Specifications; and 3) Request for Bid 5781.

29. PUBLIC RECORDS

Both parties understand that the Board is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Contract are subject to and conditioned on the provisions of Wis. Stat. § 19.21, *et seq.* Contractor acknowledges that it is obligated to assist the Board in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Contract, and that the Contractor must defend and hold the Board harmless from liability under the law. Except as otherwise authorized, those records shall be maintained for a period of seven years after receipt of final payment under this Contract.

30. COMPLIANCE REQUIREMENT

The requirements that follow are required per 12-month contract term. The HUB requirement on this Contract is 10%. The student engagement requirement of this Contract is 300 hours. The Career Education requirement for this Contract is 10 hours. Failure to achieve these requirements may result in the application of some or all of the sanctions set forth in Administrative Policy 3.10, which is hereby incorporated by reference.

IN WITNESS WHEREOF, the parties here to have executed this Contract on the day, month and year first above written.

CONTRACTOR (Vendor #: V0564974)

MILWAUKEE BOARD OF SCHOOL DIRECTORS

By: _____

By: _____

*Adria D. Maddaleni, J.D., Director
Procurement and Risk Management*

Date: _____

Date: _____

Dairyland Buses, Inc.
3850 N. Holton Street
Milwaukee, WI 53212
(414) 963-8770

By: _____

*Keith P. Posely, Ed.D.
Superintendent of Schools*

SS# or FEIN:

Date: _____

Budget Code: 000-0-0-000-BL-ECTS

By: _____

*Larry Miller, President
Milwaukee Board of School Directors*

Date: _____

Reviewed by Risk Management:

By: _____ Date: _____