

(ATTACHMENT 20) **AUTHORIZATION TO AMEND FY14 BUS CONTRACT  
AMOUNTS TO REFLECT FY14 EXPENDITURES AND TO  
ENTER INTO FY15 PUPIL TRANSPORTATION CONTRACTS**

Requisition R241225  
Contract Number C021137  
Vendor V022031

**MILWAUKEE BOARD OF SCHOOL DIRECTORS  
BUSING CONTRACT**

This Contract is being entered into this 1<sup>st</sup> day of July, 2014, by and between **Durham School Services, Inc.** ("Contractor") and Milwaukee Board of School Directors ("MPS") a school district organized and operating under Chapter 119, Stats., 5225 W. Vliet Street, Milwaukee, WI 53208.

**1. SCOPE OF SERVICES**

Contractor shall provide yellow school bus transportation services for students participating in district-sponsored athletics, mid-day kindergarten and extra-curricular activities. Contractor was chosen pursuant to B 5707 and shall be held to the specifications listed therein. Services consist of transporting students to and from activities and, if directed, to their home or designated location. A description of each service is provided below:

- Athletic and Interscholastic Academic Charters: This service provides transportation for athletic, forensic, debate, math and chess teams. The services include trips to games and meets, trips to-and-from practices and trips home for students after games, meets and practices when required. Service outside the metro-Milwaukee area is expected. Included is service to take students home after games/meets.
- After-School Activities: This service provides transportation for students who stay after school dismissal for authorized school activities. Students are dropped-off at designated locations throughout Milwaukee, usually at the closest MPS school site. Service is required after 7:00 pm, except Vincent HS which may have multiple times.
- Mid-Day Kindergarten Service: This service provides transportation for students at mid-day, either from school to home or from home to school. Bus schedules will be provided by Pupil Transportation. Bus vendors will be required to provide car seats and harness as required at own expense.

Schedules for all events will be provided by Pupil Transportation Services and/or the school via the districts Fleetrigger System or a TF-01 form. The majority of the destination sites will be to Milwaukee area schools and will occur between 3:00pm and 8:00 pm. There may be long trips to other schools throughout the state, including Saturdays and/or school holidays. This service may require as many as six (6) to eight (8) buses on certain dates. Please note:

1. Where destination sites are within Milwaukee County and the time estimated from drop-off at the site to the return pickup will be more than four (4) hours, the driver will not be expected to stay with the group and will not be paid for doing so.
2. Where destination sites are outside Milwaukee County and the time estimated from drop-off at the site to the return pickup will be more than four (4) hours, the driver will be expected to stay with the group and the contractor will be paid live time and mileage at the contracted rate plus \$15.00 per hour for driver dead time, the time during which the driver is idle waiting for the scheduled event to finish.
3. When outdoor events are being conducted at non-school sites such as county parks or municipal recreation sites, the driver and the bus should remain with the team if the estimated time is less than four (4) hours.
4. When there is an emergency and it is necessary to pair up teams on the initial trip to the competition sites, it is expected that separate buses will arrive at the sites for the return trips if the estimated time is less than four (4) hours.

Contractor shall provide these services in accordance with the terms and conditions of this Contract and the General Specifications and Operating Procedure 2014-2015 School Year, herein expressly incorporated by reference.

Contractor shall provide, at its own expense, all personnel required to perform the services under this Contract.

**2. TERM**

This Contract shall be in effect from July 1, 2014, through June 30, 2015, contingent on the appropriation of funds as set forth herein.

**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**

Subject to the escalation clauses set forth herein, Contractor’s pricing for the term of the Contract shall be as follows:

Athletics		
School(s)	Per Hour Rate	Per Mile Rate
Community	\$42.00	\$0.85
King	\$42.00	\$0.85
Vincent	\$42.00	\$0.85
Washington Multiplex	\$42.00	\$0.85

MPS will review on a monthly basis the applicability of the escalation clauses set forth in G-30 of General Specifications and Operating Procedures 2014-2015 School Year. Any changes will be documented by letter, which letter shall become part of this Contract by amendment hereto.

The amount to be encumbered for this Contract is not to exceed \$209,000.00. Total compensation under this Contract shall not exceed \$209,000.00

Contractor shall invoice on a monthly according to the pricing set forth herein for the routes. Invoices shall be submitted to:

MPS Transportation Services  
Attn: Michael Turza, Director  
5225 W. Vliet Street  
Milwaukee, WI 53208

A properly submitted invoice must include the route number, the school(s) being served; the number of days service was provided and the cost per route. 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 the Contractor is/ are as follows:

6001 N 91<sup>st</sup> Street  
Milwaukee, WI 53225

**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 the 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 the Contractor or Contractor's insurer, and upon such tender it shall be the duty of the Contractor and Contractor's insurer to defend such claim or action without cost or expense to MPS, its officers, agents or employees. The Contractor shall be solely responsible for the conduct and performance of the services performed under this Contract.

#### **9. BACKGROUND CHECKS**

A criminal information background check is required as set forth in Section G-36 of the General Specifications and Operating Procedures 2014-2015 School Year.

#### **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 the Contractor. Contractor and its subcontractors shall effect and maintain any insurance coverage set forth in G-40 of the General Specifications and Operating Procedures 2014-2015 School Year. 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.

#### **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 day's 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.

MPS reserves the right to terminate any contracts awarded pursuant to this RFP without liability if it determines to bring transportation services in house.

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.

In lieu of terminating the entire Contract for a breach of contract, MPS may in its sole discretion reassign buses from the breaching Contractor to the highest performing 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 the Milwaukee Board of School Directors. Such statutes, rules and regulations of the federal government, the State of Wisconsin, and the Board are incorporated herein by reference the same as is set out verbatim, and 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. Additionally, it is understood that strict adherence to the provisions of any and all Contracts the board may award for bus route, including, but not limited to, starting points, destinations and times of departure and arrival, as necessary to adequately fulfill this Contract. For violations of or failure to adequately fulfill a contract, the Board may within its sole discretion, terminate said 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.

#### **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. Contractor shall adhere to the MPS' Livable Wage Policy.
- D. No person may enter into this Contract for services that the MPS employee would otherwise perform as an employee.
- E. No current or former MPS employee may perform services on a professional services Contract without the prior written consent of the Director of Human Relations or her designee.
- F. 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. 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.

#### **18. 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.

#### **19. INTEGRATION / SEVERABILITY**

This Contract and its exhibits and addenda, if any, 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.

#### **20. 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.

#### **21. TIMING**

Time is of the essence in this Contract.

#### **22. 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").

#### **23. FORCE MAJEURE**

MPS will not be liable to pay Contractor for any work that the contractor is unable to perform due to act of God, riot, war, civil unrest, flood, earthquake, outbreak of contagious disease or other cause beyond MPS' reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence).

#### **24. 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.

#### **25. 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.

**26. 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.

**27. 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 General Specifications and Operating Procedures 2014-2015 School Year; and 3) the applicable bid.

**28. 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.

**29. COMPLIANCE REQUIREMENTS**

The HUB requirement on this Contract is 3.5%. The student engagement requirement of this Contract is 300 hours. The Career Education requirement for this Contract is ten (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 WITNESSES WHEREOF, the parties here to have executed this Contract on the day, month and year first above written.

**CONTRACTOR** (Vendor V022031)

**MILWAUKEE BOARD OF SCHOOL DIRECTORS**

By \_\_\_\_\_

By \_\_\_\_\_  
Deborah S. Noble, Director of Procurement

Date \_\_\_\_\_

Date \_\_\_\_\_

Durham School Bus  
6001 N 91<sup>st</sup> Street  
Milwaukee, WI 53225  
(414) 760-7480

By \_\_\_\_\_  
Gregory E. Thornton, Ed.D., Superintendent of Schools

Date \_\_\_\_\_

Tax ID: 95-3320487

Budget Code: TSP-0-0-TRS-DW-EPPT

By \_\_\_\_\_  
Michael Bonds, Ph.D., President  
Milwaukee Board of School Directors

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

**NOTE: BUDGET CODES THAT ARE NOT LOCAL SCHOOL BUDGET CODES, MUST BE APPROVED BY APPROPRIATE DEPARTMENT OR PROGRAM ADMINISTRATOR.**

This Contract is not enforceable until signed by the Department of Finance. Payment will not be made on any contract not on file in the Department of Finance. A minimum of fifteen business days is required for approval.

Reviewed by Division of Insurance and Risk Management

By \_\_\_\_\_

Date:

Approved as to form and independent Contractor status by Department of Finance.

By \_\_\_\_\_

Date: