

CONTRACT FOR STUDENT TRANSPORTATION SERVICES

This Contract is made and entered into between Harlow's School Bus Service, Inc. of Montana, a North Dakota corporation with offices at 3077 US Highway 2, Libby MT, 59923, 406.293.8845 (hereinafter referred to as "Harlow's" or "Contractor") and Sandpoint Charter School, DBA Forrest M. Bird Charter School, 614 S. Madison Avenue, Sandpoint ID 83864, 208.255.7771 (hereinafter referred to as "FMBCS").

1. Contract Term

This Contract shall commence on the date that this Contract is fully executed under authorization granted by the FMBCS Board and be effective September 3rd, 2021 until June 30, 2026 (the "Contract Term"), with an option of up to an additional five (5) year contract. This contract includes the following academic years: 2021-2022, 2022-2023, 2023-2024, 2024-2025, 2025-2026 as provided herein.

2. Termination

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

FMBCS may terminate this contract with ninety (90) days written notice of termination if any issue is brought to the Contractor and resolution of that issue cannot be agreed upon between FMBCS and Contractor in a timely manner or if FMBCS needs to discontinue service.

3. Insurance

Contractor will be required to furnish, prior to the signing of the contract, one million dollars (\$1,000,000) single limit for bodily injury and property damage liability as well an additional nine million dollars (\$9,000,000) umbrella policy (or as mutually agreed upon) and such other insurance as required by the state of Idaho, if any. The policy shall name FMBCS as an additional insured and provide that such coverage may not be cancelled or materially changed without thirty (30) days prior written notice to FMBCS.

Any accident involving student transportation shall be reported to the school transportation representative as soon as possible and no later than one business (1) day of the accident. Complete Idaho State reporting forms as well Contractors documents will be submitted no later than three (3) business days after the date of the accident.

4. Assignability

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

5. Force Majeure

In the event that Contractor shall fail at any time to provide transportation herein agreed to be provided solely and by reason of extreme weather conditions or impassable road conditions, act of God, fire, riots, war, picketing civil commotions or unavailability of fuel, such failure on the part of the Contractor shall not be deemed a breach of the Contract. The determination as to whether road conditions are such as to make it unsafe to transport pupils shall be made by FMBCS.

6. General Management

At the present time, FMBCS has three (3) General Transportation routes, operating one hundred and thirty-four (134) days per year or per approved FMBCS calendar. The Contractor shall provide for all vehicle(s), driver(s), as well as the maintenance and management of the same, to operate school buses for FMBCS for the 2021-2026 school years. Contractor's designated supervisor shall be readily available for contact by FMBCS representatives to address issues or concerns that arise during the school year. Contractor will be the primary supplier of bus transportation for FMBCS during the term of this contract. FMBCS guarantees the Contractor the right of first refusal of any additional transportation services during the term of this Contract.

The Contractor, with FMBCS's approval or another mutually agreed upon arrangement may hire a bus attendant to assist a regular route driver with student control on a school bus if necessary.

Rider discipline exercised by the Contractor will be guided by the FMBCS transportation conduct policy.

7. Routes

All students whose parents voluntarily enroll in the FMBCS transportation program and who are eligible for school bus transportation for FMBCS will receive bus transportation services. Due to safety concerns, any non-eligible rider will be reported to the school. Contractor shall be responsible for the care and supervision of students during their period of transportation. The transportation of students shall be deemed to have begun when the student boards the school bus and shall be deemed to have ended when a student has exited the bus.

Prior to the start of the school year, the Contractor, working in cooperation with FMBCS's representative, shall establish routes, pickup points, and identify the students to be transported. Time schedules and routes will be arranged and adjusted as necessary by the Contractor after discussion with the designated representative of FMBCS. Pickup times will be established to allow delivery to each school no later than fifteen (15) minutes prior to its established starting time. An FMBCS's representative will designate bus loading and unloading zones at school. Reasonable and infrequent late arrivals or departures resulting from unexpected traffic delays and mechanical failure will not be considered a breach of contract.

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

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

* Currently this does not include special education students.

8. Vehicle and Maintenance Requirements

Contractor will provide and maintain at Contractor's expense all buses to be used by Contractor to perform this contract. Contractor will maintain the insurances on its buses pursuant to Section 3, above. All school buses shall be DOT certified, comply with Idaho's specifications and registrations. All route buses will be equipped with a two-way radio system (or another form of communication) and a digital camera system (initial two camera lens provided by Contractor).

Fuel for buses used to perform this contract will be paid for by Contractor and reimbursed to Contractor pursuant to the Fuel Escalation Clause, Section 12, and the Fees and Expenses, Section 11.

The contractor agrees to maintain all records or other documents relevant to this contract for three (3) years after final payment and any person duly authorized by the board shall have full access to and right to examine any of said materials.

9. Driver Requirements

Qualifications: Only drivers who hold the appropriate license and endorsements as well sustain a US DOT Medical Examiners Certificate will operate the Contractor’s vehicles. All drivers must pass a national criminal background check (HireRite) which includes fingerprinting as well as annual motor vehicle record (MVR) check.

Contractor will conduct driver training which shall not be less than twelve (12) hours per year (or as required).

10. Activities and Field Trips

Contractor is the primary transportation solution and agrees to provide transportation for student activities on an as needed basis. Payment will be based on a per mile payment for longer trips (more than 60 miles round trip) and a straight hourly rate for short trips (less than 60 miles round trip) “Down time” shall begin at arrival of the destination and end at departure. straight hourly rate with a three (3) hour minimum. Hourly rates will be invoiced in quarter hour increments (¼ or .25).

In the event of an overnight trip, FMBCS will pay Contractors lodging directly and driver meals will be reimbursed as a pass-through cost. FMBCS transportation personnel will work with Contractor’s management for timely advance scheduling of drivers and buses for all trips. It is recommended that all activities and field trips be scheduled fourteen (14) days in advance of scheduled use.

11. Fees And Expenses

Invoice And Payment Terms: Contractor will invoice FMBCS on a Semi-Monthly basis for services provided under this Contract. All invoices should be sent to FMBCS by email or as set forth in the Notices provision, Section 24. Payment from FMBCS is due and payable within fifteen (15) days of receipt of invoice. ACH payment available.

Fees: The fees for Contractor’s services under this Contract (the “Fees”) will be pursuant to the following payment schedule, subject to the Fuel Escalation Clause, Cost Of Living Escalator and Government/ School Mandates provisions, Sections 12, 14 and 15 respectively:

General School Transportation –

Cost Per School Bus, Per Day (5 hours):	:	\$430.00
Overage Cost, Per Hour:		\$86.00

School Field Trips and Activity Transportation -

In-Town Cost Per School Bus, Two (2) Hour Minimum:	\$172.00
Overage Cost, Per Hour:	\$86.00
Out-of-Town, 60 Miles RT Minimum:	\$2.65 per mile
Driver Down-Time	\$21.25

PPE / Sanitizing Expense

Pass Through

- o The items may include but not limited to: gloves, mask, disinfectant and hand sanitizer for the bus, etc. We would want a mutually agreed upon / approved plan.

- **School Closures**

- a) “Closure” shall mean when more than fifty percent (50%) of all students enrolled at an educational facility served by Contractor are not physically attending class at the educational facility due to causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God or the public enemy, acts of the federal, state or local government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather or mechanical failure of heating, cooling or other environmental systems. Closure includes a “soft closure,” which shall mean when students are not physically attending school or class, but instead are attending school remotely, using internet access, video links, or printed materials.
- b) On or before the 5th day of each month after which a Closure on an Instructional Day occurs, the Contractor shall submit to the District an invoice, which shall identify the request for payment under this Alternative Payment Schedule and include the date(s) of the Closure. On or before the 20th day of the month in which the invoice is submitted, the District shall pay the Contractor as follows:
 - i. If a Closure on five (5) or fewer Consecutive Instructional Days occurs, the School shall pay the Contractor one hundred percent (100%) of the Daily Rate per route per Instructional Day the Contractor does not provide transportation due to a Closure.
 - ii. If a Closure on more than five (5) Consecutive Instructional Days and fewer than twenty (20) consecutive Instructional Days occurs, the District shall pay the Contractor seventy- five percent (75 %) of the Daily Rate per route per Instructional Day the Contractor does not provide transportation due to a Closure.
 - iii. If a Closure on twenty (20) or more Consecutive Instructional Days occurs, the District shall pay the Contractor Sixty- five percent (65 %) of the Daily Rate per route per Instructional Day the Contractor does not provide transportation due to a Closure.
- c) For the purposes of this Alternative Payment Schedule, the calculation of Consecutive Instructional Days shall begin anew or reset upon the occurrence of a day when fifty percent (50%) of all students enrolled at an educational facility served by the Contractor are physically attending class at the educational facility.

12. Fuel Escalation Clause

Contractor and FMBCS acknowledge that the price and fluctuations in price of fuel have a direct impact on the cost of transportation and on the total compensation to be paid to Contractor under this Contract. For all fuel (gas, propane or diesel) purchased by Contractor for this Contract, the price paid per mile shall be adjusted effective the first day of the month following a change in the actual cost of fuel purchased by Contractor.

For transportation, the price per mile per bus per route shall be calculated and provided to FMBCS. Thereafter, an adjustment of one cent per mile shall be made for each five cent per gallon increase or decrease in the cost of fuel (gas, propane or diesel floor of \$2.75 per gallon). The Contractor shall submit to FMBCS each month the amount of miles driven in the preceding month with a calculation of increased cost of fuel incurred if any during the preceding month for each bus for each route. The base price for purposes of this calculation shall be established at \$2.75 per gallon for fuel, the maximum decrease in fuel escalation cost will not exceed the established rate per gallon (no credit

will be awarded). Receipts indicating the most recent cost paid by Contractor for fuel purchases shall be submitted monthly to substantiate the adjustment.

13. Option to Renew

FMBCS and Contractor agree to meet by June 30, 2026, to renegotiate any extended years to this Contract. This Contract may be renewed for an additional term of up to five (5) years, or as mutually agreed.

14. Cost of Living Escalator

Upon contract renewal, effective July 1, 2022, and for subsequent years of this contract, general transportation, field trip and activities and down-time shall increase by the greater of 3.5% or annual Consumer Price Index (CPI) Urban, All Items determined in April of each year. <https://www.bls.gov/cpi/>. Contractor will provide FMBCS a formal letter annually.

15. 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 FMBCS 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 FMBCS during the remainder of the contract term. If FMBCS and Contractor are unable to agree on a price adjustment to the contract due to such mandate(s), then either FMBCS or Contractor may terminate this contract with ninety (90) days written notice to the other. In the event no agreement can be reached, FMBCS and Contractor agree to cooperate to transition transportation services back to FMBCS, FMBCS agrees to pay Contractor at the rates otherwise set forth herein until the transition is complete, and neither FMBCS 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.

16. Indemnification

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

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

17. Nondisclosure

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

18. Governing Law and Jurisdiction

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

19. Arbitration Clause

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

20. Relationship of Parties

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

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

21. Severability

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

22. Modification

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

23. Entire Contract

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

24. Notice

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

For Contractor:

Harlow's School Bus Service, Inc.
1021 South 23rd Street, Suite A
Bismarck, ND 58504
Attn: Sr. Vice President

For FMBCS:

Forrest M. Bird Charter School
614 S. Madison Avenue
Sandpoint, ID 83864
Attn: Superintendent Designee

Notices are deemed received upon receipt given methods listed above.

25. Headings


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

ACCEPTANCE OF AGREEMENT

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

ACCEPTED AND AGREED TO:

HARLOW'S SCHOOL BUS SERVICE, INC.

Signature: 

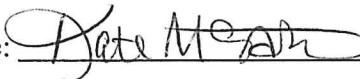
Name: Joshua R. Kinahan

Title: Director of Operations

Date: 9-13-21

ACCEPTED AND AGREED TO:

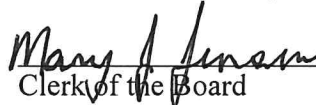
FORREST M. BIRD CHARTER SCHOOL

Signature: 

Name: Kate McAlister

Title: Chairman

Date: 9/13/21


Clerk of the Board

9/14/21
Date

Kyle

33-1510. CONTRACTS FOR TRANSPORTATION SERVICE.

(1) All contracts entered into by boards of trustees for the transportation of pupils shall be in writing using the current pupil transportation model contract developed by the state department of education. School districts may attach to the model contract addenda to meet local requirements. School districts shall submit to the state superintendent of public instruction a copy of the pupil transportation contract prior to both parties signing it, for a review of legal requirements and appropriate costs and for final approval. The state superintendent of public instruction shall respond to the school district within twenty-one (21) calendar days of the postmarked receipt of the contract by notifying the school district of contract approval or of recommended or required changes. A school district may appeal to the state board of education any changes the state superintendent requires, in which case the state board may, upon review, approve the contract without such changes.

(2) No contract shall be executed covering a period of time exceeding five (5) years. School districts shall advertise, bid and contract for all bus transportation service routes at a single time, and contract with the lowest responsible bidder or bidders meeting the specifications; provided that, one (1) time only, a school district may renew a contract with the current contractor if the board of trustees, after renegotiation with the contractor, determines that the terms are satisfactory to the district. The board of trustees may renew the contract for a term not to exceed five (5) years. Renewal of any contract pursuant to this section shall not be granted unless the provisions of this section were included, in a substantially conforming summary, within the bidding notice, published pursuant to section 33-601, Idaho Code, of the contract.

(3) Before entering into such contracts, the board of trustees shall invite bids by twice giving notice as provided in section 33-402(2), Idaho Code, and shall award the contract to the lowest responsible bidder.

[33-1510, added 1963, ch. 13, sec. 88, p. 27; am. 1987, ch. 9, sec. 1, p. 14; am. 1989, ch. 3, sec. 1, p. 4; am. 1997, ch. 40, sec. 2, p. 76; am. 1997, ch. 176, sec. 1, p. 495; am. 2004, ch. 136, sec. 1, p. 462; am. 2004, ch. 254, sec. 1, p. 725; am. 2009, ch. 171, sec. 6, p. 549; am. 2009, ch. 341, sec. 49, p. 1025; am. 2011, ch. 151, sec. 18, p. 428.]

No contractors received this email.

Nothing said conference.

B/c of audit, SDE Trans not following through w/ contracts
— hard hand slap

RFP prior to this decision

Rec contract prior to this decision

Board accepted RFP prior to this decision

State told ME to sign + send it in as is b/c of