

**CONTRACT FOR
STUDENT TRANSPORTATION SERVICES**

This Contract is made and entered into between Harlow’s School Bus Service, Inc., a North Dakota corporation with offices in Sturgis at 2237 W Sherman, Sturgis, SD 57785, Office (605) 347-5066 (Hereinafter referred to as “Harlow’s” or “Contractor”) and Meade School District 46-1, 1230 Douglas Street, Sturgis, SD 57785, Office (605) 347-2523 (hereinafter referred to as (“MSD”).

MSD has awarded the student transportation Contract to Harlow’s School Bus Service and the Contractor does hereby agree to transport the students of the Meade School District (estimated 170 school days). Services include but not limited to: general transportation, authorized field trips, excursions, athletic events or other purpose designated by MSD.

1. Contract Term

This Contract shall commence on the date that this Contract is fully executed under authorization granted by the MSD Board at its meeting and be effective July 1, 2018 until June 30, 2023 (the “Contract Term”): School years include: 2018-19, 2019-20, 2020-21, 2021-22 and 2022-23.

2. Termination

Contractor may terminate this contract by written notice of termination in the event MSD fails to perform any obligation of MSD under this contract. Contractor will continue to provide transportation services no more than one hundred and eighty (180) days from the date of the written notice of termination to MSD. MSD agrees to pay Contractor for transportation services under the payment schedule of this contract through the last day transportation services are provided by Contractor.

MSD may terminate this contract with one hundred and eighty (180) days written notice of termination if any issue is brought to the Contractor and resolution of that issue cannot be agreed upon between MSD and Contractor in a timely manner or if MSD needs to discontinue service.

3. Insurance

Contractor will be required to furnish, prior to the signing of the contract, five million dollars (\$5,000,000) single limit for bodily injury and property damage liability as well an additional five million dollars (\$5,000,000) umbrella policy (or as mutually agreed upon) and such other insurance as required by the state of South Dakota, if any. The policy shall name MSD as an additional insured and provide that such coverage may not be cancelled or materially changed without thirty (30) days prior written notice to MSD.

Contractor shall be required to carry all workers’ compensation insurance and/or any other insurance that is necessary as the employer of its independent employees.

4. Assignability

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

5. Force Majeure

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

6. General Management

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 MSD for the 2018-2023 school year. Contractor's designated supervisor shall be readily available for contact by MSD representatives to address issues or concerns that arise during the school year. While it is the intent of the parties that the contractor will be the primary supplier of bus transportation for MSD during the term of this contract. Furthermore, MSD guarantees the Contractor the right of first refusal of any additional transportation services during the term of this Contract.

Contractor will enforce rules, policies, and guidelines as outlined in the School Student Handbook and/or transportation conduct policy.

During the term of this agreement, the Contractor shall comply with all laws, rules, and regulations of the State of South Dakota and United States Government affecting or regulating the Transportation of school children.

The Contractor will furnish information that is necessary to complete any reports required by the State of South Dakota and MSD.

MSD school year is approximately 170 transportation days (rural school calendar may be less) and is subject to additional or fewer days as dictated by the school calendar.

The Contractor shall cooperate with MSD in maintaining a good public relations program with the community and news media so that any pertinent items affecting the transportation program or the patrons of MSD can be brought to the attention of the public.

7. Routes

All students whose parents voluntarily enroll in the MSD transportation program and who are eligible for school bus transportation for MSD will receive bus transportation services. Due to safety concerns, any non-eligible rider will be reported to the school.

Prior to the start of the school year, the Contractor, working in cooperation with MSD's representative, shall establish routes, pickup points, and identify the students to be transported. Designation and selection of routes supporting MSD shall be limited to operation of equipment on highways, roads, and streets that are owned and maintained by the State or any of the various cities, towns, town-ships, counties or approved designated locations.

Time schedules and routes will be arranged and adjusted as necessary by the Contractor after discussion with the designated representative of MSD. Routing capacity assumption is: K-5th grade three (3) students to a seat, 6th-12th grade two (2) students to a seat. Pickup times will be established to allow delivery to each school no later than fifteen (15) minutes prior to its established starting time. An MSD'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 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.

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 to include proper capacity to support a route. Contractor will maintain the insurances on its buses pursuant to Section 3, above. All school buses shall be DOT certified, comply with State of South Dakota specifications and registrations of Minimum Standards for School Buses.

The Contractor shall have enough buses available to service the routes. The Contractor shall keep the exterior and interior of the buses as clean as possible and practical. Windows, mirrors, etc., obscured by mud, dirt, or other visual barriers shall be cleaned/cleared as soon as practical and open to examination by the MSD and the School Board at all times.

All route buses will be equipped with both a two-way radio system and a digital camera system (initial two camera lens provided by Contractor).

MSD agrees to pay tower rent and to provide Contractor with radio access to the tower at no cost to 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.

9. Driver Requirements

The bus driver's primary responsibility is for the safe transportation of students. Bus drivers are responsible for establishing and maintaining discipline on the bus. For these reasons, the School District and Contractor will work collaboratively to ensure professional drivers provide expected service. The MSD and its superintendent reserve the right, after consultation with Contractor and with no liability to the School District, to suspend immediately any driver who does not abide by the rules and regulations set forth or whose license has been revoked or suspended. Drivers may be required to attend driving in-service training upon request of the School District or Contractor.

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 as well participate a random drug and alcohol testing consortium. Drivers will not use tobacco products in the buses, near the buses, or on school properties.

The Contractor shall administer a satisfactory safety program. Said program shall include, but not limited to, regular scheduled safety meeting for the Contractor's personnel. The Contractor shall cooperate and participate in State sponsored Safety and School Bus Driver Training. Harlow's will conduct driver training which shall not be less than ten (10) hours per year.

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 or minimum payment for trip(s). "Down time" shall begin at arrival at the destination and end at departure. Hourly rate & down time items will be invoiced in quarter hour increments (¼ or .25).

In the event of an overnight trip, MSD will pay Contractor the cost of room and meals for the bus driver in addition to "down time." MSD transportation personnel will work with Contractor's management for timely advance scheduling of drivers and buses for all trips.

11. Fees And Expenses

Invoice And Payment Terms: Payment for services rendered shall be made on a monthly basis no later than the 15th day after the month in which such transportation services were provided.

Payment for General Transportation, shall be based upon a total annual cost divided by nine monthly payments starting in September and continuing through May. The final payment of transportation services will be made at the end of the school year.

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:

Payment Rates:

***NOTE:** Fuel Escalation Clause applies in addition to all payment rates.

Below are the details outlining the 2018-19 school year rates:

- General Transportation For School Year: \$1,000,268
 - Operating 22 Routes: 1,833 miles per day * 170 school days * \$3.21 mile
- Activities, Fields Trips and Co-Curricular Trips:
 - Motor Coach \$3.07/ mile
 - Minimum Fee \$265.00
 - School Bus Activities \$2.42/ mile
 - School Bus – in town service (minimum fee) \$53.96/ min
- Driver Downtime: \$14.85/ hour
- Second Driver for Motor Coach Trip(s): \$67.45/ hour
- Driver Meals on Multi-Day Trip(s): \$27.00/ day

Cancellation Fees Due To Weather And Road Conditions: When the School Buses are unable to safely provide transportation due to inclement weather, road conditions, or other emergency conditions, Contractor's services shall be cancelled. Cancellation shall result in payment to Contractor at seventy five percent (75%) of cost for the scheduled services that were cancelled. This is only if the cancelled school day and/or events are not made up. The decision as to whether the transportation services will be provided shall be that of MSD and Contractor's management, pursuant to a procedure established by MSD and Contractor.

12. Fuel Escalation Clause

Contractor and MSD 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 MSD. 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 \$4.00 per gallon). The Contractor shall submit to MSD 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 \$4.00 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

MSD and Contractor by April 30, 2023, will renegotiate extended years and rates to this contract. This contract may be renewed for an additional term of five years or as mutually agreed.

14. Cost of Living Escalator

The annual increase in the contract to be 2.5% or the rate of inflation, whichever is greater but not to exceed 6%. If the South Dakota's Consumer Price Index (same as State Aid CPI) is in excess of 6%, the parties agree to negotiate any amount above that is determined to be appropriate and can be mutually agreed upon.

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 MSD 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 MSD during the remainder of the contract term. If MSD and Contractor are unable to agree on a price adjustment to the contract due to such mandate(s), then either MSD or Contractor may terminate this contract with one hundred and twenty (120) days written notice to the other. In the event no agreement can be reached, MSD and Contractor agree to cooperate to transition transportation services back to MSD, MSD agrees to pay Contractor at the rates otherwise set forth herein until the transition is complete, and neither MSD 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 section.

16. Indemnification

Contractor agrees to indemnify and hold MSD, 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.

MSD 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 MSD and/or MSD's affiliates and related entities, employees, agents or representatives arising out of or relating to MSD 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 MSD students transported by Contractor, their families, and the employees of MSD 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 MSD and Contractor. The Contractor will not represent or hold itself out to be part of MSD or a partner or agent of MSD. The contractor shall not enter into any agreement on MSD's behalf or in MSD's name.

Contractor and MSD 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 MSD.

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
Bismarck, ND 58504
Attn: Corporate General Manager

For MSD:

Meade School District 46-1
1230 Douglas Street
Sturgis, SD 57785
Attn: Attn: Superintendent or 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 facsimile, 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: _____

Title: _____

Date: _____

ACCEPTED AND AGREED TO:

MEADE SCHOOL DISTRICT 46-1

Signature: _____

Name: _____

Title: _____

Date: _____

ATTEST:

Business Manager

Date