

ST. MARY'S COUNTY GOVERNMENT  
DEPARTMENT OF PUBLIC WORKS & TRANSPORTATION  
**NON-PUBLIC SCHOOL BUS TRANSPORTATION  
CONTRACTOR SERVICES AGREEMENT (SAMPLE) SCHOOL YEAR**

**THIS CONTRACTOR SERVICES AGREEMENT**, made this \_\_\_\_\_ day of \_\_\_\_\_, in the year 2 \_\_\_\_\_, by and between the St. Mary's County Government, hereinafter called "County" and \_\_\_\_\_ herein called "Contractor"; and the County agrees that the relationship of the Contractor to the County under this agreement continues to be that of Independent Contractor, and that this contract will be administered on the Board's behalf by and through the office of the Director of the St. Mary's County Department of Public Works & Transportation and such designee(s) as the Director may from time to time assign.

**NOW, THEREFORE**, in consideration of their mutual promises and covenants and other good and valuable considerations, the parties hereto agree that Non-Public School Bus Transportation Services shall be furnished by the Contractor upon the following terms and conditions.

**Section I. School Bus Provisions**

1. Contractor agrees to furnish student transportation to and from school for the **2009 / 2010 School Year** during the hours set forth and over the approved routes described in Section III, and on the days set forth and described in the School Calendar.
2. Contractor agrees to provide at his/her expense a sufficient number of school buses and/or spare buses to fulfill requirements of their Agreement, all of which have been approved by the County and which meet the requirements of all Federal, State, County and municipal laws, statutes, ordinances, rules and regulations, which are applicable to and enforceable in St. Mary's County, Maryland. The designation of and authorization to utilize spare buses shall be determined at the sole discretion of the County.
3. Contractor agrees to furnish at his/her expense all labor, parts and other materials required for the operation of the school buses, including drivers, maintenance, repairs, gasoline, oil and other motor fuel and lubricants.
  - A. Contractor shall keep his/her school buses in good and safe mechanical condition at all times in accordance with standards established by statute, lawful authority and the County.
  - B. Contractor shall keep his/her school buses in clean and sanitary condition at all times that they are being used.
  - C. All buses will be available for State and local inspections, at all reasonable times, by personnel authorized and/or designated by the County. Contractors shall, immediately, correct or cause to be corrected, all defects or deficiencies reported to him/her upon inspection and, over authorized signature, shall certify to the repairs made or other work performed and returns the inspection report to the County, in no case later than seven (7) days after the date of inspection. Any school bus determined by inspection to be unsafe for any reason (i.e., failed bus inspection, failed driver drug/alcohol test, lack of proper insurance coverage, improperly tagged buses, etc.) shall immediately be taken out of service and replaced with an approved alternative and/or spare school bus at the Contractor's cost until the bus so removed has been

## Section I. School Bus Provisions (Con't)

certified safe to resume service by the inspecting authority. It is understood and agreed that the use of any unsafe equipment shall be grounds for suspension of all payments to the Contractor and may result in termination of this contract.

- D. School Bus evacuations are to be completed no later than **November 1, 2009** and **March 20, 2010**. The Contractors are responsible for scheduling their school bus evacuations with each school that they provide transportation to.
- E. Buses must be kept within 10 miles of the start of the bus route in order to comply with the mileage allowance.

## Section II. Contractor / Driver Requirements

- 1. Contractor shall provide the County with Contractor's Federal Tax Identification Number by **August 3<sup>rd</sup>**, or the start of school. All drivers and others engaged in the operation of the Contractor's school buses shall be employees of the Contractor. Contractors shall carry adequate Workmen's Compensation Insurance and cause a certificate of such insurance to be forwarded by the insurance carrier to the County by **August 3<sup>rd</sup>**, or no later than the scheduled start of school, indicating that the policy is not subject to cancellation, non-renewal or reduction in coverage until forty-five (45) days prior written notice has been given to the County.
  - A. All drivers shall be qualified under State law to drive a school bus and drivers shall be employed or continued in employment by the Contractor subject to approval by the County for fitness and competence. Such approval shall be made a condition precedent of any driver employment contract entered into by Contractor. Bus drivers shall not drive the school bus until certified and approved by the County and any other authority required by law. The Contractor's drivers shall be subject to pre-employment, random, post-accident and reasonable suspicion drug and alcohol testing and / or in accordance with current CDL and FMCSA requirements.
  - B. Contractor shall be responsible for compliance by his/her drivers with all laws, statutes, rules and regulations for the transportation of school children, including any policies now established or to be promulgated in the future by the County and the Maryland State Department of Education and DOT and FMCSA regulations, including yet not limited to the 49 CFR drug/alcohol program requirements for employees. Contractor shall provide bus drivers who are capable of exercising acceptable control of school children at all times during transportation. Bus drivers shall promptly report the detail of any misconduct or breach of order and discipline to the school principal / disciplinarian via the *Bus Behavior Report Form* and in accordance with all other guidelines and set forth in the *Parent / Student Handbook*.
  - C. Contractors are responsible for all timely communication with the Transportation Office pertaining to their fleet operations, including student or bus stop changes, incidents or accidents and bus drivers' schedules; the school bus driver will not be held liable or responsible for any of the foregoing communication / information.

## Section II. Contractor / Driver Requirements (Con't)

- D. Drivers shall observe the highest possible standards of safe driving at all times and strictly comply with all CDL rules and regulations, as well as all provisions of the Maryland Motor Vehicle Laws.
- E. Contractors and Drivers must attend four (4) hours of In-Service Training provided by the St. Mary's County Department of Public Works & Transportation during the school year. Emergency absences will be excused, and it will be the Contractor's responsibility to contact the BOE for their training schedule to fulfill the requirement. The contractor of the drivers attending the BOE training program must coordinate with the Transportation Office to have a BOE training sign up sheet faxed to the Transportation Office within 4 business days from the date(s) of training. The BOE sign-in sheet information is required for the contractor's In-Service payment(s) and must be received by the above mentioned deadline; otherwise the contractor forfeits entitlement to In-Service reimbursement for the said driver(s).
- F. Contractors are required to retain and consistently maintain a minimum of two substitute drivers throughout the entire school year; every substitute driver must submit all paperwork, as required by the Transportation Office, prior to operating a school bus for a non-public school bus route. Failure to produce a full time or substitute driver for an established non-public school bus route may result in termination of this contract by the County, at its sole discretion.

## Section III. Designated Bus Routes and Out-of-County Student Charges

- 1. The Contractor agrees that the pupil transportation and use of the bus provided under this Agreement shall be furnished to the school children and other persons designated by the County Transportation Manager or his/her designee.
  - A. The children to be transported under this Agreement are St. Mary's County resident pupils attending Non-Public Schools, or out-of-county students, paying a fee of **\$750** per student per year, unless otherwise approved or modified by the County.
  - B. The Contractor agrees not to deviate from his/her designated route(s) without the written consent of the County or its duly designated representative who may also designate individual and cluster stops, drop-off and transfer locations, time schedules and route /mileage adjustments. Updated / revised route and/or bus driver information changes must be submitted in writing to the Transportation Office by the Contractor prior to the next pay period (the 10<sup>th</sup> of the following month). This updated/revised information includes, but is not limited to: any and all changes to the manifest, mileage, hours and tier status changes. The respective adjustments will be reflected on the next pay period invoices; that is the pay period following receipt of the information. There will be no consideration for retroactive reimbursement(s) if the written request for adjustment(s) are received by the Transportation Supervisor after the aforementioned deadline.
  - C. Detailed maps and directions of each bus route, for both AM and PM routes, must be submitted to the Transportation Supervisor by **September 28, 2009**. Contractors will be held responsible for ensuring that the required paperwork is received by the

### Section III. Designated Bus Routes and Out-of-County Student Charges (Con't)

established deadline. Failure to comply can and will result in withholding of payment for the said bus(es).

- D. Contractors are responsible for the accurate completion of manifests by September 28, 2009. Contractors must schedule appointments to review the manifests or **paycheck will be withheld until the next pay period**. The filing of the following reports to the DPW&T Transportation Division Office, in an accurate manner, is required by the County to receive compensation: Route & Time Compensation Form ("Green Sheet" indicating time, mileage, and pupil count, etc) should be submitted by **September 4<sup>th</sup>**. Student Manifest (Accident Report Information and Seating Chart) which should be submitted no later than **September 28<sup>th</sup>**.

### Section IV. Payment and Reimbursement Requests

1. The County agrees to pay the Contractor in accordance with the terms of a reimbursement formula, subject to the appropriations by the County. The County reserves the right to make changes, alterations or modifications within the general scope of the contract (i.e., bus routes, fuel price adjustments, mileage, pick-up locations, etc). The payment due the Contractor under this agreement shall be adjusted (increased or decreased) as may be required to reflect any such changes. Upon satisfactory completion by the Contractor and acceptance of the work performed under this Agreement by the County, payment shall be made in **ten (10)** consecutive, monthly installments mailed by the County on the last business day of each calendar month's operation of school buses performed by the Contractor, providing all other contractual agreements are being met. No contract payment adjustments will be allowed if asserted after final payment by the County to the Contractor.
  - A. Fuel prices will be determined based on: the 20<sup>th</sup> day of the previous month; the first day of the current month; the 10<sup>th</sup> day of the current month; and from twelve (12) randomly selected stations and distributions. The high and low cost will be discarded from each and the average of the remaining prices will be calculated. The average of these three (3) amounts will then be calculated. The total averaged amount will be divided by a **7.5** miles per gallon (mpg) factor for diesel and **4.8** mpg factor for gasoline to determine the reimbursement rate per mile.
  - B. In addition to spare bus liability insurance coverage (POOL insurance), a spare bus maintenance stipend in the amount of **\$1,525** per bus will be provided for all County approved spare buses. The number of eligible and approved spare buses shall be designated by the DPW&T Director and Transportation Manager based on availability, historical demand / need and the overall mechanical condition of the bus(es).
  - C. Contractors are required to provide a cell phone for each bus. The County will provide a stipend of **\$200** towards cell phone expenses; therefore, the County reserves the right to request a copy of the monthly cell phone bill for review.
  - D. Contractor will be reimbursed for drivers according to the hourly rate (prior to benefit adjustment factor) of **\$14.70** for Tier II drivers with 10 years of experience or more, and the hourly rate of **\$14.03** for Tier I drivers with less than 10 years of experience, as specified in the County's Contractor Reimbursement Form for the applicable year, which is subject to approval by the St. Mary's County Board of County Commissioners.

## Section V. Insurance

1. The County, at its expense shall provide liability insurance during the life of this Agreement insuring the approved school / spare bus(es) and passengers for property damage and bodily injury up to the maximum coverage per occurrence as afforded by the County Insurance policy. This insurance will not apply to any other use of school buses and it is the responsibility of the school bus contractor to obtain liability insurance coverage for such other use, including spare buses not covered under Paragraph 6B, unless the Board of County Commissioners otherwise authorizes. It is the sole responsibility of Contractor to obtain all other business insurance coverage not specifically set forth in this Agreement, including, but not limited to, **Commercial General Liability Insurance and proof of Worker's Compensation Coverage by August 3<sup>rd</sup> . The Sole Proprietor Status as a Covered Employee Form and MVA Contractor Certification / Inspection Certificate is required by September 1<sup>st</sup>.** The County insurance shall not include comprehensive or collision physical damage coverage in any instance. The insurance furnished by the County will apply to all regularly contracted school buses and approved spare buses, while such buses are operated by drivers certified and approved by the County, as follows:
  - A. On official school business, including transporting pupils to or from school or when transporting pupils on school sponsored activities, including the operation of the buses to and from regular storage or garage locations.
  - B. Operated for maintenance or testing purposes.
  - C. Stored or parked at the regular storage or garage locations.
  - D. Being used to train drivers.
  - E. Other County business when specifically authorized by the County's Transportation Manager or his/her designee.

## Section VI. Additional Terms and Conditions

1. This agreement shall be for a term of **one (1) year** from the date hereof and shall be renewable from term to term without the necessity for either party giving notice of renewal via the County's receipt of an executed / signed copy on or before **August 3<sup>rd</sup>**, unless otherwise agreed upon by the County. The performance of the terms of this Agreement by the Contractor shall at all times be subject to the approval of the County and the County may terminate this Agreement for inadequate performance or breach of this Agreement by the Contractor or any of his/her employees by giving thirty (30) days written notice to Contractor, unless it is determined by the County that the Contractor's performance, or that of any of his/her employees presents a risk of danger or harm to any of the passengers of the buses, in which case such termination may be immediate. If such termination is for inadequate performance or breach of this Agreement, the contractor may be held responsible by the County for expenses incident to his/her replacement. If this Agreement is terminated for inadequate performance or breach of this Agreement, the Contractor shall be provided the reason or reasons for termination in writing at the same time notice of termination is given.

If the Contractor defaults or neglects to carry out the terms of this Agreement, and fails within a seven (7) calendar day period, after receipt of written notice from the Transportation Manager or his/her designee, to commence and continue correction of such default or neglect with diligence and promptness, the County may terminate the contract and/or deduct reasonable costs from payments to the Contractor described in Section IV of this Agreement.

## Section VI. Additional Terms and Conditions (Con't)

- A. Contractor shall be given an opportunity for a hearing before the St. Mary's County Transportation Manager and Supervisor of Non-Public School Transportation if requested by him/her, in writing, within no less than **fifteen (15) working days** of the date of notice, of the date of termination. The Contractor shall be allowed to bring counsel and witnesses and may present additional evidence if so desired.
  
  - B. Within, **fifteen (15) working days** after the hearing before the Transportation Manager and Supervisor of Non-Public School Transportation, Transportation Manager shall give written notice of his/her decision to the Contractor setting forth the reasons for the decision reached, after review by the Director of Public Works & Transportation ("Director"). If the Contractor is not satisfied with the decision reached by the Department of Public Works & Transportation, he/she may appeal such decision to the St. Mary's County Commissioners and may again bring counsel, present witnesses and present other evidence as Contractor may desire. The appeal must be requested, in writing, within **fifteen (15) working days** of the date of the Transportation Manager's, written decision. No appeal after said **fifteen (15) working days** shall be allowed. Within **fifteen (15) working days** after such a hearing before the County Commissioners, the County Commissioners shall render its decision, in writing, to the Contractor, setting forth its reasons for the decision rendered. The decision of the County Commissioners shall be final and no further appeal shall be allowed.
2. In the event Contractor should become aggrieved by a decision of the County or any of its employees concerning the interpretation of this Agreement, the Contractor may request a hearing before the County Commissioners. Any such request for reconsideration shall be in writing and shall set forth the nature of Contractor's grievance. After a hearing before the County Commissioners, the County Commissioners shall, within **fifteen (15) working days** after such a hearing, render its decision in writing to the Contractor. The provisions of this Paragraph do not apply when this Agreement has been terminated by the County for cause; for in such instance, the provisions of Section VI of this Agreement apply. This paragraph does not and shall not be construed to enlarge or diminish County's or Contractor's right and duties as set forth in this Agreement. The decision of the County Commissioners shall be final and no further appeal shall be allowed.
  
  3. The County, in the exercise of its sole discretion, shall have the right to terminate this agreement upon **thirty (30) calendar days** notice to the Contractor, in the event of an adverse determination by the Internal Revenue Service relating to the Contractor's status as an independent Contractor, or upon the advice of counsel to the County that the independent Contractor status of the contractor may not be recognized. Upon receipt of such an adverse determination or advice of counsel, it shall be within the sole discretion of the County to terminate this agreement in accordance with this provision or to defer exercising its right to terminate pending the County's further appeal of the determination or further consideration of the advice. Any such deferral, however, does not constitute a waiver by the County of its right to terminate this contract, which right shall continue to be exercisable by the County at its sole discretion.

## Section VI. Additional Terms and Conditions (Con't)

4. The County shall have the privilege of changing the bus routes from time to time to meet transportation requirements of the Non-Public Schools as set forth in Section IV. Contractors agree to accept any reasonable change of route upon notice thereof from the Transportation Manager, or the Supervisor of Non-Public School Transportation, and do further agree to accept adjustment of compensation as the County may deem proper by any changes, modifications or alterations of this Agreement within the intended scope of work. In the event of any emergency or required exercise, the "Director" shall authorize the Transportation Manager to assign, on a temporary basis, such route(s) to another individual or business entity as necessary to ensure the safe and continuing transportation of students.
5. If this Agreement is terminated by the County pursuant to Section VI of this Agreement, the County through its Transportation Manager or his/her designee (i.e., Supervisor of Non-Public School Transportation) will assist Contractor in disposing of Contractor's equipment, but will assume no legal or financial obligation should the County and/or Contractor be unable to dispose of said equipment.
6. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of this Agreement to create in the public or any member thereof, third party beneficiary status in connection with the performance of the obligations herein without the written consent of the County and notwithstanding its concurrence in or approval of the award of any contract or subcontract or the solicitation thereof in fulfilling the obligations of the Agreement.
7. Either the County or the Contractor may terminate this agreement at the end of any school year for any reason upon notice in writing to the other party at least **thirty (30)** calendar days prior to the end of the current school year.
8. Both parties acknowledge that the Agreement shall be funded by appropriations at the Local level. Appropriations are made annually and are limited to such annual appropriations by the Board of County Commissioners. The County reserves the right to set the rate of reimbursement pursuant to the current year's reimbursement formula, as approved by the St. Mary's County Board of County Commissioners.
  - A. A contractor may return their Contractor Services Agreement, or may choose to terminate their Agreement due to the death or retirement of a contractor(s). Requests for a family member (spouse, children, or sibling) to continue a Services Agreement will be reviewed on a case-by-case basis by the Transportation Manager and Supervisor. The Transportation Manager, DPW&T Director and other County support staff (i.e., County Attorney and Risk Manager) may determine that a particular route(s) is best served by a new Services Agreement, whether it be to another Contractor or to the family member for the remaining life of the bus(s).
  - B. Any contractor desiring to terminate his/her contract, or transfer his/her equipment to another contractor, must advise the St. Mary's County Department of Public Works & Transportation, Transportation Division, in writing. Contractor transfers usually require a new Services Agreement be signed by a duly authorized party (i.e., estate executor, parent company owner(s), managing partner(s) etc.), and are reviewed / awarded on a case-by-case basis in accordance with Paragraph A, above.

## **Section VII. Legal Requirements**

1. By entering into this contractual Agreement, the County and its “employees”, as defined in the Local Government Tort Claims Act, §§5-301 et seq. of the Courts and Judicial Proceedings Article, do not waive sovereign immunity, do not waive any defenses and do not waive any limitations of liability as may be provided for by law. No provision of this Contract modifies and/or waives any provision of the Local Government Tort Claims Act.
2. No elected official, appointed official, employee, servant, agent or law enforcement officer shall be held personally liable under this Agreement and any extensions or renewals thereof because of its enforcement or attempted enforcement provided they are acting within the course and scope of their employment or governmental duties and responsibilities.
3. The County's financial obligations, if any, under this Agreement are contingent upon sufficient appropriations and authorization being made by the County for the performance of this Agreement. The County's decision as to whether sufficient appropriations are available shall be accepted by the other party or parties to this Agreement, and shall be final.
4. In the event any portion of this Agreement is found to be unconstitutional, illegal, null or void, by a court of competent jurisdiction, it is the intent of the parties to sever only the invalid portion or provision, and that the remainder of the Agreement shall be enforceable and valid, unless deletion of the invalid portion would defeat the clear purpose of the Agreement, or unless deletion of the invalid portion would produce a result inconsistent with the purpose and intent of the Board of County Commissioners in entering into this Agreement.
5. This Agreement and the performance thereof shall be governed, interpreted, construed, enforced and regulated by the laws of the State of Maryland applicable to contracts made and to be performed in such State without giving effect to the principles of conflicts of law.
6. This Agreement (and any documents and/or forms incorporated by reference) shall be binding upon the parties hereto and shall remain in effect through the completion of the work, terminable prior thereto only upon the mutual consent of the parties hereto. In the event of such early termination, all contract fees and charges incurred through the effective date of the termination shall be payable in accordance with the terms of this Agreement. In the event of such termination, neither party shall be liable for any damages, penalties, demobilization or contract termination expenses of any nature. In the event of a conflict between this clause any other clause of this Agreement, this clause shall control.

**AS WITNESS**, the hands of the parties hereto, the day and year first above written.

**WITNESS:**

\_\_\_\_\_  
Witness

**ST. MARY'S COUNTY GOVERNMENT:**

**BY:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
Jacqueline Fournier  
*Transportation Manager*

**WITNESS:**

\_\_\_\_\_  
Witness

**CONTRACTOR(S)**

**By:** \_\_\_\_\_ **Date:** \_\_\_\_\_

\_\_\_\_\_  
Witness

**By:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Federal Tax Identification Number:** \_\_\_\_\_