



April 19, 2007

Ms. Meredith Petit
Recreation Supervisor
City of Agoura Hills
30610 Thousand Oaks Blvd.
Agoura Hills, CA 91301

**Re: Agreement between the City of Agoura Hills and Durham School Services,
L.P. For The Operation of Summer Beach Bus Service (the "Agreement")**

Dear Ms. Petit:

Enclosed please find three (3) signed originals of the above-referenced Agreement for your review. The Agreement is effective June 18, 2007 through August 24, 2007.

Upon execution of the Agreement in triplicate, please return one (1) original of the fully executed document for our file. I have enclosed a pre-addressed envelope for your convenience.

We look forward to continuing our relationship with the City of Agoura Hills.

If you should have any questions in regard to the enclosed, please do not hesitate to contact me at 630-435-8008.

Sincerely,

A handwritten signature in black ink, appearing to read "Penny Sedlacek", is written over a large, stylized flourish.

Penny Sedlacek
Contracts Administrator

Pas/
Enclosures

cc: Maggie Kirvan
Janet Cook
Chuck Moore

**AGREEMENT
BETWEEN THE CITY OF AGOURA HILLS AND
DURHAM SCHOOL SERVICES, L.P. FOR
THE OPERATION OF A SUMMER BEACH BUS SERVICE**

THIS AGREEMENT, made and entered into this ____ day of _____, 2007 by and between the CITY OF AGOURA HILLS, hereinafter referred to as "CITY" and DURHAM SCHOOL SERVICES, L.P., hereinafter referred to as "CONTRACTOR".

WITNESSETH:

WHEREAS, there is an immediate and demonstrable need in the City of Agoura Hills for the operation of public transportation services, and

WHEREAS, it is in the public interest to provide a Summer Beach Bus fixed-route transit service for the residents of Agoura Hills hereinafter referred to as SERVICE; and

WHEREAS, CITY desires to enter into an Agreement with a competent, well established and skilled CONTRACTOR for the operation of a public transportation system on routes hereinafter designated; and

WHEREAS, CONTRACTOR has agreed to provide the aforementioned services in accordance with the hereinafter mentioned conditions; and

NOW, THEREFORE, in consideration of the covenants and conditions herein contained to be kept and performed by the parties, hereto, IT IS AGREED AS FOLLOWS:

Section 1. Term of Agreement. The term of the Agreement shall commence June 18, 2007 and terminate at midnight on August 24, 2007 unless otherwise provided by a new agreement or by amendment to this Agreement.

CONTRACTOR shall perform the services hereinafter indicated strictly in accordance with the terms and conditions of this agreement.

Section 2. Equipment and Facilities.

- A. CONTRACTOR, as an independent contractor, shall at its sole cost and expense, provide one handicapped accessible transit type bus or school bus (or a comparable vehicle approved by the CITY), with a minimum seating of 53 passenger seats to serve the route described in Exhibit A provided, however, in addition to such vehicle, CONTRACTOR shall provide from time to time a wheelchair lift-equipped vehicle to accommodate two wheelchairs to serve the route described in Exhibit A. For the purposes hereof, the phrases "bus," "buses," and "buses and bus equipment" shall refer to such wheelchair lift-equipped vehicles as well as regular buses.

In the event CITY exercises its right to increase the service hereinafter described, CONTRACTOR shall provide the necessary additional buses for said service. The minimum required seating capacity of the additional buses shall be 24 passengers.

- B. CONTRACTOR shall provide the wheelchair lift-equipped vehicle described in Section 2.A., above, from time to time upon telephone notice from the CITY, and as directed by CITY, for round trips on the route and on the days described in Section 3, below. CONTRACTOR shall not, however, be required to provide more than one such wheelchair lift-equipped vehicle per day. CITY shall encourage disabled patrons to make advance reservations for such vehicle. Nevertheless, CONTRACTOR shall respond within 45 minutes to any request for a wheelchair lift-equipped vehicle for service along the route.
- C. All the buses required to be utilized in this Agreement shall be safe for operation on public roads and streets. CONTRACTOR shall, at its sole cost and expense, register and license such buses and bus equipment on public roads and streets.
- D. All of the said buses, bus equipment and other equipment and facilities required by the Agreement shall, during the term hereof, be maintained by CONTRACTOR in good order and repair and in a condition satisfactory to the State of California.
- E. Bus interiors shall be cleaned and swept prior to placing the bus in service on each day of operation specified herein, and the exterior shall be washed weekly.
- F. Advertising on the buses is prohibited unless written authorization is obtained from CITY. The terms and conditions of any such advertising shall be subject to approval by the CITY. Proceeds of the advertisement will be remitted to CITY. CITY'S decision on these matters shall be final.
- G. CONTRACTOR shall provide additional buses as necessary, in the event of a bus breakdown or overload conditions. The maximum response time shall be 45 minutes for a bus to be made available for the bus patrons to continue on to their destination.
- H. CONTRACTOR shall provide and maintain appropriate fixed maintenance facilities for the servicing of the buses and bus equipment utilized under this Agreement. Such facilities shall be subject to approval by CITY.
- I. CONTRACTOR shall in the course of its operations under this Agreement comply with all current and applicable Federal and State Safety Regulations. In addition, CONTRACTOR shall also comply with General Order No. 98A of the Public Utilities Commission, State of California, relating to the operation and maintenance of buses and bus equipment.

Section 3. Plan Route Frequency and Days of Service. Included herewith and as a part hereof is Exhibit A describing the location and extent of the route to be served. The route shall

operate five days a week (Monday through Friday), June 18, 2007 through August 24, 2007, holidays included (a total of 50 service days) at times and stops described in attached Exhibit A. If and when increased ridership calls for it, the CONTRACTOR shall provide additional round trips on the service days designated above, as directed by CITY. CITY may cancel bus trips with a one day notice without penalty to the CITY. Bus trips canceled on the same day as scheduled for operation will be subject to a cancellation charge, except in cases of Force Majeure as defined by Section 10 of this Agreement.

Section 4. Rates and Compensation:

- A. Payment to the CONTRACTOR for service provided on the specified route and any new routes will be based on cost computed as follows: the bus-hours of operation times the rate of \$57.23 per bus-hour. The cost will include furnishing of the buses, bus equipment, personnel and facilities as may be necessary or required by this Agreement for the operation of a public transportation systems for approximately 11.16 hours per day.

Rate schedules affecting wheelchair equipped buses - CONTRACTOR shall be compensated for such vehicles at the rate of \$233.12 per bus day minimum for the first 4.0 hours and 85 miles, and \$25.22 for each hour over the first 4.0, and \$1.56 per mile for every mile over the first 85. All charges shall be computed "portal-to-portal", 2323 Moorpark Road, Thousand Oaks, California.

The monetary value shown above shall apply as follows:

1. To services herein described.
2. To increases in regular service up to 100% of the bus-hours noted herein, but shall be subject to negotiation for increases of more than 100%.
3. To the cancellation charge which is equivalent to 4 bus-hours.

B. Non-Compensation:

In the event CONTRACTOR is precluded from starting the service described herein for those excusable reasons cited in Section 10 hereinafter, CONTRACTOR shall not receive compensation under this Agreement for the period of the excusable delay. If the excusable delay occurs following the start of regularly scheduled service, on any day, CONTRACTOR shall be compensated as specified in Section 4 above.

Section 5. Claims for Payment. Claims for payment will be submitted monthly to the City of Agoura Hills (Recreation Supervisor) by CONTRACTOR for the bus-hours operated during the previous one month period. The basis of the claim for monthly payment will be substantiated by records kept by CONTRACTOR as described under Section 17 hereinafter. All claims for payment must be presented by the fifteenth of the month to allow their payment on or about the first of the

month following.

CITY shall pay its proportionate share of the total claim for payment based on the number of passes received on the bus bearing the identification of the City.

Section 6. CONTRACTOR'S Service Requirements.

- A. Monitoring of Schedules and Service (CONTRACTOR). CONTRACTOR shall monitor schedules, service and report ridership to CITY on a regular basis and indicate the need to maintain, reduce or increase the frequency of operations. Ridership shall be recorded daily and submitted weekly to the CITY. The records will include the number of people boarding at each stop location for each trip on all service days.
- B. Monitoring of Schedules and Services (CITY). CITY shall have the right to have authorized CITY personnel board at no cost to CITY all buses utilized by CONTRACTOR in the performance of services herein for the purpose of monitoring the CONTRACTOR'S schedules and services.
- C. Personnel. CONTRACTOR shall supply a sufficient number of properly trained, licensed and qualified persons to operate and maintain its equipment and to provide the services required hereunder. All of CONTRACTOR'S employees shall at all times while on duty in the performance of the services required herein by neatly and cleanly dressed, and shall at all times maintain a courteous cooperative attitude in their contact with the public. CONTRACTOR shall be solely and fully liable for the negligence and/or misconduct of any of its personnel. All such personnel who are likely to be in contact with the public shall be evaluated and screened for suitability for the position and shall be trained by CONTRACTOR to give accurate information concerning the routes and schedules of operations of the bus system.

CONTRACTOR shall during the normal bus operating hours have a manned office to accept calls of emergency and informational nature as it relates to bus service. CONTRACTOR shall during normal bus operating hours have personnel carry pagers and cellular phones on bus.

Upon notice from CITY concerning the conduct, demeanor or appearance of such persons in the employ of CONTRACTOR, not conforming to the above, CONTRACTOR shall forthwith take steps necessary to remove or alleviate the cause of the objection.

- D. Identification. CONTRACTOR shall furnish head signs to identify the service and, if requested by CITY, furnish and mount logos signs for identification and promotional material on the exterior of the buses. All signs shall be subject to the approval of CITY.

- E. On Time Performance. CONTRACTOR shall operate buses strictly according to the most current bus schedules provided by CITY and to a reasonable on-time performance standard except where service is interrupted for those reasons stated in Section 10. If service is interrupted, CONTRACTOR shall notify CITY immediately of the situation and provide an estimate of schedule disruption.

Section 7. Changes in Routes, Frequency, Stops and Equipment. CITY may from time to time require changes to be made on the route, frequency of service, stop locations and equipment. Said changes will be requested of CONTRACTOR in writing 5 days in advance of the implementation of the change. CONTRACTOR shall after receipt of written notice take the necessary steps to institute such change in the most expedient manner possible.

Section 8. Fares or Charges. Passenger fares will be described in Exhibit A. CITY will notify the CONTRACTOR in writing of any changes in the fares during the term of this contract. CONTRACTOR shall charge and collect from the persons utilizing said transportation system the fares or charges, as may be established by CITY in fare boxes of a type approved by CITY. CONTRACTOR shall not accept vouchers or tokens, from said persons in lieu of money unless authorized by CITY.

CONTRACTOR shall, upon such forms as shall be prescribed by CITY, furnish weekly to CITY a daily accounting of all revenues collected. The revenues collected each month will be deducted from the amount due to CONTRACTOR for the services provided during that month.

Section 9. Liability and Insurance.

- A. CONTRACTOR shall indemnify, defend and save harmless CITY, its officers, agents, and employees from and against any and all liability, expense, including defense costs and legal fees and claims for damages of any nature whatsoever, including, but not limited to bodily injury, death, personal injury or property damage arising from or connected with CONTRACTOR'S maintenance of equipment or its operations or services hereunder, or the operations or services of subcontractors hereunder, including any workers' compensation suits, liability, or expense arising from or connected with services performed by or on behalf of CONTRACTOR or Subcontractors or by any person pursuant to the Agreement.
- B. Without limiting CONTRACTOR'S indemnification of CITY, the CONTRACTOR shall provide and maintain at its own expense during the term of this Agreement the following program(s) of insurance covering its operations hereunder. Such insurance shall be provided by insurers admitted to do business in California, with a current A.M. Best's rating of A:VII or better, and current certificates of such policies of insurance satisfactory to the CITY shall be delivered to the City Clerk on or before the effective date of this Agreement. Each such certificate shall, as required herein, name the CITY, its officers, agents and employees as additional named insured, shall specifically identify this Agreement and shall contain express conditions that CITY

be given written notice at least 45 days in advance of any modification or termination of any program of insurance. Consultant agrees that it will not cancel, reduce or otherwise modify any insurance required by this agreement.

1. Comprehensive General Liability. A program including, but not limited to, comprehensive general liability, with independent contractor and contractual liability endorsements, property damage and automobile coverage with a combined single limit of not less than \$5,000,000 per occurrence. Such insurance shall be primary to and not contributing with any other insurance maintained by CITY, shall name the CITY and its officers, agents and employees as additional insured and shall include provisions for waiver of subrogation.
2. Workers' Compensation. A program of workers' compensation insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California, and which specifically covers all persons providing services by or on behalf of CONTRACTOR and all risks to such persons under this Agreement. An endorsement and certificate evidencing such insurance coverage shall be filed with CITY prior to CONTRACTOR'S commencement of work hereunder.
3. Subcontractor. Insurance requirements stated above apply to all Subcontractors as well as CONTRACTOR.

Section 10. Force Majeure. CONTRACTOR shall not be charged, nor shall CITY demand from CONTRACTOR damages because of failure in providing the services indicated in the Agreement due to unforeseeable cause beyond the control and without the fault or negligence of CONTRACTOR. Such causes of excusable delay may include acts of federal and/or state governments, acts of CITY, or anyone employed by them, acts of public enemy, fires, floods, snow storms, epidemic quarantine, restrictions, strikes, freight embargoes, and public road closures, but in every case the delay is excusable only for so long as, and to the extent that, the excusable delay continues.

In the event that the CONTRACTOR is unable to provide the services indicated due to any cause, it shall make a reasonable attempt at its expense, to so notify the public patronizing the service.

Section 11. Performance Bond. CONTRACTOR shall procure, at its expense, and keep in effect at all times during the term hereof, a surety bond equivalent to 25% of the aggregate Agreement amount in favor of CITY and executed by a corporate surety authorized to conduct business as a surety in the State of California. Such bond shall be conditioned upon faithful performance by CONTRACTOR of the terms and conditions of the Agreement and shall be renewed to provide for continuing liability in the above amount notwithstanding any payment or recovery thereon. Said bond shall not be subject to cancellation except after notices to CITY by registered mail at least 45 days prior to the date of cancellation. CONTRACTOR shall submit said

bond to CITY concurrently with the execution of this Agreement.

Upon failure of CONTRACTOR to keep such bond in effect at all times during the term hereof, CITY may terminate this Agreement by giving CONTRACTOR 5 days notice in advance of such termination.

Changes in services provided by CONTRACTOR, including but not limited to changes in routes, schedules and stops made pursuant to this Agreement shall in no way release CONTRACTOR or its surety herein from their obligations. Notice of such changes shall be waived by the surety.

Section 12. Assignment or Transfer. CONTRACTOR shall not assign, transfer, convey, sublet or otherwise dispose of this agreement or its rights, title or any interest therein, in whole or in part, or its power to execute such contract to any person, company, or corporation without the prior written consent of CITY.

Section 13. Project Manager (CONTRACTOR). CONTRACTOR agrees that Maggie Kirvan shall be the Project Manager for all aspects of the services to be performed hereunder. Said Project Manager shall have full authority to act for the CONTRACTOR. The CONTRACTOR shall notify CITY in writing of any subsequent changes in the Project Manager.

Section 14. Termination by CITY.

- A. CITY reserves the right to terminate all or any portion of the services in this Agreement for any reason upon giving 15 days written notice to CONTRACTOR.
- B. CITY shall further have the right to terminate this Agreement in its entirety and all rights ensuing therefrom immediately upon the occurrence of one or more of the following:
 1. The occurrence of any act which operates to deprive CONTRACTOR of the rights, powers, licenses, permits and authorities necessary for the proper conduct and operation of the activities authorized herein for a period of any days, or the filing by or against CONTRACTOR of any petition in bankruptcy, or any reorganization of CONTRACTOR pursuant to Chapters 10 or 11 of the Bankruptcy Act; provided, further, that any attempt upon the part of CONTRACTOR to make an assignment for the benefit of creditors shall constitute a breach of this Agreement and, thereupon, this Agreement shall become null and void and no right granted or conferred by this Agreement shall pass under said attempted assignment.
 2. The abandonment or discontinuance by CONTRACTOR of any of the services herein designated by any act or acts of CONTRACTOR without the prior written consent of CITY.

3. Any violation on part of CONTRACTOR'S agents, servants or employees of the traffic rules and regulations of the State of California or disregard of safety of persons using buses, upon failure or refusal on part of the CONTRACTOR to correct the same forthwith after notice from CITY to do so.
 4. The failure by CONTRACTOR to keep, perform, and observe any of the covenants, conditions and terms of this Agreement to be kept, performed or observed.
 5. Failure on the part of CONTRACTOR to maintain the quality of service required by the terms of this Agreement for 5 days after written notice to correct any deficiency therein, including, but not limited to, any cessation for any reason whatsoever to maintain in its employ the personnel necessary to keep said transportation service in operation and available for transporting passengers.
 6. Failure to maintain the whole, or any portion, of CONTRACTOR'S bus equipment, other equipment or facilities in a manner satisfactory to CITY after a 5day notice to correct any deficiency found therein.
- C. In the event CITY terminates this Agreement as hereinabove provided, CONTRACTOR will be paid for the actual services performed to the time of cancellation of the Agreement. If cancellation is due to any of the reasons specified in Subsection B, such payment will be reduced by any damages caused to CITY by acts of CONTRACTOR causing the cancellation. CONTRACTOR in having tendered a bid, has and agrees to waive any and all claims for damages because of cancellation in Agreement for any such reason.

Section 15. Default by Contractor. If CONTRACTOR fails to commence bus service on the date specified, and in the manner specified, does or causes to occur any of the acts indicated in Section 14, above, or if CONTRACTOR is not carrying out the intent of the Agreement, CITY may serve written notice upon CONTRACTOR and the surety that provided the faithful performance bond declaring the Agreement in default and demanding satisfactory compliance with the Agreement.

If CONTRACTOR or its Surety does not comply with such notice after receiving it, or after starting to comply, fails to continue, CITY may complete and continue the service by contracting for the unfinished service with another contractor or providing for and continuing the services with its own personnel and/or equipment. In event, the cost of completing the service shall be charged against CONTRACTOR and its Surety, and may be deducted from any money due or becoming to CITY. If the sums due CONTRACTOR under the Agreement are insufficient for payment of costs of completion, CONTRACTOR or Surety shall pay to CITY all cost in excess of the Agreement price, but not to exceed the maximum amount of the Faithful Performance Bond required in Section 11.

If the Surety assumes any part of the service, it shall take CONTRACTOR'S place in all respects for that part, and shall be paid by CITY for all services performed by it in accordance with this Agreement. If the Surety assumes the entire Agreement, all money due CONTRACTOR at the time of its default shall be payable to the Surety as the service progresses, subject to the terms of the Agreement.

Section 16. Emergency In-Lieu Performance by CITY. In the event that CONTRACTOR fails, neglects or is unable to timely perform any of the services as specified herein, CITY reserves the right, without terminating the Agreement as specified in Section 14, and without declaring the Agreement in default as specified in Section 15, to provide such services, until such time as CONTRACTOR demonstrates its ability to continue performance. CONTRACTOR agrees to pay CITY for the reasonable costs thereof.

Section 17. Business Records Retention and Inspection. CONTRACTOR shall maintain separate complete and accurate books and records which relate to those aspects of the service described in Section 2 of this Agreement, including statements of utilization of the service (ridership), on time performance, and income reports relating to the service.

CONTRACTOR shall retain all records relating to this Agreement for a minimum period of 5 years following expiration or termination hereof. All such records shall be available for inspection by designated auditors of CITY and State of California at reasonable times during normal working hours.

CONTRACTOR shall maintain and make available to CITY and/or appropriate State agencies records pertaining to said service in accordance with the State Uniform System of Accounts.

If at any time during the term of this Agreement or at any time after the expiration or termination of this Agreement, authorized representatives of CITY conduct an audit of CONTRACTOR regarding the service provided to CITY per the terms of this Agreement and if such audit finds that CITY dollar liability for such service is less than payments made by CITY to CONTRACTOR, then CONTRACTOR agrees that the difference shall be either: (1) repaid forthwith by CONTRACTOR to CITY by cash payment, or (2) at CITY option, credited against any future payments hereunder to CONTRACTOR. If such audit finds that CITY dollar liability for service provided hereunder is more than payments made by CITY to CONTRACTOR, the difference shall be paid to CONTRACTOR by CITY by cash payment, provided that in no event shall CITY maximum obligation for this Agreement, as set forth in the Agreement, be exceeded.

Section 18. Non-Discrimination. CONTRACTOR agrees that in hiring employees for work under this Agreement, or any subcontract hereunder, neither it, nor any person acting on its behalf shall by reason of race, religion, color, national origin, ancestry, physical handicap, or sex discriminate against any person who is qualified and available to perform the work to which the employment relates. Nor will CONTRACTOR discriminate against any employee hired for the performance of work under this Agreement on account of race, religion, color, national origin,

ancestry or sex.

In the event of CONTRACTOR's noncompliance with the nondiscrimination provision of this Agreement, CITY shall impose such Agreement sanctions as it may determine to be appropriate, including but not limited to; (a) withholding of payments to the CONTRACTOR under the Agreement until the CONTRACTOR complies, and/or (b) cancellation, termination or suspension of the Agreement, in whole or in part.

Section 19. Modification. This Agreement fully expresses all understandings of the parties concerning all matters covered and shall constitute the total Agreement. Except as may otherwise be provided herein, no addition to, or alteration of, the terms of this agreement, whether by written or verbal understanding of the parties, their officers, agents or employees, shall be valid unless made in the form of a written amendment to this Agreement which is formally approved and executed by the parties.

Section 20. Precedence of Documents. To the extent that there exists a conflict between the documents incorporated herein by reference, and the body of the Agreement, the conflict shall be resolved by giving precedence in the following order:

- A. The Agreement
- B. Documents Incorporated by reference

Section 21. Non-Waiver of Conditions. The failure of CITY to insist upon strict performance by CONTRACTOR of any provision hereunder in any one or more instances shall not constitute a waiver of such provision by CITY, nor shall, as a result, CITY relinquish any rights which it may have under this Agreement.

Section 22. Interpretation and Enforcement. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any lawsuit or other legal proceeding brought by either party to enforce the terms of this Agreement shall be brought in state court in Los Angeles County California, and the prevailing party therein shall be entitled to recover its costs of suit including, without limitation, reasonable attorneys fees.

Section 23. Taxes and Other Charges. CONTRACTOR shall pay all taxes of whatever character that may be levied or charged upon its equipment, facilities, improvements, fixtures, or upon its operations hereunder. CONTRACTOR shall also pay all license or permit fees necessary or required by law for the conduct of its operations hereunder.

Section 24. Inspection. CITY, or any person representing CITY, shall at all times have access and the right to inspect CONTRACTOR'S equipment and facilities utilized in the performance of this Agreement.

Section 25. Notices.

- A. Notices to CITY shall be addressed as follows:
Greg Ramirez, City Manager
City of Agoura Hills
30001 Ladyface Court
Agoura Hills, CA 91301

- B. Notices to CONTRACTOR shall be addressed as follows:
Durham School Services, L.P.
Attn: Contracts Administrator
1431 Opus Place, Suite #200
Downers Grove, IL 60515

Section 26. Status of Contractor. CONTRACTOR and its officers, employees, agents and subcontractors, in the performance of this Agreement, shall act in an independent capacity and shall not be deemed for any purposes, employees of CITY, nor shall they be entitled to any rights, benefits or privileges of CITY employees. CONTRACTOR shall furnish all personnel, supplies, equipment and transportation necessary for the performance of service hereunder.

Section 27. Funding. CITY's obligations under this Agreement are subject to availability of funds in its Fiscal Year 2006-2007 budget to support this service. CITY will utilize local sales tax funds obtained pursuant to Ordinance No. 16 (Proposition A) of the Los Angeles County Transportation Commission for the partial funding of the service described herein. CONTRACTOR agrees to be bound by applicable provisions of this Ordinance and regulations of the Los Angeles County Transportation Commission pertaining thereto.


REMAINDER OF THIS PAGE

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IN WITNESS WHEREOF, CITY has executed this Agreement by causing it to be subscribed by the Mayor and the seal of CITY to be affixed and attested by the Clerk thereof, and said CONTRACTOR has executed this Agreement on the day and year first herein above written.

DURHAM SCHOOL SERVICES, L.P.:

By: Durham Holding II, L.L.C.,
its General Partner



John A. Elliott, President and CEO

CITY OF AGOURA HILLS:

Dan Kuperberg, Mayor

APPROVE AS TO FORM:

Kimberly M. Rodrigues, City Clerk

Craig Steele, City Attorney