

**SETTLEMENT AGREEMENT AND
MUTUAL RELEASE**

CJP This Settlement Agreement and Mutual Release (“Agreement”) is entered into as of this 3rd day of ~~May~~ ~~April~~, 2024 (“Effective Date”), by and between the City of Framingham, Massachusetts, including its officers, employees, representatives, consultants and attorneys, and all persons acting by, through, under or in concert with any of them (collectively, “Framingham”), and Durham School Services, L.P., including its parent (National Express LLC) and related companies, divisions, subsidiaries and other affiliates (collectively, “Durham” and together with Framingham, “the Parties”).

WHEREAS, on or about August 1, 2016, Framingham and Durham entered into a five-year written contract (“Contract”) for school bus transportation services;

WHEREAS, due to the COVID-19 pandemic, the Parties entered into three amendments to the Contract to adjust the Contract responsibilities of the Parties to reflect the pandemic realities of school closures and phased re-openings during 2020 and 2021 (“Amendments”);

WHEREAS, disputes between Framingham and Durham arose over the course of the Contract and Amendments, resulting in Framingham filing a lawsuit against Durham entitled *City of Framingham v. Durham School Services, L.P.*, Middlesex Superior Court Civil Action No. 2381CV00268 which was removed to the United States District Court for the District of Massachusetts as *City of Framingham v. Durham School Services, L.P.*, Civil Action No. 1:23-cv-10460-RGS (“Lawsuit”);

WHEREAS, at all times Durham has disputed, and continues to dispute, the claims Framingham alleges in the Lawsuit;

WHEREAS, Framingham and Durham have agreed to settle these disputes concerning the Contract and Amendments, subject to and upon the terms and conditions hereinafter set forth.

AGREEMENT

In consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Framingham and Durham agree as follows:

1. **Settlement Payment.** The Parties agree that no later than twenty-one (21) days after the Effective Date of this Agreement and receipt of a 2024 W-9 from Framingham, Durham will pay the City two hundred and sixty-five thousand dollars (\$265,000.00). Said payment will be made by either transmitting a bank or certified check in said amount made payable to the City of Framingham and delivering the same to Christopher J. Petrini, Esq., Petrini & Associates, P.C., 372 Union Avenue, Framingham, MA 01702, or by wire payment to an account directed by Framingham. If Durham fails to make payment within seven (7) days of the due date as specified above, Framingham shall have the right to obtain court enforcement of any failure to make timely payment

of the Settlement Payment by commencing an action for recovery of the same, which shall include reasonable attorney's fees, court costs and interest in the amount of 12% per annum.

2. Releases.

(a) Release by Framingham. Upon the parties' satisfaction of the obligations set forth in Paragraph 3 herein, Framingham releases and discharges Durham from any and all charges, claims, counterclaims, complaints, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, defenses and set offs, costs, losses, debts and expenses (including without limitation, attorney's fees and costs actually incurred) of every type, kind, nature, description or character whatsoever whether known or unknown, suspected or unsuspected, liquidated or unliquidated, which Framingham may have had, may now have, or ever may have against Durham arising out of or related to the Contract and Amendments, including but not limited to the claims in the Lawsuit.

This release by Framingham does not include any claims that may be brought on behalf of Framingham by the Commonwealth of Massachusetts pursuant to the Massachusetts False Claims Act (G.L.c.12, §§5A- 5O) and related laws (collectively, "FCA Claims") arising from Durham's actions related to the Contract and Amendments.

(b) Release by Durham. Upon the Parties' satisfaction of the obligations set forth in Paragraph 3 herein, Durham releases and discharges Framingham from any and all charges, claims, counterclaims, complaints, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, defenses and set offs, costs, losses, debts and expenses (including without limitation, attorney's fees and costs actually incurred) of every type, kind, nature, description or character whatsoever, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, which Durham may have had, may now have, or ever may have against Framingham arising out of or related to the Contract and Amendments, including but not limited to the claims in the Lawsuit.

(c) Except as related to the FCA Claims, Durham and Framingham acknowledge that there is a risk that subsequent to the execution of this Agreement, they may discover facts or discover, incur or suffer losses which were unknown or unsuspected at the time this Agreement was executed, and which, if known by them on the date of this Agreement, might have materially affected their decision to enter into this Agreement. Notwithstanding such possibility, Durham and Framingham acknowledge and agree that they are assuming the risk of unknown facts and unsuspected claims and intend and agree that the mutual releases contained in this Agreement shall apply thereto.

(d) In addition to the other representations and warranties reflected herein, Framingham and Durham each represent and warrant: (i) such party has the full power and authority to execute and deliver this Agreement and to make the agreements, covenants, releases, licenses and waivers set forth in this Agreement; (ii) each signatory to this Agreement has the power and authority to bind the party on behalf of whom such signatory is acting; (iii) this Agreement is the valid and binding obligation of each signatory hereto, enforceable against such party in accordance with its terms.

(e) All parties' signatories hereto represent that they (i) have received independent legal advice with respect to the advisability of entering into this Agreement and the legal significance of the terms hereof, and (ii) made such investigation of the facts pertaining to the Agreement, and of all other pertinent matters as they deemed necessary, and (iii) acknowledge that they have not relied on any representations, warranties or statements made by the other party not contained in this Agreement.

(f) All parties' signatories hereto acknowledge and agree that this Agreement is a compromise settlement which is not in any respect, nor for any purpose, to be deemed or construed to be an admission or concession of any liability whatsoever on the part of any person or entity, any such liability being expressly denied.

3. Agreement to Dismiss Pending Litigation.

Upon the Parties' satisfaction of the obligations set forth in Paragraph 1 hereinabove, Framingham and Durham agree to dismiss the Lawsuit with prejudice, without costs and waiving all rights of appeal, by executing and filing a Stipulation of Dismissal with Prejudice in the form attached as **Exhibit A** hereto.

4. Non-Admission.

This Agreement settles disputed claims between the Parties and shall not be deemed an admission of liability or wrongdoing by any of the Parties. Nothing in this Agreement is meant to suggest that either Party has violated any law or contract or that either Party has any claim against the other. Each Party expressly denies any wrongdoing as alleged in the Lawsuit.

5. Disclosure of Agreement

The parties have the right to discuss this agreement and its terms in public and with the media if they so choose. Nothing in this Agreement is intended to restrict either Party from truthfully testifying in connection with any legal, regulatory or law enforcement proceedings in which they or their employees, agents, or representatives are compelled to appear; taking legal action for the purposes of enforcement of this Agreement; or engaging in conduct otherwise required by law.

6. Miscellaneous.

(a) All parties' signatories hereto (i) agree to execute or cause its counsel to execute any additional agreements, instruments and documents and to take any further action which may reasonably be required in order to consummate or effectuate the purposes of this Agreement or otherwise fulfill the obligations of one or more of the parties hereunder, and (ii) shall bear their own costs and attorneys' fees incurred in connection with this Agreement and any such additional agreements or action.

(b) This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Massachusetts. All disputes arising from or related to this Agreement shall be adjudicated in the United States District Court for the District of Massachusetts.

(c) This Agreement contains the entire agreement and understanding between the parties hereto with respect to the matters referred to in this Agreement and supersedes all prior and contemporaneous written and oral negotiations, discussions and understandings. Each party was represented by counsel in negotiating and documenting the terms of this Agreement and assumes the risk of any mistake made in entering into this Agreement, and if either subsequently discovers that any fact relied upon in entering into this Agreement was untrue, or that its understanding of the facts or law was incorrect, it shall not be entitled to set aside this Agreement for such reason or otherwise. This Agreement may only be modified by a writing signed by both parties.

(d) This Agreement shall be binding on, and shall inure to the benefit of and be enforceable by, the parties hereto and their respective successors, heirs and legal representatives.

(e) This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.


(f) All parties' signatories hereto have participated in the negotiation and drafting of this Agreement and waive, knowingly and voluntarily, any statutory provision, judicial precedent or other rule of law to the effect that ambiguities shall be construed against the party that shall have drafted the ambiguous provision in question.

(g) All disputes between the parties that arise out of or relate to this Agreement, whether in tort or in contract, shall be resolved by way of litigation in a court of competent jurisdiction in the Commonwealth of Massachusetts.

(h) This Agreement constitutes a public record pursuant to G.L. c. 66, §10 et seq. and G.L. c. 4, §7, cl. 26, the Massachusetts Public Records Law.

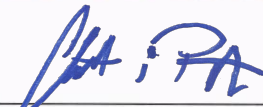
IN WITNESS WHEREOF, the parties have executed this Agreement effective the date first above written.

THE CITY OF FRAMINGHAM, MASSACHUSETTS



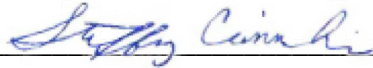
Charlie J. Sisitsky, Mayor
Dated May 2, 2024

APPROVED AS TO FORM:



Christopher J. Petrini
Special Counsel to City of Framingham
May 2, 2024

DURHAM SCHOOL SERVICES, L.P.,



Name: Steffy Cunningham
Title: General Counsel
DULY AUTHORIZED

Dated: May 3, 2024

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CITY OF FRAMINGHAM, Plaintiff v. DURHAM SCHOOL SERVICES, L.P., Defendant
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C.A. NO. 1:23-CV-10460-RGS

STIPULATION OF DISMISSAL

Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), the Plaintiff hereby voluntarily dismisses this action by filing this stipulation of the parties in which the parties stipulate that all claims and counterclaims which were asserted or which could have been asserted in this action, except claims pursuant to the Massachusetts False Claim Act (G.L.c.12, §§5A – 5O) and related laws are dismissed with prejudice and without costs. All rights of appeal are waived.

Respectfully submitted,

Respectfully submitted, DURHAM SCHOOL SERVICES, L.P. By its attorney, _____ Jonathan W. Garlough (admitted pro hac vice) FOLEY & LARDNER LLP 321 N. Clark Street, Suite 3000 Chicago, IL 60654 Telephone: (312) 832-5702 Email: jgarlough@foley.com	The Plaintiff, CITY OF FRAMINGHAM, By its attorneys, _____ Christopher J. Petrini (BBO# 556848) cpetrini@petrinilaw.com Arthur J. Goldberg (BBO# 543909) agoldberg@petrinilaw.com Petrini & Associates, P.C. 372 Union Avenue Framingham, MA 01702 (508) 665-4310 (508) 665-4313 (fax)
_____ Hillary A. Leffue, BBO #707404 FOLEY & LARDNER LLP 111 Huntington Avenue Boston, Massachusetts 02199 Tel. 617.342.4000 Fax. 617.342.4001	

hleffue@foley.com	
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CERTIFICATE OF SERVICE

I, Christopher J. Petrini, hereby certify that on this ____ day of April, 2024 a true and accurate copy of the foregoing document was electronically filed through the ECF system and will be sent electronically to all persons identified on the Notice of Electronic Filing. Any party not receiving notice will be served by U.S. Mail.

Christopher J. Petrini, Esq.