

RESOLUTION NO. 2019- 2643

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING AN AGREEMENT WITH ACADEMY BUS, LLC FOR COACH BUS TRANSPORTATION SERVICES; FINDING THAT THE SERVICES ARE EXEMPT FROM COMPETITIVE PROCUREMENT PURSUANT TO SECTION 3-13(3) OF THE TOWN CODE OF ORDINANCES; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside (the “Town”) Parks and Recreation Department utilizes the services of coach buses for transportation of camp and recreational program participants (“Participants”) throughout Miami-Dade, Broward, and Palm Beach counties; and

WHEREAS, the Town Commission desires to enter into an agreement with the provider of coach bus transportation services (the “Services”) to continue transporting Participants; and

WHEREAS, the City of Parkland issued RFP No. 2018-12 for Coach Bus Transportation Services (the “RFP”) and competitively awarded a contract to Academy Bus, LLC (the “Contractor”) pursuant to the RFP (the “Parkland Contract”); and

WHEREAS, the Contractor has extended the terms and conditions of the Parkland Contract to the Town; and

WHEREAS, Section 3-13(3) of the Town Code of Ordinances (the “Code”) provides that purchases made under state general service administration contracts, federal, county or other governmental contracts or competitive bids with other governmental agencies are exempt from the competitive bidding procedures of Chapter 3 of the Town Code; and

WHEREAS, pursuant to Section 3-13(3) of the Town Code, the Town Commission wishes to approve an agreement with the Contractor for the Services in substantially the form attached hereto as Exhibit “A,” including or adopting the terms and conditions of the Parkland Contract, except as amended or modified by the Town (the “Agreement”); and

WHEREAS, the Town Commission finds that this Resolution is in the best interest and welfare of the residents of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. That each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

Section 2. Approval. That the Town Commission approves the Agreement in substantially the form attached hereto as Exhibit "A."

Section 3. Exemption from Competitive Bidding. That the Town Commission finds that hiring the Contractor to provide the Services by utilizing the Parkland Contract is exempt from competitive bidding pursuant to Section 3-13 of the Town Code.

Section 4. Authorization. That the Town Commission hereby authorizes the Town Manager to execute the Agreement in substantially the form attached hereto as Exhibit "A," subject to approval by the Town Attorney as to form, content, and legal sufficiency; to execute any purchase order or required documentation for the purchases described in this Resolution; and to take any and all necessary action which is reasonably necessary to implement the Agreement, obtain the Services, and implement the purpose of this Resolution.

Section 5. Effective Date. That this Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED on this 12th day of November, 2019.

Moved By: Vice Mayor Gielchinsky

Second By: Commissioner Karukin

FINAL VOTE ON ADOPTION

Commissioner Barry Cohen	<u>Yes</u>
Commissioner Michael Karukin	<u>Yes</u>
Commissioner Tina Paul	<u>Yes</u>
Vice Mayor Daniel Gielchinsky	<u>Yes</u>
Mayor Daniel Dietch	<u>Yes</u>

Daniel Dietch
Mayor

ATTEST:

Sandra Novoa, MMC
Town Clerk

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**

A handwritten signature in blue ink, appearing to read "Quango", is written over a horizontal line.

Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney

**COACH BUS TRANSPORTATION SERVICES AGREEMENT
BETWEEN
THE TOWN OF SURFSIDE
AND
ACADEMY BUS, LLC**

THIS AGREEMENT (this “Agreement”) is made effective as of the ____ day of _____, 2019 (the “Effective Date”), by and between the TOWN OF SURFSIDE, FLORIDA, a Florida municipal corporation, (hereinafter the “Town”), and ACADEMY BUS, LLC, a Florida limited liability company, (hereinafter, the “Contractor”). Collectively, the Town and Contractor are referred to as the “Parties.”

WHEREAS, the Town desires to utilize the services of Contractor for the provision of coach bus transportation services (the “Services”); and

WHEREAS, the City of Parkland issued RFP No. 2018-12 for Coach Bus Transportation Services (the “RFP”) and competitively awarded a contract to Contractor pursuant to the RFP, which contract is attached hereto as Exhibit “A” (the “Parkland Contract”); and

WHEREAS, the Parties wish to incorporate the terms and conditions of the Parkland Contract in this Agreement, except as otherwise modified or amended herein; and

WHEREAS, Section 3-13(3) of the Town Code of Ordinances (the “Code”) provides that purchases made under state general service administration contracts, federal, county or other governmental contracts or competitive bids with other governmental agencies are exempt from the competitive bidding procedures of Chapter 3 of the Town Code; and

WHEREAS, pursuant to Section 3-13(3) of the Town Code, the Town desires to engage the Contractor to perform the Services as specified below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Contractor and the Town agree as follows:

1. **Incorporation of Contract.** The terms and conditions of the Parkland Contract (Exhibit A hereto) is incorporated as though fully set forth herein. Except as otherwise specifically set forth or modified herein, all terms in the Parkland Contract are hereby ratified and affirmed and shall remain unmodified and in full force and effect in accordance with its terms.
2. **Conflicts.** In the event of any conflict or ambiguity between the terms and provisions of this Agreement and the terms and provisions of the Parkland Contract, the terms and provisions of this Agreement shall control.
3. **Defined Terms.** All initial capitalized terms used in this Agreement shall have the same meaning as set forth in the Parkland Contract unless otherwise provided in this Agreement. All references to Parkland, FL shall be replaced with the Town of Surfside, FL, where applicable.
4. **Article 2 of Parkland Contract.** Article 2 of the Parkland Contract is hereby deleted in its entirety and replaced as follows:

ARTICLE 2
TERM AND TIME OF PERFORMANCE

- 2.1 The term of this Agreement shall be from the Effective Date through September 19, 2020, unless earlier terminated in accordance with this Agreement. Additionally, the Town Manager may renew this Agreement for three (3) additional one (1) year periods on the same terms as set forth herein upon written notice to the Contractor and so long as the City of Parkland as the lead agency chooses to renew the Parkland Contract.
- 2.2 Time shall be deemed of the essence in performing the duties, obligations, and responsibilities required by this Agreement.

- 5. Article 5 of Parkland Contract. Article 5 of the Parkland Contract is hereby deleted in its entirety and replaced as follows:

ARTICLE 5
INSURANCE

- 5.1 Contractor shall secure and maintain throughout the duration of this agreement insurance of such types and in such amounts not less than those specified below as satisfactory to Town, naming the Town as an Additional Insured, underwritten by a firm rated A-X or better by A.M. Best and qualified to do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the Town, its officials, employees, agents, and volunteers naming the Town as additional insured. Any insurance maintained by the Town shall be in excess of the Contractor's insurance and shall not contribute to the Contractor's insurance. The insurance coverages shall include at a minimum the amounts set forth in this section and may be increased by the Town as it deems necessary or prudent.
 - 5.1.1 **Commercial General Liability** coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.
 - 5.1.2 **Workers Compensation and Employer's Liability insurance**, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the Contractor shall be allowed to provide Services pursuant to this Agreement who is not covered by Worker's Compensation insurance.
 - 5.1.3 **Business Automobile Liability** with minimum limits of \$1,000,000 per occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive

endorsements, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.

5.2 **Certificate of Insurance.** Certificates of Insurance shall be provided to the Town, reflecting the Town as an Additional Insured (except with respect to Professional Liability Insurance and Worker's Compensation Insurance), no later than ten (10) days after award of this Agreement and prior to the execution of this Agreement by Town and prior to commencing Services. Each certificate shall include no less than (30) thirty-day advance written notice to Town prior to cancellation, termination, or material alteration of said policies or insurance. The Contractor shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Agreement, including any extensions or renewals that may be granted by the Town. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The Town reserves the right to inspect and return a certified copy of such policies, upon written request by the Town. If a policy is due to expire prior to the completion of the Services, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Town before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Town.

5.3 **Additional Insured.** Except with respect to Professional Liability Insurance (if required) and Worker's Compensation Insurance, the Town is to be specifically included as an Additional Insured for the liability of the Town resulting from Services performed by or on behalf of the Contractor in performance of this Agreement. The Contractor's insurance, including that applicable to the Town as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Town shall be in excess of and shall not contribute to the Contractor's insurance. The Contractor's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.

5.4 **Deductibles.** All deductibles or self-insured retentions must be declared to and be reasonably approved by the Town. The Contractor shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

5.5 The provisions of this section shall survive termination of this Agreement.

6. **Section 8.2 of Parkland Contract.** Section 8.2 of the Parkland Contract is hereby deleted in its entirety and replaced as follows:

8.2 Ownership and Access to Records and Audits.

8.2.1 Contractor agrees to keep and maintain public records in Contractor's possession or control in connection with Contractor's performance under this Agreement. The Town Manager or her designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access

to and the right to examine and audit any records of the Contractor involving transactions related to this Agreement. Contractor additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Town.

- 8.2.2 Upon request from the Town's custodian of public records, Contractor shall provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.
- 8.2.3 Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Town.
- 8.2.4 Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Contractor shall be delivered by the Contractor to the Town Manager, at no cost to the Town, within seven (7) days. All such records stored electronically by Contractor shall be delivered to the Town in a format that is compatible with the Town's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Contractor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- 8.2.5 Any compensation due to Contractor shall be withheld until all records are received as provided herein.
- 8.2.6 Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Town.
- 8.2.7 **Notice Pursuant to Section 119.0701(2)(a), Florida Statutes. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.**

Custodian of Records: Sandra Novoa, MMC
Mailing address: 9293 Harding Avenue
Surfside, FL 33154
Telephone number: 305-861-4863
Email: snovoa@townofsurfsidefl.gov

7. **Section 8.8 of Parkland Contract.** Section 8.8 of the Parkland Contract is hereby deleted in its entirety and replaced as follows:

8.8 **Notices/Authorized Representatives.** Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the addresses listed on the signature page of this Agreement or such other address as the party may have designated by proper notice.

8. **Section 8.12 of Parkland Contract.** Section 8.12 of the Parkland Contract is hereby deleted in its entirety and replaced as follows:

8.12 **Compliance with Laws.** The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out its duties, responsibilities, and obligations under this Agreement, and in particular shall obtain all required permits from all jurisdictional agencies to perform its duties, responsibilities, and obligations under this Agreement at its own expense.

9. **Section 8.15 of Parkland Contract.** Section 8.15 of the Parkland Contract is hereby deleted in its entirety and replaced as follows:

8.15 **Governing Law; Venue; Waiver of Jury Trial.** This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any proceedings arising out of this Agreement shall be proper exclusively in Miami-Dade County, Florida. **IN THE EVENT OF ANY LITIGATION ARISING OUT OF THIS AGREEMENT, EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.**

10. **Article 8 Miscellaneous of Parkland Contract.** Article 8 of the Parkland Contract is hereby amended by adding the following provisions:

8.21 **Subcontractors.** The Contractor shall be responsible for all payments to any subcontractors and shall maintain responsibility for all work related to the Services. Contractor may only utilize the services of a particular subcontractor with the prior written approval of the Town Manager, which approval may be granted or withheld in the Town Manager's sole and absolute discretion.

8.22 **Contractor's Responsibilities; Representations and Warranties.** The Contractor represents that is an entity validly existing and in good standing under the laws of Florida. The execution, delivery and performance of this Agreement by Contractor have been duly authorized, and this Agreement is binding on Contractor and enforceable against Contractor in accordance with its terms. No consent of any other person or entity to such execution, delivery and performance is required.

8.23 Attorneys' Fees. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and all appellate levels.

8.24 Entire Agreement/Modification/Amendment. This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein. No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

8.25 Survival of Provisions. Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

8.26 Prohibition of Contingency Fees. The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

[Remainder of page intentionally left blank. Signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year as first stated above.

TOWN OF SURFSIDE

CONTRACTOR

By: _____
Guillermo Olmedillo
Town Manager

Attest:

By: _____
Sandra Novoa, MMC
Town Clerk

Approved as to form and legal sufficiency:

By: _____
Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney

Addresses for Notice:

Town of Surfside
Attn: Town Manager
9293 Harding Avenue
Surfside, FL 33154
305-861-4863 (telephone)
305-993-5097 (facsimile)
golmedillo@townofsurfsidefl.gov (email)

With a copy to:

Weiss Serota Helfman Cole & Bierman, P.L.
Attn: Lillian Arango, Esq.
Town of Surfside Attorney
2525 Ponce de Leon Boulevard, Suite 700
Coral Gables, FL 33134
larango@wsh-law.com (email)

By: _____

Name: _____

Title: _____

Entity: **Academy Bus, LLC**

Addresses for Notice:

Academy Bus, LLC
Attn: Antonio Ramos, Vice President, Sales
111 Paterson Avenue
Hoboken, NJ 07030
_____(telephone)
_____(facsimile)
_____(email)

With a copy to:

_____(telephone)
_____(facsimile)
_____(email)

EXHIBIT "A"

**Services Agreement between the City of Parkland and Academy Bus, LLC
(including all exhibits to same)**