

AGREEMENT FOR CONTINUATION OF PAYMENTS DURING COVID-19-RELATED SCHOOL CLOSURES

This Agreement for Continuation of Payments During COVID-19-Related School Closures ("Agreement") is made effective as of May 6, 2020 ("Effective Date") by and between the William S. Hart Union High School District ("District"), a California public school district, and Storer Transportation School and Contract Service ("Provider"), a California corporation designated as entity number C0832885 by the California Secretary of State. The District and Provider may be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. The District and Provider are parties to that certain agreement dated May 5, 2019, and entitled "Transportation Service Contract Agreement" ("Existing Services Contract"). In accordance with the Existing Services Contract, the Provider is to furnish transportation services subject to certain terms and for certain District students, including both home-to-school ("HTS") and nonpublic school ("NPS") routes ("Transportation Services").

B. Governor Newsom, on behalf of the State of California ("State"), and Los Angeles County ("County"), among other governmental entities, have separately declared the existence of a public health emergency arising from the spread of the virus that causes COVID-19, and the World Health Organization has declared that COVID-19 is a worldwide pandemic. As a result of this public health emergency, the public health officers of the State and the County have issued orders intended to slow the spread of the virus that causes COVID-19. Consistent with such orders, the District closed its schools as of March 13, 2020. Since then, the District's students have not been physically attending classes in the District's schools or in any NPS settings, and Provider has not been providing any Transportation Services.

C. On March 17, 2020, Senate Bill ("SB") 117 took effect. Among the other provisions of SB 117, Section 1(b) provides that "It is the intent of the [California] Legislature that a local educational agency receiving a hold harmless apportionment pursuant to this [Section 1] ensures that [its] employees and contractors are compensated and paid during the period of time a school is closed due to the coronavirus (COVID-19), as reasonably anticipated if the school has not been closed due to COVID-19." In addition, on March 27, 2020, House Resolution ("HR") 748 became law (Public Law No: 116-136). HR 748, among other things, established the "Education Stabilization Fund" to assist educational agencies to prepare for and respond to the COVID-19 public health emergency. In accordance with Sections 18002 and 18003 of HR 748, the Education Stabilization Funds will be allocated to the Governor of the State, and the State will make those funds available to local educational agencies in the State. Section 18006 of HR 748 provides that "A local educational agency ... that receives funds under 'Education Stabilization Fund,' shall to the greatest extent practicable, continue to pay its employees and contractors during the period of any disruptions or closures related to coronavirus."

D. The Parties acknowledge that the presumed goal underlying both Section 1(b) SB 117 and Section 18006 of HR 748 is that the payments (for purposes of this Agreement, each an "SB 117 Payment") will allow service providers to continue to pay their respective employees, so that the employees will have financial resources available during the period schools are closed, thereby enabling the service providers to be able to resume providing necessary services when the current COVID-19 public health emergency ends.

E. The Parties acknowledge that, as of the Effective Date, there are no mandatory provisions or guidance with respect to implementation of the intent set forth in Section 1(b) of SB 117 or with respect to the scope and interpretation of Section 18006 of HR 748. The Parties further acknowledge and agree that, regardless of whether any governmental entity subsequently issues mandatory provisions or guidance regarding those matters, the Parties have entered into this Agreement for purposes of implementing, on a good faith basis, the provisions of those laws. On that basis, the Parties acknowledge and agree that the Payroll Payments and Benefit Payments (as defined herein) that Provider is to make pursuant to this Agreement will : (i) be adequate incentive for the Direct Employees (as defined herein) to remain in their jobs with the Provider or, as applicable, return to their jobs with the Provider once the District's schools reopen; and (ii) ensure all Direct Employees are made "whole" through receipt of the intended financial assistance during the COVID-19 crisis.

F. For avoidance of doubt, the Parties further acknowledge and agree that, subject to the provisions herein, and for each school day funded by SB 117 Payments pursuant to Section 2 herein, the Provider shall make Payroll Payments to each of the Direct Employees in such amounts as assume that each Direct Employee worked four hours per day on each such school day, notwithstanding that the Direct Employee actually may not have worked that day. Also for avoidance of doubt, in no event shall the District be obligated pursuant to this Agreement with respect to any portion of the 2020-2021 or subsequent fiscal years.

Now, in consideration of the foregoing and of the respective rights and obligations of the Parties as set forth herein, consideration that each Party acknowledges is adequate, the Parties hereby agree as follows:

AGREEMENT

Section 1. Provider Documentation of Direct Employee Compensation.

Subsection 1.1 Initial Certified Payroll Records for Direct Employees. Within five days following the Effective Date, the Provider shall provide to the District a certified copy of the Provider's payroll records ("Certified Payroll Records") for the month of April, 2020, including only those of the Provider's employees who, as of the date the District closed its schools, were directly providing labor, specifically as drivers, in connection with the Transportation Services furnished to District students (each a "Direct Employee"). The Direct Employees shall not include any of Provider's officers, management, administrative, or maintenance personnel. The Certified Payroll Records shall identify each Direct Employee and his or her position, days worked, and total compensation package (i.e., salary/wages and benefits) during the month of April, 2020.

Subsection 1.2 Certified Payroll Records Submitted with Invoices. With each invoice the Provider submits to the District pursuant to Section 2 herein, the Provider shall provide Certified Payroll Records for the month to which the invoice is applicable, specifying, with respect to each of the Direct Employees, all of the information described in Subsection 1.1 herein.

Section 2. District SB 117 Payments. Subject to District receipt and verification of the information to be provided by the Provider, and subject to all other provisions of this Agreement, the District shall make SB 117 Payments to the Provider on the following basis:

- (i) For the portion of the 2019-2020 fiscal year that the District's schools have been and remain closed as a result of the COVID-19 public health emergency ("Closure Period"), the District will make monthly SB 117 Payments to Provider, in arrears and subject to receipt of properly documented monthly invoices, at the rate of \$13,105.94 per school day;

- (ii) The Provider may count as a “school day” only those days that the Provider reasonably would have provided Transportation Services if the District’s schools had not been closed as a result of the COVID-19 public health emergency, and the total number of school days to be funded in accordance with this Agreement shall be limited to a maximum of fifty-three (53) school days;
- (iii) Provider shall, at all times during the Closure Period, continue to pay one hundred percent of Employee agreed upon CAP for the medical, dental, and vision plan premiums (“Benefit Payments”) for all of the Direct Employees who were actively enrolled as of March 13, 2020;
- (iv) Employees (drivers) will have a choice to stay on Unemployment or accept the 4.0 hours a day in wages offered by the District. If the employee (driver) chooses to stay on Unemployment, Provider will continue to pay their respective medical, dental and vision benefits up to the employee agreed benefit cap through summer. Provider will then credit the District for the 4.0 hours of drivers pay per day by creating a line item credit of \$91.84 (average driver wage plus payroll taxes) per day for each day the employee (driver) has been on unemployment or stays on unemployment during the COVID-19 closure. This will ensure that employees are not “double dipping” and will allow Provider to return to work all maintenance and office staff to full time status and continue all employee benefits as already stipulated.
- (v) Provider shall submit to the District: (1) monthly invoices, each which shall specify the SB 117 Payment amount due for the month covered by the invoice.
- (vi) The Provider shall not invoice the District for any SB 117 Payments: (1) to the extent reductions of the invoiced amounts are necessary on account of Alternative Financial Assistance (defined in Section 3 herein) received by the Provider, and (2) as otherwise may be required pursuant to this Agreement; and
- (vii) The District will review, process, and issue payment on each invoice within thirty days following receipt of the invoice; provided that the time for issuance of payment may be extended to the extent the Provider does not provide reasonably supporting documentation for the invoiced amount or the District reasonably has questions regarding such information.

Section 3. Alternative Financial Assistance. At all times, including, without limitation, after the declarations of public health emergency due to COVID-19 have been lifted, the Provider shall make reasonable efforts to apply for and receive or obtain any and all federal, state, and/or local government COVID-19-related financial assistance that may in whole or in part be applicable to the Closure Period and available to the Provider and/or its employees (“Alternative Financial Assistance”). To the extent not precluded by applicable laws or programs that authorized the Alternative Financial Assistance: (i) any and all Alternative Financial Assistance received or obtained by or on behalf of the Provider and attributable to the Closure Period shall serve to offset the District’s obligations to make SB 117 Payments pursuant to this Agreement; and (ii) with respect to Alternative Financial Assistance received after the Closure Period ends, the Provider, within thirty days of receiving such Alternative Financial Assistance, shall refund to the District the SB 117 Payments it made pursuant to this Agreement, not to exceed an amount equal to the total of any and all Alternative Financial Assistance received or obtained by the Provider. With each invoice that it provides to the District pursuant to this Agreement and, subsequently, on a monthly basis during the one-year period after the declarations of public health emergency due to COVID-19 have been lifted, the Provider shall provide documentation to the District

reasonably evidencing the Provider's efforts to apply for and receive or obtain such Alternative Financial Assistance, along with the amounts and sources of all Alternative Financial Assistance actually received or obtained. Without limiting anything else in this Agreement, the provisions of this Section shall be deemed and construed: (i) to constitute a material portion of the consideration to the District in exchange for making the SB 117 Payments to the Provider pursuant to this Agreement; and (ii) the Provider's obligations pursuant to this Section shall survive the termination of this Agreement.

Section 4. Provider Services During Closure Period. In recognition of the fact that, pursuant to this Agreement, the District will be making SB 117 Payments despite the Provider not providing the Transportation Services it would have provided but for the COVID-19 public health emergency, the Provider, upon request of the District at any time during the Closure Period and at no additional cost to the District, shall furnish transportation services, consistent with the Existing Services Contract, as the District reasonably may require. However, in no event shall the transportation services furnished by the Provider pursuant to this Section be in excess, on a cumulative basis, of the Transportation Services the Provider would have furnished pursuant to the Existing Services Contract.

Section 5. Provider Records. The Provider must prepare and maintain, in accordance with generally accepted accounting principles, all financial and other records related to or associated with this Agreement as necessary, appropriate and/or required by law ("Provider Records"). Without limiting the foregoing, the Provider Records shall include records regarding the Payroll Payments made to Direct Employees and the Benefit Payments made on behalf of Direct Employees. In accordance with Government Code Section 8546.7, the California State Auditor has the right, for a period of three years following final payment, to review, audit and/or copy records of the contracting parties with respect to each contract providing for expenditure of public funds in excess of \$10,000. In addition to the State Auditor, the District and any other governmental entities with competent jurisdiction shall each have an independent right pursuant to this Agreement, and for a period of three years following final payment to the Provider, to review, audit and/or copy the Provider Records. Upon each request during such period, the Provider shall make the Provider Records reasonably available for such purposes.

Section 6. Provider Waiver and Release. As additional material consideration for the District's agreement to make SB 117 Payments pursuant to this Agreement, the Provider hereby waives and releases the District with respect to any and all rights, claims, and actions the Provider now or at any other time may have pursuant to the Existing Services Contract and with respect to the Closure Period. In connection with the foregoing waiver and release, the Provider hereby waives any and all rights that it may have pursuant to Section 1542 of the California Civil Code, which provides that:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Section 7. Provider Indemnification of District.

Subsection 7.1 General Requirement. The Provider shall indemnify and hold harmless the District with respect to any and all damages, losses, judgments, costs and expenses (including, without limitation, attorneys' fees and expenses), and other liabilities of whatever nature (each a "Liability" and, if multiple, the "Liabilities") to the extent arising from this Agreement or any SB 117 Payments made to the Provider pursuant to this Agreement. For all purposes of this Section 7, the Provider's obligation to indemnify the District shall be deemed and construed to apply to the District, its Governing Board and each member thereof, the District's other officers, and its employees, agents, and other representatives (collectively, not including the District, the "District Representatives").

Subsection 7.2 Defense of District. The Provider shall defend the District with respect to any and each claim, demand, action, or other proceeding that by allegation or implication is within the scope of the indemnification obligation set forth in Subsection 7.1 herein. Any and each defense of the District and/or any District Representatives conducted pursuant to this Agreement must be conducted by qualified and appropriately experienced legal counsel that is reasonably acceptable to the District, but selected and retained by Provider, at no cost to the District or any of the District Representatives.

Subsection 7.3 Limitation on Obligation. The Provider shall not be obligated to indemnify and defend the District pursuant to Subsections 7.1 and 7.2 of this Agreement to the extent any Liability is attributable to the sole negligence, active negligence, or willful misconduct of the District or any of the District Representatives, in which event the Parties shall be responsible and liable on a comparative basis.

Subsection 7.4 Insurance Not a Limitation. The obligations of Provider pursuant to this Section 7 shall not be deemed or construed to be: (i) conditioned upon or in any other manner limited by the existence of any insurance coverage maintained by the Provider or any other entity or person; or (ii) conditioned upon the receipt by the Provider or any other entity or person of, or limited to the amount of, any insurance proceeds.

Subsection 7.5 Survival of Obligations. Without limiting anything else in this Agreement, the foregoing provisions of this Section 7 shall be deemed and construed: (i) to constitute a material portion of the consideration to the District in exchange for making the SB 117 Payments to the Provider pursuant to this Agreement; and (ii) with respect to any and all acts, omissions, incidents and/or disputes that arise or occur prior to termination of this Agreement, to survive the termination of this Agreement.

Section 8. Provider Refund of SB 117 Payments. To the extent the District does not receive sufficient funding, pursuant to Section 1 of SB 117 and/or Section 18003 of HR 748, to fully compensate it for the SB 117 Payments made to Provider and any other service providers to which the District has made similar payments (after taking into account any other expenditures pursuant to those laws), or for any reason (whether through audit or otherwise) the State, the County, or any court or other governmental agency disallows some or all of the SB 117 Payments the District makes to the Provider (including, without limitation, because the Provider may have improperly expended such funds, or because the SB 117 Payments were determined to be a gift of public funds), the Provider shall refund to the District the applicable portion of the SB 117 Payments. Each such refund shall be paid to the District within sixty days following receipt by the Provider of notice from the District and documentation reasonably evidencing the reasons for, and the amounts of, the refunds. If the Contractor does not timely refund such amounts to the District, including, without limitation, because the Contractor disputes its obligation to refund the amounts to the District, the Contractor shall also pay interest, at the maximum rate allowed by State law, accruing from the date payment was due. Without limiting anything else in this Agreement, the provisions of this Section shall be deemed and construed: (i) to constitute a material portion of the consideration to the District in exchange for making the SB 117 Payments to the Provider pursuant to this Agreement; and (ii) to survive the termination of this Agreement.

Section 9. Confidential Employee Information.

Subsection 9.1 District Obligations. The District shall make reasonable efforts to secure, protect the privacy of, and prevent the unauthorized disclosure of, any and all confidential personal information regarding the Direct Employees that is set forth in any of the Certified Payroll Records the District receives pursuant to this Agreement (“Confidential Employee Information”). Such reasonable efforts may include, but are not limited to allowing access to Confidential Employee Information only on a “need to know” basis, which, in addition to District employees, may include allowing access by the District’s legal counsel and/or consultants.

Subsection 9.2 Mandated Disclosure. The District shall provide written notice to the Provider promptly upon becoming aware that any subpoena, order, demand, or other process seeking or requiring disclosure or release of any Confidential Employee Information is being sought or has been issued. In each such event, the Provider shall be permitted to intervene for purposes of attempting to stop or limit the disclosure of Confidential Employee Information. Notwithstanding anything to the contrary, the District may disclose some or all of the Confidential Employee Information if, but only if: (i) required pursuant to the California Labor Code or other applicable law; (ii) a court or other governmental entity with competent jurisdiction has ordered that the information be disclosed or authorized a subpoena or discovery request seeking disclosure of the information; or (iii) disclosure is made during litigation or other dispute resolution arising from this Agreement.

Section 10. Interpretation of Agreement.

Subsection 10.1 Fair and Reasonable Interpretations. Each Party hereby acknowledges and agrees that, prior to execution and delivery of this Agreement, it has received, or had unqualified opportunities to receive, independent legal advice from its legal counsel with respect to the advisability of entering into this Agreement and the meaning of the provisions herein. Therefore, the provisions of this Agreement shall be construed based on their fair and reasonable meaning, and not for or against any Party based on whether such Party or its legal counsel was primarily responsible for drafting this Agreement or any particular provision herein.

Subsection 10.2 Recitals. Each of Recitals A through F, inclusive, herein, is hereby incorporated as an effective and operative provision of this Agreement.

Subsection 10.3 Entire Agreement. This Agreement constitutes the entire understanding and agreement between the Parties pertaining to the SB 117 Payments, and any and all prior and contemporaneous agreements, representations and understandings of the Parties relating to such subject matter, whether oral or written, are hereby superseded and replaced. In the event any provision of this Agreement conflicts with any provision of the Existing Services Contract, the provision of this Agreement shall govern for all purposes.

Subsection 10.4 Modifications of Agreement. This Agreement may be amended or otherwise modified only by means of duly-approved written instrument executed and delivered by both Parties.

Subsection 10.5 Waiver. A waiver by a Party of any provision of this Agreement shall be binding only if the waiver is set forth in writing and has been duly approved and signed by the waiving Party. Unless so specified in the written waiver, a waiver by a Party of any provision of this Agreement shall not constitute a waiver of any other provision(s) herein, similar or not, and shall not be construed as a continuing waiver. Except as waived in accordance with this Subsection, neither the failure by a Party at any time to require performance of any requirement of this Agreement, nor any

forbearance or indulgence of the Party in regard to such requirement, shall in any manner affect the Party's right at a later time to enforce the same or any other provision of this Agreement.

Subsection 10.6 Governing Law and Venue. This Agreement shall be governed by and interpreted in accordance with California law, notwithstanding any conflict-of-law, choice-of-law or other provision in any federal, state, or local law. Any action, arbitration, or other proceeding arising from this Agreement shall be initiated and conducted only in the County of Los Angeles, California.

Subsection 10.7 No Severability. If a court of competent jurisdiction determines, for any reason, that any material provision or requirement of this Agreement is invalid or unenforceable, such determination shall be deemed or construed to mean that this Agreement was void, invalid, and unenforceable from the inception. Within 60 days of any such determination, the Provider shall refund to the District any and all SB 117 Payments and other amounts that it paid to the Provider pursuant to this Agreement.

Subsection 10.8 Successors and Assigns. Absent the express written consent of the District (which the District, in its sole discretion, may give, deny or condition), the Provider shall not assign this Agreement, and any attempt to do so shall be null and void. Subject to the foregoing, this Agreement shall inure to the benefit of, and be binding on, the Parties' authorized successors and assigns.

Subsection 10.9 No Third-Party Rights of Action. This Agreement shall in no event be deemed or construed to create any right or provide any basis for any third party to file, make, commence, or otherwise assert any claim, demand, action, or other proceeding against or involving the District.

Subsection 10.10 Agreement is Public Record. Notwithstanding anything in any proposal or any discussions or writings relating hereto: (i) nothing in this Agreement shall be deemed or construed to constitute confidential information; and (ii) this Agreement is a public record which the District may disclose in accordance with California law or otherwise.

Section 11. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, taken together, shall constitute one and the same instrument. Signature pages may be detached from counterpart originals and combined to physically form one or more copies of this Agreement having original signatures of both Parties.

(The remainder of this page intentionally left blank.)

Section 12. Due Authority. Each person who has signed this Agreement on behalf of a Party shall be deemed and construed to thereby represent and warrant that he or she has been duly authorized by such Party to sign, and thereby bind such Party to, this Agreement.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have executed this Agreement as evidenced by their signatures below.

William S. Hart Union High School District

By: _____

Print Name: _____

Print Title: _____

Approved as to form:

By: Atkinson, Andelson, Loya, Ruud & Romo,
Attorneys for the William S. Hart Union
High School District

By: _____

Brian W. Smith, Legal Counsel

**Storer Transportation School and Contract
Service**

By: _____

Steven J. Fernandes, Vice President

Fed. Tax ID No: _____