

**AMENDMENT TO TRANSPORTATION SERVICES CONTRACT BETWEEN THE
BOARD OF EDUCATION OF YORKVILLE COMMUNITY UNIT SCHOOL DISTRICT
NO. 115, KENDALL COUNTY, ILLINOIS AND SEPTRAN, INC.**

THIS AMENDMENT is entered into this _____ day of April, 2020, by and between the **Board of Education of Yorkville Community Unit School District No. 115, Kendall County, Illinois (“District”)**, and **Septran, Inc. (“Contractor”)** (collectively referred to as “Parties”).

WITNESSETH:

WHEREAS, the Parties entered into a Transportation Services Contract, dated March 16, 2015 (“Current Contract”), in which the Contractor would provide transportation services for the District for the period 2015 - 2018, which the Parties previously have extended through the end of the current (2019-2020) school year and 2020 summer school term;

WHEREAS, after public bid the District awarded a new Transportation Services Contract (“Successor Contract”) to Contractor to begin July 1, 2020;

WHEREAS, the Current Contract permits the Parties to amend the Current Contract by a written amendment signed by the Parties;

WHEREAS, District may temporarily, intermittently, or permanently suspend classes during the current 2019-2020 school year due to the COVID-19 pandemic (each a “Closure Period”);

WHEREAS, on March 13, 2020, Governor Pritzker’s Executive Order 5 (2020) ordered the closure of all public and private schools in Illinois serving pre-kindergarten through 12th grade students from March 17, 2020 through March 30, 2020;

WHEREAS, on March 20, 2020, Governor Pritzker’s Executive Order 10 (2020) ordered all individuals currently living within the State of Illinois to stay at home or at their place of residence, which extended the mandated statewide suspension of in-person instruction through April 7, 2020;

WHEREAS, on March 31, 2020, Governor Pritzker extended his previous order mandating statewide suspension of in-person instruction through April 30, 2020;

WHEREAS, the District temporarily suspended classes through April 30, 2020;

WHEREAS, the Illinois State Board of Education has advised that school districts should amend contracts with existing bus contractors to ensure reimbursement for contractors’ allowable transportation expenditures during a Closure Period;

WHEREAS, the Current Contract and Successor Contract, as written, only require the District to pay for services received and do not require payments for periods of no service; and

WHEREAS, the District and Contractor wish to amend the Current Contract to ensure that during the current Closure Period, through April 30, 2020, Contractor is provided payments to enable it to continue paying drivers, monitors, and other individuals required to perform the services set out in the Current Contract (“Contractor’s Employees”) for any work days missed that are not subsequently made-up.

NOW, THEREFORE, in consideration of the terms and conditions herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Compensation.** During the Closure Period, the District shall provide payments to Contractor in the amount of up to **\$20,078.42** per day for personnel costs and up to **\$4,739.27** per day for fixed costs, so that Contractor may continue paying Contractor’s Employees during this time and Contractor’s Employees will be available during Closure Period and when service resumes. Contractor has provided District a list of all those employed as of March 13, 2020, and payments discussed in this paragraph shall not be made for any additional employees. For any retroactive payments made to Contractor’s Employees by Contractor for service during the Closure Period prior to approval of this Amendment, Contractor shall reduce its payments by any amount an employee has already received from unemployment claims during the Closure Period and refund the District accordingly. Moving forward, Contractor shall take all required steps to ensure all payments to employees continue to be lawful and consistent with unemployment laws. In the event that a Closure Period continues past the regular 2019-2020 school year into the 2020 summer school term, the Parties may renegotiate an equitable adjustment in compensation that would apply during the 2020 summer school term. This Amendment does not amend the Successor Contract.

2. **Continued Employment.** In exchange for the payments made under paragraph 1 of this Amendment, the Contractor will continue to employ all Contractor’s Employees necessary to operate the buses that would otherwise be servicing the District and to maintain such buses in proper working order so that they are available to work during the Closure Period and so that when school resumes, the Contractor remains ready, willing and able to promptly commence services under the Current Contract. The District reserves the right to send additional notices to Contractor’s Employees concerning its expectations during the Closure Period, specifically its expectation that the employees are available to work at any time during the closure period and will be available when the Closure Period is over.

3. **Monthly Payment Reports.** At the end of each month, Contractor shall send, in addition to its monthly invoice, a detailed backup and proof of amounts paid to or on behalf of all individual employees and all allowable fixed costs during that period. If the monthly report includes any costs that are not allowed, such as payments to employees who now work for a different employer or any fixed costs that the District has not previously agreed to or any costs that are insufficiently documented, the District will not need to pay for these costs. The District shall reserve exclusive and final discretion over the sufficiency of documentation submitted. Allowable costs include:

A. Personnel costs documented through payroll records that sets forth the following: (i) an employee variable (i.e., random number or otherwise) that corresponds to; (ii) the job function

(bus driver, bus aide, mechanic etc.); (iii) the hourly rate of pay; (iv) the total gross wages; and (v) any benefits paid to or on behalf of the employee.

4. **Clawback.** Contractor shall apply for any and all available compensation (applicable to Contractor's business) for expenses outlined in this Amendment, including, but not limited to, state or federal government funds or applicable insurance. If, at any time, Contractor or any subsidiary or parent corporation receives compensation from another source for any of these same expenses outlined and related to this Amendment, the District must be notified and the amounts received must be turned over to the District. If Contractor receives compensation from another source for any these same expenses outlined in this Amendment before the District begins making payments under this Amendment, then District will reduce or stop payments accordingly. If Contractor fails to notify District of any such compensation received, Contractor shall be liable for interest on all such clawback amounts or overpayments in the amount of 1% per month, and Contractor shall reimburse all costs incurred by the District, including but not limited to attorney's fees and expert witness fees, in discovering and collecting such sums.

5. **Audit Rights.** During the term of this Amendment, and for ten years thereafter, the District shall have the right to inspect and copy Contractor's accounting records and other related documents to confirm that Contractor has complied with the terms and conditions of this Amendment. Any audit performed by the District shall be done at its expense; however, if such audit reveals that Contractor has failed to materially comply with the terms and conditions of this Amendment, the District shall, in addition to any other remedies available to it under the Current Contract, this Amendment, at law or in equity, be entitled to recover all of the costs and expenses incurred by the District in performing such audit.

6. **Make-Up Days.** If make-up days are utilized and the cost of the make-up days plus payments hereunder exceeds the District's budgeted Transportation costs for the 2019-2020 school year, Contractor will offset the above per diem payment from the costs of any additional make-up days. If the District receives any funding from state or federal government funds or applicable insurance claims, including but not limited to the Education Stabilization Fund, as a result of its expenditures exceeding its budgeted Transportation costs for the 2019-2020 school year, then this paragraph shall not apply to the extent of such additional funding and District's offset will be reduced accordingly.

7. **State Reimbursement/Credit.** It is anticipated by the Parties that the Illinois State Board of Education will reimburse the District's payments made under this Amendment at a rate of 62%. In the event that this does not happen, and the rate is less than 62%, both District and Contractor will share the loss equally. Therefore, while District will be responsible for 50% of the difference between the 62% rate and ISBE's actual reimbursement rate, Contractor must provide a credit or offset to the District for the remaining 50% of the difference between the payments made under this Amendment and the applicable State reimbursed amounts. The District shall prepare and send Contractor an invoice for its equal portion of the unreimbursed amount, and Contractor shall provide a credit in that amount that will be applied to future services provided by Contractor to District. Except as set forth in this Amendment, Contractor agrees to release any and all claims against the District for any additional compensation during this Closure Period.

8. **Additional Services.** During Closure Period, in further consideration for the payments in paragraph 1, the Contractor shall be available to perform any and all runs, activities, and work that the District requests.

9. **Termination.** The District reserves the right to terminate this Agreement with or without cause at any time upon written notice to Contractor.

10. **Bankruptcy.** This Amendment shall terminate, without notice, (i) upon the institution by or against the Contractor of insolvency, receivership or bankruptcy proceedings or any other proceeding for the settlement of debts, (ii) upon Contractor's assignment for the benefit of creditors, or (iii) upon Contractor's dissolution for cessation of doing business. Said termination shall not impair the validity and enforceability of the District's rights under paragraphs 4, 6, and 7, and the applicable provisions of said paragraphs shall survive termination.

11. **Incorporation of Preambles/Existing Contract.** The preambles are hereby incorporated into and made a part of this Amendment. Except as set forth herein, all other terms and conditions of the Current Contract and Successor Contract shall remain in full force and effect.

12. **Reopener.** In the event of any changes in laws, rules, regulations, or interpretations of agencies or courts, or based on economic considerations that affect this Amendment or the Contract, the District shall have the right to request to renegotiate any of the impacted provisions hereunder after April 30, 2020.

IN WITNESS WHEREOF, the Parties have executed this Amendment in duplicate on the dates indicated below.

DISTRICT:

CONTRACTOR:

**BOARD OF EDUCATION
YORKVILLE COMMUNITY
UNIT SCHOOL DISTRICT NO. 115,
KENDALL COUNTY, ILLINOIS**

SEPTRAN, INC.

BY: _____
Its: Board President

BY: _____
Its:

DATE: _____

DATE: _____

ATTEST:

BY: _____

Its: Secretary

DATE: _____

624429_1