

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

SOUTH ALLEGHENY SCHOOL DISTRICT,

Plaintiff,

v.

SUN COACH LINES, LLC,

Defendant.

CIVIL DIVISION

NO. GD-20-009112

**PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

Filed on behalf of:

Plaintiff, South Allegheny School District

Counsel of Record for this Party:

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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

SOUTH ALLEGHENY SCHOOL DISTRICT,)
)
 Plaintiff,) NO. GD-20
)
 v.)
)
 SUN COACH LINES, LLC,)
)
 Defendant.)
)

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

AND NOW, comes Plaintiff, South Allegheny School District (hereinafter referred to as “the School District”), by and through its attorneys, Falco A. Muscante, Esquire, Steven P. Engel, Esquire, Peter J. Halsey, Esquire, and the law firm of Maiello, Bruno & Maiello, LLP, and hereby files this Motion for Preliminary Injunction against Defendant, Sun Coach Lines, LLC (hereinafter referred to as “Defendant”), and in support thereof avers as follows:

1. The School District hereby incorporates by reference the averments in the Complaint as if fully set forth herein. A true and correct copy of the Complaint is attached hereto and marked as **Exhibit “A”**.

2. This matter arises from a written contract between the School District and Defendant that was signed on May 2, 2018 (hereinafter referred to as “the Agreement”), under which Defendant agreed to continue to provide all school bus transportation services to the School District for an additional seven (7) year term, commencing on August 1, 2016 and continuing through July 31, 2023 in return for the School District’s agreement to pay Defendant in accordance

with certain yearly bulk rates that were identified in the attached Exhibit “A” to the Agreement. A true and correct copy of the Agreement was attached to the Complaint as Exhibit “1.”

3. Paragraph 4 of the Agreement contained provisions which required the School District and Defendant to renegotiate the bulk rate for school bus transportation services in the event of: (1) a five percent (5%) increase or decrease in the number of students who were provided school bus transportation services by the School District; or (2) the discontinuance of school bus transportation services for the School District’s students at any time after the 2016 – 2017 school year (See ¶4 of Exhibit “1”).

4. The Agreement also contained a negotiated mechanism for dispute resolution provision, which required the parties to mediate and then, if necessary, to arbitrate any disputes if the parties were unable to renegotiate a revised bulk rate or the elimination of the bulk rate for school bus transportation services or agree upon a modification to the bulk rate that was satisfactory to both the School District and Defendant after the occurrence of one of the triggering events identified in subparts (a) or (b) of Paragraph 4 of the Agreement (See ¶4 of Exhibit “1”).

5. Commencing March 13, 2020, Pennsylvania Governor Tom Wolf issued certain executive orders (hereinafter referred to as “the Closure Orders”) in an effort to limit the spread of the COVID-19 virus, which required all schools within the Commonwealth of Pennsylvania to remain closed from March 16, 2020 through the end of the 2019-2020 school year.

6. Following Governor Wolf’s issuance of the Closure Orders, the School District exercised its right to request a modification or elimination of the bulk rate identified in the Agreement during the course of the school closures that were mandated by the Closure Orders, and the School District notified Defendant through separate letters dated April 30, 2020 and June 19, 2020 that the School District was not obligated under the terms of the Agreement to pay for

any portion of the bulk rate for the period of time while its schools were required to remain closed due to the Closure Orders. True and correct copies of those letters were attached to the Complaint as Exhibits “2” and “6”.

7. On June 25, 2020, Defendant’s counsel sent a letter to the School District’s counsel, acknowledging that the Closure Orders required the parties to renegotiate the bulk rate and demanding mediation, because it contended that “[t]he parties are at an impasse as to whether the District owes the \$379,299.75 bulk rate covering the remainder of the 2019-2020 school year.” A true and correct copy of that letter was attached to the Complaint as Exhibit “7”.

8. Despite Defendant’s acknowledgement and admission in Defendant’s June 25th Letter that the Closure Orders required the parties to negotiate the bulk rate and its demand for mediation and the School District’s efforts to select a mediator and schedule an expedited mediation, Defendant has failed and refused to engage in any negotiations regarding the bulk rate or to continue the process for the selection of a mediator or to participate in mediation.

9. Instead, through letters dated August 6, 2020 and August 19, 2020, Defendant’s counsel advised that: (1) it was withdrawing its demand for mediation and/or refusing to participate in the mediation, because it did not believe it was required to mediate and/or arbitrate the dispute regarding the requested adjustment to the bulk rate; and (2) it was refusing to provide school bus transportation services to the School District for the upcoming 2020-2021 school year “[i]f the District does not cure its default by paying the \$379,299.75 balance it owes with thirty (30) days ...” True and correct copies of the letters were attached to the Complaint as Exhibits “10” and “12.”

10. On August 18, 2020, Counsel for School District sent a letter to Counsel for Defendant advising that Defendant's breach of the terms of the Agreement and/or threatened

refusal to provide school bus transportation services to the students in the School District will threaten the entire School District's operation and will substantially harm its students and families. The letter therefore demanded written confirmation that Defendant would perform its obligation to provide school bus transportation services for the 2020-2021 school year. A true and accurate copy of the August 18, 2020 letter was attached as Exhibit "11" to the Complaint.

11. On August 19, 2020, Defendant's counsel sent a letter to counsel for the School District in response to the School District's counsel's August 18, 2020 letter (hereinafter referred to a "Defendant's August 19th letter"). A true and correct copy of Defendant's August 19th letter was attached as Exhibit "12" to the Complaint.

12. Defendant's August 19th letter acknowledged and/or demonstrated that Defendant was aware that the School District did not plan to utilize buses or to hold in-person or on-site classes for its students at its schools during "[a] period of virtual schooling for 4-6 weeks at the beginning of the school year" (*Id.*).

13. Despite Defendant's knowledge that the School District did not plan to have in-person or on-site classes and planned to utilize virtual schooling for at least the 4-6 weeks at the beginning of the school year (and therefore would not require school bus transportation for the majority of its students during that period), Defendant's August 19th letter represented that Defendant was only willing to provide school bus transportation services to the School District for the upcoming 2020-2021 school year *if the School District agreed to pay the full bulk rate for those services during the 4-6 week period at the beginning of the 2020-2021 school year* (*Id.*).

14. On August 20, 2020, the School District sent a letter to Defendant's counsel in response to Defendant's August 19th letter, advising that the School District was exercising its right to renegotiate the bulk rate for school bus transportation services in accordance Section 4(a)

and 4(b) of the Agreement during the initial 4-6 week period at the beginning of the 2020-2021 school year when the School District planned to only utilize virtual schooling. The August 20, 2020 letter also made another request for confirmation that Defendant would perform its obligation to provide school bus transportation services for the 2020-2021 school year. A true and accurate copy of this August 20, 2020 letter was attached as Exhibit "13" to the Complaint.

15. By his August 20, 2020 Letter, Defendant's Counsel again refused to acknowledge Defendant's obligation to provide transportation services to the School District for the 2020-2021 School Year.

16. Defendant's failure to abide by the provisions of the Agreement regarding the modification and/or elimination of the bulk rate for school bus transportation services after the occurrence of one of the triggering events identified in subparts (a) or (b) of Paragraph 4 of the Agreement, its refusal to comply with the provisions thereof relative to mediation and arbitration, and its threatened refusal to provide school bus transportation services for the upcoming school year if the improperly claimed amounts are not paid thwarts the peaceful and orderly procedures negotiated by the parties in the Agreement for settlement of disputes regarding the modification and/or elimination of the bulk rate for school bus transportation services after either an increase or decrease in the number of students who are provided school bus transportation services by the School District or the District's discontinuance of school bus transportation services.

17. By refusing to provide school bus transportation services to the School District for the upcoming 2020-2021 school year if the School District does not pay the \$379,299.75 amount that Defendant improperly claims is due for the 2019-2020 school year and/or the entire bulk rate to Defendant during period of virtual schooling for at least the 4-6 weeks at the beginning of the 2020-2021 school year when the School District did not need and Defendant would not be

providing school bus transportation services to the students who attended school in the School District, Defendant has, to the detriment and irreparable injury of the School District and its students , willfully breached and otherwise performed acts contrary to and in violation of the Agreement by expressing a definite and unconditional repudiation of the obligations under the Agreement when it informed the School District that Defendant will not be performing the agreed to and required school bus transportation services under the Agreement for the imminent school year.

18. If injunctive relief is not granted by the Court at this time, immediate and irreparable injury will be suffered by the School District, its students and the community at large as there is a very real possibility that Defendant will fail to perform or refuse to provide school bus transportation services, which would: (1) shut down or substantially impair the entire operations of the School District; (2) cause an indefinite delay in providing live, in classroom instruction during the school year; (3) result in substantial harm to the students and families in the School District; and (4) result in litigation of an extensive nature.

19. The School District and this Motion satisfy the standards for a preliminary injunction, because:

- a. There is a strong likelihood of success on the merits, as the express terms of the contract demonstrate that the School District's refusal to pay the amount that was improperly demanded by Defendant as payment for the periods when Defendant did not provide or perform any services (*i.e.*, from March 13, 2020 through the end of the 2019-2020 school year and the initial 4-6 week period at the beginning of the 2020-2021 school year when the School District planned to only utilize virtual schooling) did not constitute a breach by the School District and that Defendant was therefore not entitled to suspend performance. In fact, the terms of the Agreement expressly

required the School District and Defendant to negotiate, mediate and, if necessary, submit to the jurisdiction of AAA arbitration to determine, an appropriate reduction in or elimination of the bulk rate for school bus transportation services when there is five percent (5%) increase or decrease in the number of students who were provided school bus transportation services by the School District or the complete discontinuance of school bus transportation services. Governor Wolf's issuance of the Closure Orders, which closed the schools and prevented Defendant from having to provide any school bus transportation services at the end of the 2019-2020 school year and the School's District decision to go to a virtual learning format for at least the first 4-6 weeks of the 2020-2021 school year, which eliminated and discontinued the need for school bus transportation services for its students in that period, constituted just such a triggering event. Thus, the express language of the Agreement and these Closure Orders justified or authorized the School District's actions and lead to the inescapable conclusion that the School District was *not in breach* when it requested a reduction in or elimination of the bulk rate for the period when its schools were closed or school was to be conducted virtually or remotely (and Defendant did not perform or provide any services) and then sought to mediate or arbitrate the dispute after the Parties could not agree upon such an elimination or reduction. Moreover, this demonstrates that it was Defendant who was in breach when it refused to participate in a mediation/arbitration and attempted to use its refusal to perform or provide the required school bus transportation services for the upcoming school year as leverage to force the School District to pay for periods when Defendant did not provide any services.

- b. The School District and its students will suffer immediate and irreparable harm that cannot be compensated by monetary damages if the Court does not enjoin Defendant's failure to provide the agreed-upon school bus transportation services to the School District and its students, which could

include, but is not limited to, the potential complete shutdown of the School District's operations, an indefinite delay of live, in classroom instruction during school year and substantial harm to the students and families in the School District;

- c. Greater harm would result from the denial of the requested injunctive relief or by allowing Defendant to willfully breach and otherwise refuse to perform its obligation to provide the school bus transportation services required under the Agreement than would occur to Defendant if an injunction is imposed since: (i) Defendant will continue to receive exactly its expected payments pursuant to the Rate Schedule it proposed to the School District; and (ii) Defendant cannot articulate any harm in comparison to the complete and irreparable harm the School District and its student will face if the Services are not provided;

- d. The requested injunctive relief will serve only to preserve the status quo of the Parties' obligations under the Agreement by requiring the Parties to simply continue to operate under the terms of the Agreement as they have since May 2, 2018, while the properly submitted disputes regarding the re-negotiation or elimination of the bulk rate, and/or what, if any amounts were owed to Defendant for the remainder of the 2019-2020 school year after the issuance of the first of the Closure Orders and for the initial 4-6 week period at the beginning of the 2020-2021 school year when the School District planned to only utilize a virtual learning format, are mediated, and, if necessary arbitrated, as required under the terms of the Agreement.

- e. The requested injunctive relief is not overbroad, but rather is reasonably suited to abate the offending activity in that it: (i) only seeks to prevent Defendant from resorting to self-help; and (ii) only requires Defendant to submit itself to procedures that the Parties mutually agreed to under

Paragraph 4 of the Agreement for the resolution of disputes regarding re-negotiation or adjustment of the bulk rate when there is a reduction in or elimination of the need for school bus transportation services; and (iii) simply preserves the contractually defined status quo to allow the Parties to attempt to resolve the current disputes (*i.e.*, the disputes regarding what, if any, amounts were owed to Defendant for the remainder of the 2019-2020 school year after the issuance of the first of the Closure Orders and for the initial 4-6 week period at the beginning of the 2020-2021 school year when the School District planned to only utilize a virtual learning format) through mediation and/or, if necessary, allow an AAA arbitration panel to make a determination, as mutually agreed-to by the Parties under Paragraph 4 of the Agreement;

- f. The injunction requested will not adversely affect any public interest, but rather will keep the School District operating, preserve the integrity of the public education system and protect the School District's students and their families from incurring the types of substantial harm that could result from the complete shutdown of the School District's operations, an indefinite delay of providing live, in classroom instruction during the school year that would likely result from Defendant's failure to provide school bus transportation services for the upcoming school year while the School District seeks to secure services from an alternative supplier.

20. Due to the timing of Defendant's repudiation or notification that it did not intend to honor its obligation to provide the school bus transportation services required under the Agreement, there is no possibility of the School District being able to publicly bid and enter into a contract with another transportation company before the start of the school year on August 19, 2020.

21. Thus, the School District does not have an adequate remedy at law under the circumstances contained herein, and the School District, its students and the public at large will suffer immediate and irreparable harm and injury if Defendant's willful violation of the Agreement is not prevented.

22. Unless this Honorable Court acts, Defendant will continue to willfully refuse to perform its obligations to the School District under the Agreement.

23. The School District is, therefore, entitled to and justice requires that this Honorable Court enter an order preventing Defendant's willful violation of the terms of the Agreement enjoining Defendant from committing further violations of its obligations under the Agreement.

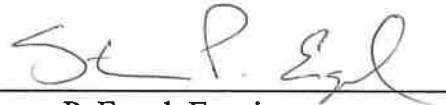
WHEREFORE, Plaintiff, South Allegheny School District, respectfully requests that this Honorable Court grant their Emergency Motion for Preliminary Injunction and Ex Parte Injunctive Relief and issue appropriate Order(s) providing the following relief:

- (1) An initial Order that: (a) temporarily enjoins Defendant from failing or refusing to provide school bus transportation services under the terms of Agreement until such time as the Court can conduct a complete and final hearing on the merits of the School District's Motion; (b) orders Defendant to provide all services and to perform all obligations required under the terms of that Agreement until further notice from this Court; and (c) scheduling a hearing on the merits of School District's Motion and the continuance of this injunction;
- (2) Such interim Orders as are necessary to preserve the status quo and prevent immediate and irreparable injury to the School District, its students and the public at large;

- (3) A final Order after a hearing on the merits, which (a) permanently enjoins Defendant from failing or refusing to provide school bus transportation services under the terms of Agreement; and (b) orders Defendant to provide all services and to perform all obligations required under the terms of that Agreement; (c) awards damages to the School District for any and all injuries, damages and added costs that were caused by Defendant's breach of the terms of the Agreement; and
- (4) Granting such other relief as the Court deems just and proper.

Respectfully submitted,

MAIELLO, BRUNGO & MAIELLO, LLP.



Steven P. Engel, Esquire

Pa. I.D. #74524

Falco A. Muscante, Esquire

Pa. I.D. #49560

Peter J. Halesey, Esquire

Pa. I.D. #313708

Southside Works

424 South 27th Street, Suite #210

Pittsburgh, PA 15203

(412) 242-4400

*Attorney for Plaintiff, South Allegheny School
District*

VERIFICATION

I, Dr. Lisa Duval, Superintendent of the South Allegheny School District, verify that the factual allegations set forth in the foregoing document are based upon facts of which I have personal knowledge; that the language of the document is that of counsel and not my own; that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief; and that I am authorized to execute this Verification on behalf of the South Allegheny School District.

I understand that the statements made herein are made subject to the penalties of 18 Pa. Cons. Stat. Ann. Sec. 4904 relating to unsworn falsification to authorities.

A handwritten signature in cursive script, appearing to read "Dr. Lisa Duval", is written over a horizontal line.

CERTIFICATE OF COMPLIANCE

I, the undersigned, hereby certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

A handwritten signature in black ink, appearing to read 'S. P. Engel', is written over a horizontal line.

Steven P. Engel, Esquire
Pa. I.D. #745254

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

SOUTH ALLEGHENY SCHOOL DISTRICT,)
) GD 20 –
 Plaintiff,)
)
 v.)
)
 SUN COACH LINES, LLC,)
)
 Defendant.)

PRELIMINARY ORDER

AND NOW, this _____ day of _____, 2020, upon consideration of Plaintiffs' Motion for Preliminary Injunction, and without notice to Defendants or a hearing, it is hereby ORDERED and DECREED as follows:

1. The Court finds that Plaintiff's Motion provides prima facia evidence that immediate and irreparable harm or injury could be sustained by the Plaintiff, the students within the South Allegheny School District and the public at large before a final hearing on the merits of Plaintiff's Motion for a Preliminary Injury can occur;

2. The Motion is therefore GRANTED and Defendant is hereby enjoined from failing or refusing to provide school bus transportation services under the terms of its Agreement with South Allegheny School District and is ordered to provide all services and to perform all obligations required under the terms of that Agreement until further notice from this Court;

3. A hearing on the continuance of the injunction shall be held on _____, _____, 2020 at _____ a.m./p.m. in Courtroom _____;

4. Plaintiff shall serve a copy of the Motion for Preliminary Injunction and this Order upon Defendant and Defendant's attorney, if any, within three (3) days of the date of this Order;

5. Plaintiff is not required to file a bond at this time; and

6. This Order shall remain in effect until further Order of the Court.

BY THE COURT:

_____ J.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

SOUTH ALLEGHENY SCHOOL DISTRICT,)	
)	GD 20 –
Plaintiff,)	
)	
v.)	
)	
SUN COACH LINES, LLC,)	
)	
Defendant.)	

FINAL ORDER

AND NOW, this _____ day of _____, 2020, upon consideration of Plaintiffs’ Emergency Motion for Preliminary Injunction and Ex Parte Injunctive Relief, and without notice to Defendants or a hearing, it is hereby ORDERED and DECREED as follows:

- (1) The School District was entitled to an appropriate reduction in or elimination of the bulk rate for school bus transportation services due to Governor Wolf’s issuance of the Closure Orders due to the COVID-19 pandemic and that the School District therefore did not breach the terms of the Agreement between the School District and Defendant when the School District refused to pay the full amounts demanded by Defendant for the period running from March 13, 2020 through the end of the 2019-2020 school year;

- (2) Defendant repudiated and breached the terms of the Agreement when it advised that it would not provide the required school bus transportation services for School district for the upcoming 2020-2021 school year if the School District did not pay the \$379,299.75 amount that Defendant improperly claimed was due for the period running from March 13, 2020 through the end of the 2019-2020 school year;

- (3) Defendant is therefore permanently enjoined from failing or refusing to provide the school bus transportation services to the School District that are required under the terms of Agreement;
- (4) Defendant shall provide all services and to perform all obligations required under the terms of that Agreement;
- (5) Defendant and the School District are hereby ordered to submit the dispute between the parties to mediation and, if necessary, AAA arbitration to resolve the dispute between the parties pursuant to Section 4 of the Agreement.
- (6) Defendant shall pay the sum of \$_____ to the School District as damages due to Defendant's breach of the terms of the Agreement.
- (7) This Honorable Court shall retain jurisdiction of this matter for purposes of enforcement of this Order.

BY THE COURT:

_____ J.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

SOUTH ALLEGHENY SCHOOL DISTRICT,

Plaintiff,

v.

SUN COACH LINES, LLC,

Defendant.

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GD 20 - 009112

TYPE OF PLEADING:

COMPLAINT

FILED ON BEHALF OF:

South Allegheny School District

COUNSEL OF RECORD FOR THIS PARTY:

Falco A. Muscante, Esquire
PA. I.D. # 049560

Steven P. Engel, Esquire
PA. I.D. No. 74524

Peter J. Halesey, Esquire
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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

SOUTH ALLEGHENY SCHOOL DISTRICT,)
) GD 20 –
Plaintiff,)
)
v.)
)
SUN COACH LINES, LLC,)
) TYPE OF PLEADING:
Defendant.)
)
) **COMPLAINT**

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the complaint or for any claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

IF YOU CANNOT AFFORD A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ON AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LAWYER REFERRAL SERVICE
The Allegheny County Bar Association
11th Floor Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
Telephone: (412) 261-5555

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

SOUTH ALLEGHENY SCHOOL DISTRICT,)	
)	GD 20 –
Plaintiff,)	
)	
v.)	
)	
SUN COACH LINES, LLC,)	
)	
Defendant.)	

COMPLAINT

NOW COMES the Plaintiff, South Allegheny School District, by and through its attorneys, Falco A. Muscante, Esquire, Steven P. Engel, Esquire, Peter J. Halesey, Esquire, and the law firm of Maiello, Bruno & Maiello, LLP, and file the following Complaint, and in support thereof state as follows:

PARTIES

1. Plaintiff, South Allegheny School District (hereinafter referred to as “the School District”), is a public-school entity duly organized and operating under the laws of the Commonwealth of Pennsylvania, with its offices located at 2743 Washington Boulevard, Liberty Borough, Allegheny County, Pennsylvania 15133.

2. Defendant, Sun Coach Lines, LLC. (hereinafter referred to as “Defendant”), is a Pennsylvania corporation with an office or principal place of business located at P.O. Box 3052, McKeesport, PA 15134.

3. Defendant is in the business of providing transportation services to school districts,

JURISDICTION AND VENUE

4. This action arises under the laws of the Commonwealth and is within the subject matter of this Honorable Court under 42 Pa.C.S. §931(a).

5. This Honorable Court has general personal jurisdiction over the Defendant under 42 Pa.C.S. §5301(a)(2)-(3), because Defendant was incorporated and formed under the laws of the Commonwealth and is carrying on a continuous and systematic part of its general business within the Commonwealth.

6. Venue in this Honorable Court is proper under Pa.R.C.P. No. 2179, because: (1) Defendant may be served in Allegheny County; (2) Plaintiff's cause of action arose in Allegheny County; and (3) the transactions and occurrences giving rise to the controversy, out of which Plaintiff's cause of action arose, took place in Allegheny County.

FACTS BACKGROUND

7. Due- to the topography and large size of the School District, the use of buses or school bus transportation is essential for its students to attend school.

8. For the past twenty-two years, Defendant has furnished school buses and drivers and provided school bus transportation services to the School District.

9. Over the past twenty-two years, the School District has paid millions of dollars to Defendant for these school bus transportation services.

10. On or about May 2, 2018, the School District and Defendant entered into a written contract (hereinafter referred to as “the Agreement”), under which Defendant agreed to continue to provide all school bus transportation services to the School District for an additional seven (7) year term, commencing on August 1, 2016 and continuing through July 31, 2023. A true and correct copy of the Agreement is attached hereto and incorporated herein by reference as **Exhibit “1.”**

11. Under the terms of the Agreement and as consideration for the Defendant’s agreement to provide all school bus transportation services to the School District, the School District agreed to pay Defendant in accordance with certain yearly bulk rates that were identified in the attached Exhibit “A” to the Agreement (See ¶4 of Exhibit “1”).

12. The Agreement also contained the following provision, which required the parties to renegotiate the bulk rate for school bus transportation services in the event of the occurrence of certain identified contingencies that could increase or decrease the demand for school buses or school bus transportation services:

In consideration of the performance on the part of the CONTRACTOR under the terms of the Agreement, the SCHOOL DISTRICT agrees to pay the CONTRACTOR in accordance with the yearly bulk rates attached hereto, made part hereof, and identified as part of Exhibit “A” for the initial one (1) year period commencing on August 1, 2016, through July 31, 2017, and for each subsequent year thereafter throughout the term of this Agreement, *unless one (1) or both of the following occur:*

- (a) The number of students provided school bus transportation services by the SCHOOL DISTRICT increases or decreased at any time during the term of this Agreement by 5% or more from the number of students provided school bus transportation services as of the first student day of the 2016-2017 School Year, which was August 24, 2016;

- (b) The SCHOOL DISTRICT, for whatever reason, discontinues school bus transportation services for its students beyond the 2016-2017 School Year, except for those school bus transportation services mandated by federal or state law; and

If either or both of the above (a) and/or (b) events occur, the CONTRACTOR and the SCHOOL DISTRICT agree that, notwithstanding any other provisions of this Agreement, they will renegotiate the bulk rate for school bus transportation services set forth in Exhibit "A" hereto to provide an appropriate increase, reduction, or elimination in such bulk rate to the SCHOOL DISTRICT by the CONTRACTOR.

(Id.)(emphasis added).

13. The Agreement also contained the following mechanism or dispute provision, which was triggered or applied in the event that the parties were unable to renegotiate a revised bulk rate or the elimination of the bulk rate for school bus transportation services or agree upon a modification to the bulk rate that was satisfactory to both the School District and Defendant after the occurrence of one of the triggering events identified in subparts (a) or (b) of Paragraph 4 of the Agreement:

[I]f the CONTRACTOR and SCHOOL DISTRICT are unable to renegotiate a revised bulk rate or the elimination of the bulk rate for school bus transportation services satisfactory to the SCHOOL DISTRICT or to CONTRACTOR because of the occurrence of either or both events (a) and/or (b) above, then, again notwithstanding any other provision of this Agreement, the parties agree to submit such issue(s) in dispute of a reasonable and appropriate reduced bulk rate to the SCHOOL DISTRICT or the elimination of the bulk rate to the SCHOOL DISTRICT to mediation and, if necessary, binding arbitration through the American Arbitration Association.

(Id.).

14. The Agreement also contained the following provision, which established the way Defendant would bill the School District for the school bus transportation services:

[T]he CONTRACTOR will Invoice the SCHOOL DISTRICT on the 1st day of each month on a monthly basis in ten (10) equal payments beginning in September of 2018 for school bus transportation services through June 30th of each successive school year. Any school bus transportation services provided in July and August of 2019 will be billed in accordance with Exhibit “A”.

(Id. at ¶6)

15. The Agreement also provided the School District with “[t]he right ... to deduct moneys for the failure on the part of the CONTRACTOR to provide school bus transportation services to the SCHOOL DISTRICT...” from any payments that were due Defendant or that were claimed by Defendant in its invoices to be due from the School District (*Id.* at ¶7).

16. Between August 1, 2016, and March 13, 2020, Defendant provided school bus transportation services to the School District.

17. Between August 1, 2016 and March 13, 2020, the School District dutifully paid Defendant for providing school bus transportation services in accordance with the terms of the Agreement.

18. On March 13, 2020, Pennsylvania Governor Tom Wolf issued an Executive Order, which included a mandatory order, requiring all schools within the Commonwealth of Pennsylvania to close on March 16, 2020 for a period of ten (10) business days in an effort to limit the spread of the COVID-19 virus.

19. On March 30, 2020, Governor Wolf extended his March 13, 2020 Executive Order and his mandatory closure of all schools in the Commonwealth through April 30, 2020.

20. On April 9, 2020, Governor Wolf issued an order, extending his March 13, 2020 Executive Order and its mandatory closure of all school in the Commonwealth through the end of

the 2019-2020 school year (Governor Wolf's March 13, 2020 Order and his subsequent orders, which extended school closures through the end of the 2019-202 school years will hereinafter be collectively referred to as the "Closure Orders").

21. As a result of the Closure Orders, the School District, like all other Districts across the Commonwealth, was required to close all schools and to discontinue school bus transportation between March 13, 2020 and the end of the 2019-2020 school year.

22. As a result of the Closure Orders, the number of students that the School District provided school bus transportation services to was decreased by 100% or to zero and no students within the School District were provided school bus transportation services during the period from March 13, 2020 through the end of the 2019-2020 school year.

23. As a result of the Closure Orders, Defendant did *not* provide any school bus transportation services to the School District *between March 16, 2020 and the end of the 2019-2020 school year*.

24. On April 30, 2020, Defendant provided the School District with an invoice, which attempted to bill the School District the full price for school bus transportation services in April of 2020, or one-tenth of the total yearly contract price or bulk rate amount (*i.e.*, \$126,433.25), despite the fact that Defendant did not provide any school bus transportation services to the School District between March 16, 2020 and the end of the 2019-2020 school year.

25. As a result, on April 30, 2020, the School District sent a letter to Defendant with subject line "balance of contract Price for Transportation Services," which reminded Defendant that it had only provided bus transportation services for 127 out of the required 178 days under the Agreement and disclosed that no payment would be made towards Defendant's April 30, 2020 invoice, because "[S]un Coach did not provide any transportation services in April 2020..." A true

and correct copy of this April 30, 2020 letter is attached hereto and incorporated herein by reference as **Exhibit “2.”**

26. The School District’s April 30, 2020 letter also advised Defendant that the remaining amounts owed under the terms of the Agreement to Defendant for providing school bus transportation services to the School District for the 2019-2020 school year was \$17,047.19, which was calculated based on the per diem rate of \$7,102.99/day. The April 30, 2020 letter also requested that Defendant submit an invoice to the School District that properly reflected the correct remaining amount owed by the School District (See attached Exhibit “2”).

27. On May 18, 2020, Defendant’s counsel, Attorney, Ray F. Middleman, sent a letter to the School District (hereinafter referred to the May 18th Letter”), which contended that “[t]he District continues to owe Sun Coach the full amount due under the Agreement for the school year ending in 2020, i.e., three more months totaling \$379,299.75.” A true and correct copy of the May 18, 2020 Letter is attached hereto and incorporated herein as **Exhibit “3.”**

28. In support of Defendant’s claim that the School District continued to owe Defendant the full amount due under the Agreement for the school year ending in 2020, the May 18th Letter argued that: (1) Act 13 of 2020 that was recently signed by Governor Wolf, which amended the School Code, entitled the School District to reimbursement for transportation costs from Pennsylvania Department of Education and prevented the School District from credibly claiming that the Closure Orders and associated financial hardships provided a basis for refusing to pay Defendant, and (2) that the School District’s receipt of certain funds under the Coronavirus Aid, Relief and Economic Security Act (hereinafter referred to as the “CARES Act”) required it to continue to pay contractor’s like the Defendant during the school closures (See Exhibit “3”).

29. The May 18th Letter also contained two thinly-veiled threats, warning that “[t]he grave shortage of qualified CDL drivers should strongly incentivize the District to continue paying under the terms of the Agreement,” while representing that “Sun Coach will be unable to pay its drivers [if the School District’s fails to pay to remaining *unearned amounts*], which “[w]ill, in turn, create potentially irreversible harm to both parties when Sun Coach does not have the drivers to cover the District’s routes when school is back in session” (See Exhibit “3”).

30. After receiving the May 18th Letter, the School District’s counsel sent two separate emails to Defendant’s counsel, which sought the following information from Defendant so that the School District could verify the claims in the letter (including, specifically, the Letter’s claim that additional payment were required for Defendant to maintain fixed predictable costs or to retain its drivers so they could provide school bus transportation services for the School District when school resumed):

- a. Documentation showing that Sun Coach has continued to maintain its complement of personnel (drivers, mechanics, aides, administrative staff, etc.) during the period of school shutdown beginning on March 16, 2020 and continuing to the present day; and
- b. Documentation related to any other funding source that Sun Coach has pursued, including but not limited to, any application for Paycheck Protection loans, if applicable, and any other federal or state funding to assist Sun Coach in maintaining its fixed costs.

True and correct copies of these emails are attached hereto and incorporated herein by reference as **Exhibits “4” and “5.”**

31. Despite the requests from the School District’s counsel, Defendant failed or refused to provide any documentation that would allow the School District to verify the May 18th Letter’s

claim that additional payment were required for Defendant to maintain fixed predictable costs or to retain its drivers so they could provide school bus transportation services for the School District when school resumed.

32. In addition, on May 31, 2020, Defendant provided the School District with an invoice, which billed or sought payment from the School District of the full price for school bus transportation services in May of 2020, or one-tenth of the total yearly contract price or bulk rate amount (*i.e.*, \$126,433.25), despite the fact that Defendant did *not* provide any school bus transportation services to the School District *between March 16, 2020 and the end of the 2019-2020 school year* and the fact that only the sum of \$17,047.19 was owed to Defendant under the terms of the Agreement in connection with the school bus transportation services that Defendant provided to the School District for the 2019-2020 School year.

33. On June 19, 2020, the School District's counsel sent a letter on behalf of the School District to Defendant's counsel in response to the May 18th Letter (hereinafter referred to as "the District's June 19th Letter"), which advised that "[t]he the School District disagrees with your position, reiterates its own position that it owes no more money to Sun Coach for the remainder of the 2019 – 2020 School Year other than as referenced in Ms. Lubert's April 30, 2020 letter [*i.e.*, \$17,047.19], and will not be issuing payment on any other invoices for the 2019 – 2020 School Year." A true and correct copy of the District's June 19th Letter is attached hereto and incorporated herein by reference as **Exhibit "6."**

34. In support of the position taken by the School District, the District's June 19th Letter noted that: (a) Paragraph 4 of the Agreement expressly provided that compensation was only to be paid to Defendant in consideration for *performance* of school bus transportation services, which did not occur after March 13, 2020 ; and (b) the express terms of Paragraph 4 of

the Agreement required the parties to renegotiate the bulk rate for school bus transportation services to provide an appropriate reduction or elimination in such bulk rate paid to Defendant in the event of : (1) a five percent (5%) increase or decrease in the number of students who were provided school bus transportation services by the School District; or (2) the discontinuance of school bus transportation services for the School District's students at any time after the 2016 – 2017 school year, which required the reduction or complete elimination of the bulk rate after the Closure Orders were issued (*See* page 3 of Exhibit “6”).

35. The District's June 19th Letter also disputed Defendant's claim that Act 13 of 2020 entitled the School District to reimbursement for transportation costs from Pennsylvania Department of Education and that the CARES Act required the School District to continue to pay Defendant during the school closures, pointing out that:

- a. Act 13 did not require the School District to renegotiate or otherwise take steps to maintain its contract for school bus transportation services to ensure that personnel and fixed costs were maintained. Instead, Act 13 was discretionary;
- b. Act 13 required the applicable school bus contractor to submit/provide weekly documentation that its compliment levels remain at or above their level on March 13, 2020.
- c. Defendant's failure or refusal to submit/provide to the School District weekly documentation that demonstrated that its compliment levels remain at or above their level on March 13, 2020 and the School District's understanding that Defendant had furloughed its drivers prevented Defendant from satisfying the requirements of Act 13 and precluded the School District from continuing payments to Defendant under Act 13;

- d. The CARES Act does not create an unqualified mandate for school districts to continue payments to contractors. Instead, it qualifies the requirement by stating that payments must be made “to the greatest extent practicable.”
- e. It was not “practicable” to use taxpayers’ monies to pay for a service that was not performed (because of the forced closure of the school facilities), or to potentially allow Defendant to be paid twice for the same costs (since the School District was forced to assume that Defendant’s labor costs were reimbursed through the Paycheck Protection Act due to Defendant’s failure or refusal to disclose if it had received funds under the Paycheck Protection Program).

(*See* pages 3-5 of Exhibit “6”).

36. On June 25, 2020, Defendant’s counsel sent a letter to the School District’s counsel, appearing to acknowledge that the Closure Orders required the parties to renegotiate the bulk rate, but contending that “[t]he parties are at an impasse as to whether the District owes the \$379,299.75 bulk rate covering the remainder of the 2019-2020 school year” (hereinafter referred to as the Defendant’s June 25th Letter). The Defendant’s June 25th Letter therefore demanded mediation in connection with adjustment to the bulk rate per the terms of the Agreement. A true and correct copy of Defendant’s June 25th Letter is attached hereto and incorporated herein by reference as **Exhibit “7.”**

37. Defendant’s June 25th Letter also advised that “[g]iven the impasse, Sun Coach will not be submitting the invoice requested by the District, as its position remains unchanged that the district owes the remainder of the bulk rate for the 2019-2020 school year.”

38. In accordance with the terms of the Agreement and as requested by Defendant, the School District took steps to mediate the issue or dispute regarding the reduction to the bulk rate or amount owed to Defendant for school bus transportation services after the issuance of the

Closure Orders, which included, *inter alia*, providing Defendant's counsel, by letter from School District's Counsel dated July 6, 2020 (hereinafter referred to as "the District's July 6th Letter"), with the names of proposed mediators. The District's July 6th Letter also again advised that the School District reiterated its position that it owed no more money to Sun Coach for the remainder of the 2019 – 2020 School Year other than as referenced in Ms. Lubert's April 30, 2020 letter [*i.e.*, \$17,047.19]. A true and correct copy of the District's July 6th Letter is attached hereto and incorporated herein by reference as **Exhibit "8."**

39. By his letter dated July 27, 2020 (hereinafter referred to as the "Defendant's July 27th Letter"), Defendant's Counsel rejected the mediators proposed by School District's Counsel and proposed alternative mediators. A true and correct copy of Defendant's July 27th Letter is attached hereto and incorporated herein by reference as **Exhibit "9."**

40. Despite the School District's good faith efforts, Defendant thereafter failed and refused to mediate the issue or dispute regarding the reduction to the bulk rate or amount owed to Defendant for school bus transportation services after the issuance of the Closure Orders. On August 6, 2020, Defendant's counsel sent a letter to the School District's counsel advising that "[u]pon further reflection and analysis since our June 25, 2020, letter to you, Sun Coach's position is that it is not compelled to mediate and/or arbitrate the instant dispute under section 4 of the parties' Agreement" (hereinafter referred to as "Defendant's August 6th Letter"). A true and correct copy of Defendant's August 6th Letter is attached hereto and incorporated herein by reference as **Exhibit "10."**

41. Defendant's August 6th Letter also advised that Defendant did not intend to honor its contractual obligations under the Agreement or provide school bus transportation services for the School District's students for the 2020-2021 school year, which commenced on August 19,

2020¹, if the School District did not pay the \$379,299.75 balance that Defendant improperly claimed was due for remainder of the 2019-2020 school year, stating that [i]f the District does not cure its default by paying the \$379,299.75 balance it owes within thirty (30) days, Sun Coach reserves the right to direct its resources to other districts in need of school busing services..." (*See* attached Exhibit "10").

42. On August 18, 2020, Counsel for School District sent a letter to Counsel for Defendant advising that Defendant's breach of the terms of the Agreement and/or threatened refusal to provide school bus transportation services to the students in the School District will threaten the entire School District's operation and will substantially harm its students and families, The letter therefore demanded written confirmation that Defendant would perform its obligation to provide school bus transportation services for the 2020-2021 school year. A true and accurate copy of the August 18, 2020 letter is attached hereto and incorporated herein by reference as **Exhibit "11."**

43. On August 19, 2020, Defendant's counsel sent a letter to counsel for the School District in response to the School District's counsel's August 18, 2020 letter (Hereinafter referred to a "Defendant's August 19th letter"). A true and correct copy of Defendant's August 19th letter is attached hereto and incorporated herein by reference as **Exhibit "12."**

44. Defendant's August 19th letter acknowledged and/or demonstrated that Defendant was aware that the School District did not plan to utilize buses or to hold in-person or on-site

¹ Classes for the District's students in the District's schools began virtually on August 24, 2020. However, the School District also has an obligation to provide transportation for students that live within the District who go to school or take classes at special education facilities, at vocational-technical schools, at parochial schools and charter schools. Several of these schools began classes on August 19, 2020.

classes for its students at its schools during “[a] period of virtual schooling for 4-6 weeks at the beginning of the school year” (*Id.*).

45. Despite Defendant’s knowledge that the School District not plan to have in-person or on-site classes and planned to utilize virtual schooling for 4-6 weeks at the beginning of the school year (and therefore would not require school bus transportation for the majority of its students during that period), Defendant’s August 19th letter represented that Defendant was only willing to provide school bus transportation services to the School District for the upcoming 2020-2021 school year *if the School District agreed to pay the full bulk rate for those services during the 4-6 week period at the beginning of the 2020-2021 school year* (*Id.*).

46. On August 20, 2020, the School District sent a letter to Defendant’s counsel in response to Defendant’s August 19th letter, advising that the School District was exercising its right to renegotiate the bulk rate for school bus transportation services in accordance Section 4(a) and 4(b) of the Agreement during the initial 4-6 week period at the beginning of the 2020-2021 school year when the School District planned to only utilize virtual schooling. The August 20, 2020 letter also made another request for confirmation that Defendant would perform its obligation to provide school bus transportation services for the 2020-2021 school year. A true and accurate copy of this August 20, 2020 letter is attached hereto and incorporated herein by reference as **Exhibit “13.”**

47. On August 20, 2020, by letter from the School District’s Business Manager (hereinafter referred to as “the District’s August 20th Letter”), the School District paid the remaining amount of \$17,047.19 that was owed under the terms of the Agreement to Defendant for providing school bus transportation services to the School District for the 2019-2020 School

year. A true and correct copy of the District's August 20th Letter is attached hereto and incorporated herein by reference as **Exhibit "14."**

48. No further amounts are owed to Defendant in connection with the school bus transportation services that Defendant provided to the School District for the 2019-2020 School year.

49. Despite receipt of the August 18, 2020 and August 20, 2020 letters from the School District's counsel, the School District's payment for the remaining amount owed for the 2019-2020 school year and the School District's offer to tender payment for all days/instances when Defendant provided school bus transportation services to the School District during the 2020-2021 school year, Defendant has refused to uphold its obligation to provide the school bus transportation services as required under the express terms of the Agreement.

50. Although the School District intends to hold classes remotely for the first four-to six-week period in the 2020-2021 school year, the School District will be required to provide school bus transportation services for its entire student body when in person classes resume at some point in the 2020-2021 school year and it currently has an obligation to provide bus transportation services to the following students who reside within the School District beginning on August 19, 2020:

- a. Students who participate in special education programs through facilities such as the Children's Institute, the Westley Spectrum K-8 and High Schools, the Western Pennsylvania School for the Deaf and the Western Pennsylvania School for the Blind;
- b. Students who participate in vocational and technical education programs at the Steel Center for Career and Technical Education;
- c. Students who are enrolled in parochial schools; and

d. Students who are enrolled in charter schools.

51. If Defendant does not honor its contractual obligations under the Agreement, the School District will be irreparably harmed in that it will be unable to provide required school bus transportation services to its students, which will cause delays, missed educational opportunities for its students, and significant added costs as the School District will be forced to secure the services of a replacement school bus transportation services provider without the time or opportunity to obtain competitive bids.

COUNT I

CLAIM FOR DECLARATORY RELIEF

South Allegheny School District v. Sun Coach Lines, LLC

52. The School District hereby incorporates the allegations set forth in Paragraphs 1 through 51 of this Complaint as if the same were set forth more fully at length herein.

53. There is now existing between the parties an actual bona fide and justiciable controversy concerning which plaintiff is entitled to have a declaration of its rights because of the facts, conditions and circumstances hereinafter set out.

54. On or about May 2, 2018, the School District and Defendant entered into a written contract (hereinafter referred to as “the Agreement”), under which Defendant agreed to continue to provide all school bus transportation services to the School District for an additional seven (7) year term, commencing on August 1, 2016 and continuing through July 31, 2023 in return for the School District’s agreement to pay Defendant in accordance with certain yearly bulk rates that were identified in the attached Exhibit “A” to the Agreement. A true and correct copy of the Agreement is attached hereto and incorporated herein by reference as **Exhibit “1.”**

55. Paragraph 4 the Agreement also contained provisions, which required the School District and Defendant to renegotiate the bulk rate for school bus transportation services in the event of: (1) a five percent (5%) increase or decrease in the number of students who were provided school bus transportation services by the School District; or (2) the discontinuance of school bus transportation services for the School District's students at any time after the 2016 – 2017 school year (See ¶4 of Exhibit "1).

56. The Agreement also contained a negotiated mechanism for dispute resolution provision, which required the parties to mediate and then, if necessary, to arbitrate any disputes if the parties were unable to renegotiate a revised bulk rate or the elimination of the bulk rate for school bus transportation services or agree upon a modification to the bulk rate that was satisfactory to both the School District and Defendant after the occurrence of one of the triggering events identified in subparts (a) or (b) of Paragraph 4 of the Agreement.

57. Commencing March 13, 2020, Pennsylvania Governor Tom Wolf issued the Closure Orders in an effort to limit the spread of the COVID-19 virus, which required all schools within the Commonwealth of Pennsylvania to remain closed from March 16, 2020 through the end of the 2019-2020 school year.

58. Following Governor Wolf's issuance of the Closure Orders, the School District exercised its right to request a modification or elimination of the bulk rate identified in the Agreement during the course of the school closures that were mandated by the Closure Orders, and the School District notified Defendant through separate letters dated April 30, 2020 and June 19, 2020 that the School District was not obligated under the terms of the Agreement to pay any remaining portion of the bulk rate for the period of time while its schools were required to remain closed due to the Closure Orders (See attached Exhibits "2" and "6").

59. On June 25, 2020, Defendant's counsel sent a letter to the School District's counsel, acknowledging that the Closure Orders required the parties to renegotiate the bulk rate and demanding mediation, because it contended that "[t]he parties are at an impasse as to whether the District owes the \$379,299.75 bulk rate covering the remainder of the 2019-2020 school year" (See attached Exhibit "7").

60. Despite Defendant's acknowledgement and admission in Defendant's June 25th Letter that the Closure Orders required the parties to negotiate the bulk rate and its demand for mediation and the School District's efforts to select a mediator and schedule an expedited mediation, Defendant has failed and refused to engage in any negotiations regarding the bulk rate or to continue the process for the selection of a mediator or to participate in mediation.

61. Instead, through letters dated August 6, 2020 and August 19, 2020, Defendant's advised that: (1) it was withdrawing its demand for mediation and/or refusing to participate in the mediation, because it did not believe it was required mediate and/or arbitrate the dispute regarding the requested adjustment to the bulk rate; and (2) it was refusing to provide school bus transportation services to the School District for the upcoming 2020-2021 school year if: (a) "[t]he District does not cure its default by paying the \$379,299.75 balance it owes with thirty (30) days ..." and/or (b) the School District did not pay the entire bulk rate to Defendant during period of virtual schooling for 4-6 weeks at the beginning of the 2020-2021 school year when the School District did not need and Defendant would not be providing school bus transportation services to the students who attended school in the School District (See attached Exhibits "10" and "12").

62. Defendant's actions in notifying the School District, on the eve of the new school year, that Defendant did not intend to provide school bus transportation services in the upcoming school year if the School District did not pay amounts that were not owed or the \$379,299.75

alleged bulk rate balance that Defendant improperly claimed was due for the remainder of the 2019-2020 school year and/or pay the entire bulk rate to Defendant during the period of virtual schooling for 4-6 weeks at the beginning of the 2020-2021 school year when the School District did not need and Defendant would not be providing school bus transportation services to the students who attended school in the School District (while refusing to honor and abide by the terms of the provisions in the Agreement for the resolution of disputes regarding adjustments to the bulk rate) constitutes a breach of its obligations under the Agreement and is otherwise an act contrary to and in violation of the Agreement, as it expresses a definite and unconditional repudiation of the Agreement.

63. The School District contends that: (1) disputes regarding the modification and/or elimination of the bulk rate for school bus transportation services after the occurrence of one of the triggering events identified in subparts (a) or (b) of Paragraph 4 of the Agreement are subject to mediation, and, if not successful, arbitration under the express provisions of Paragraph 4 of the Agreement; (2) the provisions of the Agreement calling for mediation and then binding arbitration of unsettled disputes regarding the modification and/or elimination of the bulk rate for school bus transportation services after the occurrence of one of the triggering events identified in subparts (a) or (b) of Paragraph 4 of the Agreement are mandatory; (3) the School District has fully complied with all requirements of the Paragraph 4 prerequisite to mediation and then arbitration; and (4) Defendant is in violation of the provisions of Paragraph 4 in refusing to proceed to mediation and, if necessary, arbitration as stated.

64. Defendant's failure to abide by the provisions of the Agreement regarding the modification and/or elimination of the bulk rate for school bus transportation services after the occurrence of one of the triggering events identified in subparts (a) or (b) of Paragraph 4 of the

Agreement, its refusal to comply with the provisions thereof relative to mediation and arbitration, and threatened refusal to provide school bus transportation services for the upcoming school year if the improperly claimed amounts are not paid has: (1) seriously threatened or jeopardized the amicable relations that theretofore existed between the parties hereto; (2) caused a growing concern among the School District's staff and the families of students in the School District regarding how the students will get to school during the upcoming school year; (3) threatened the shutdown of the entire School District's operations; (4) threatened to cause an indefinite delay of providing live, in classroom instruction, during the school year; and (5) threatened substantial harm to the students and families in the School District.

65. Defendant's failure to abide by the provisions of the Agreement regarding the modification and/or elimination of the bulk rate for school bus transportation services after the occurrence of one of the triggering events identified in subparts (a) or (b) of Paragraph 4 of the Agreement, its refusal to comply with the provisions thereof relative to mediation and arbitration, and threatened refusal to provide school bus transportation services for the upcoming school year if the improperly claimed amounts are not paid thwarts the peaceful and orderly procedures negotiated by the parties and established under the Agreement for settlement of disputes regarding the modification and/or elimination of the bulk rate for school bus transportation services after either an increase or decrease in the number of students who are provided school bus transportation services by the School District or the District's discontinuance of school bus transportation services.

66. The School District and Defendant have been unable to agree as to their respective rights under the Agreement with respect to the modification and/or elimination of the bulk rate for school bus transportation and/or the Closure Orders.

67. Unless an adjudication of the rights of the parties is made by the Court at this time, there is a very real possibility that Defendant will fail to perform or refuse to provide school bus transportation services, which would: (1) shut down or substantially impair the entire operations of the School District; (2) cause an indefinite delay of the school year and/or of providing live, in classroom instruction; (3) result in substantial harm to the students and families in the School District; and (4) result in litigation of an extensive nature.

68. The School District has no adequate remedy at law, because only a judgment declaring that Defendant is obligated to mediate and, if necessary, arbitrate the dispute regarding any required modification to and/or elimination of the bulk rate for school bus transportation services as a result of the Closure Orders, and specific enforcement of the contractual provisions relative to mediation and/or arbitration of the same, will provide the School District with the relief required under the circumstances.

69. As a result, the School District seeks and is entitled to a declaration or determination from this Court with respect to: (1) the respective rights of the parties under the Agreement; (2) whether the Closure Orders constituted one of the triggering events identified in subparts (a) or (b) of Paragraph 4 of the Agreement that required the re-negotiation or elimination of the bulk rate; (3) whether the parties were required to mediate, and if necessary, arbitrate their dispute regarding what, if any amounts were owed to Defendant for the remainder of the 2019-2020 school year after the issuance of the first of the Closure Orders; and (4) whether the parties were required to mediate, and if necessary, arbitrate their dispute regarding what, if any amounts were owed to Defendant for the portion of the 2020-2021 school year when the School District was only conducting classes virtually and the Defendant would not be providing school bus transportation services to the students who were attending school in the School District.

WHEREFORE, Plaintiff, South Allegheny School District, respectfully requests that this Honorable Court issue an appropriate Order under the Declaratory Judgments Act, 42 Pa.C.S. §§7531, et seq:

- (1) Declaring that the Closure Orders constituted a triggering event as identified in subparts (a) or (b) of Paragraph 4 of the Parties' Agreement, which required the re-negotiation or elimination of the bulk rate;
- (2) Declaring that the Parties are required to mediate, and if necessary, arbitrate their dispute regarding what, if any, amounts were owed to Defendant for the remainder of the 2019-2020 school year after the issuance of the first of the Closure Orders;
- (3) Declaring that the Parties are required to mediate, and if necessary, arbitrate their dispute regarding what, if any, amounts were owed to Defendant for the portion of the 2020-2021 school year when the School District was only conducting classes virtually;
- (4) Declaring that Defendant, Sun Coach Lines, LLC has breached its obligations under the terms of the Agreement in failing and refusing to mediate and/or arbitrate their dispute regarding what, if any, amounts were owed to Defendant for the remainder of the 2019-2020 school year after the issuance of the first of the Closure Orders;
- (5) Declaring that Defendant, Sun Coach Lines, LLC has breached its obligations under the terms of the Agreement in failing and refusing to mediate and/or arbitrate their dispute regarding what, if any, amounts were owed to Defendant for the portion of the 2020-2021 school year when the School District was only conducting classes virtually;

- (6) Ordering Defendant to proceed to and participate in mediation, and, if necessary, arbitration of the dispute regarding what, if any amounts were owed to Defendant for the remainder of the 2019-2020 school year after the issuance of the first of the Closure Orders;
- (7) Ordering Defendant to proceed to and participate in mediation, and, if necessary, arbitration of the dispute regarding what, if any amounts were owed to Defendant for the portion of the 2020-2021 school year when the School District was only conducting classes virtually;
- (8) Appointing a mediator to mediate the dispute regarding what, if any, amounts were owed to Defendant for the remainder of the 2019-2020 school year after the issuance of the first of the Closure Orders and for the portion of the 2020-2021 school year when the School District was only conducting classes virtually, if the parties cannot mutually agree to the appointment of a neutral third party mediator within ten (10) days of entry of the Court's Order;
- (9) Awarding such other and further relief as this Court decides is just and proper under the circumstances.

COUNT II

BREACH OF CONTRACT - CLAIM FOR INJUNCTIVE RELIEF

(PLEAD IN THE ALTERNATIVE TO COUNT III)

South Allegheny School District v. Sun Coach Lines, LLC

70. The School District hereby incorporates the allegations set forth in Paragraphs 1 through 69 of this Complaint as if the same were set forth more fully at length herein.

71. On or about May 2, 2018, the School District and Defendant entered into a written contract (hereinafter referred to as "the Agreement"), under which Defendant agreed to continue

to provide all school bus transportation services to the School District for an additional seven (7) year term, commencing on August 1, 2016 and continuing through July 31, 2023 in return for the School District's agreement to pay Defendant in accordance with certain yearly bulk rates that were identified in the attached Exhibit "A" to the Agreement. A true and correct copy of the Agreement is attached hereto and incorporated herein by reference as **Exhibit "1."**

72. Paragraph 4 the Agreement also contained provisions, which required the School District and Defendant to renegotiate the bulk rate for school bus transportation services in the event of: (1) a five percent (5%) increase or decrease in the number of students who were provided school bus transportation services by the School District; or (2) the discontinuance of school bus transportation services for the School District's students at any time after the 2016 – 2017 school year (*See ¶4 of Exhibit "1"*).

73. The Agreement also contained a negotiated mechanism for dispute resolution provision, which required the parties to mediate and then, if necessary, to arbitrate any disputes if the parties were unable to renegotiate a revised bulk rate or the elimination of the bulk rate for school bus transportation services or agree upon a modification to the bulk rate that was satisfactory to both the School District and Defendant after the occurrence of one of the triggering events identified in subparts (a) or (b) of Paragraph 4 of the Agreement.

74. Commencing March 13, 2020, Pennsylvania Governor Tom Wolf issued the Closure Orders in an effort to limit the spread of the COVID-19 virus, which required all schools within the Commonwealth of Pennsylvania to remain closed from March 16, 2020 through the end of the 2019-2020 school year.

75. Following Governor Wolf's issuance of the Closure Orders, the School District exercised its right to request a modification or elimination of the bulk rate identified in the

Agreement during the course of the school closures that were mandated by the Closure Orders, and the School District notified Defendant through separate letters dated April 30, 2020 and June 19, 2020 that the School District was not obligated under the terms of the Agreement to pay the pro rata portion of the bulk rate for the period of time while its schools were required to remain closed due to the Closure Orders (See attached Exhibits “2” and “6”).

76. On June 25, 2020, Defendant’s counsel sent a letter to the School District’s counsel, acknowledging that the Closure Orders required the parties to renegotiate the bulk rate and demanding mediation, because it contended that “[t]he parties are at an impasse as to whether the District owes the \$379,299.75 bulk rate covering the remainder of the 2019-2020 school year” (See attached Exhibit “7”).

77. Despite Defendant’s acknowledgement and admission in Defendant’s June 25th Letter that the Closure Orders required the parties to negotiate the bulk rate and its demand for mediation and the School District’s efforts to select a mediator and schedule an expedited mediation, Defendant has failed and refused to continue the process for the selection of a mediator or to engage in any negotiations regarding the bulk rate or to participate in mediation.

78. Instead, through letters dated August 6, 2020 and August 19, 2020, Defendant advised that: (1) it was withdrawing its demand for mediation and/or refusing to participate in the mediation, because it did not believe it was required to mediate and/or arbitrate the dispute regarding the requested adjustment to the bulk rate; and (2) it was refusing to provide school bus transportation services to the School District for the upcoming 2020-2021 school year if: (a) “[t]he District does not cure its default by paying the \$379,299.75 balance it owes with thirty (30) days ...”; and/or (b) the School District did not pay the entire bulk rate to Defendant during period of virtual schooling for 4-6 weeks at the beginning of the 2020-2021 school year when the School

District did not need and Defendant would not be providing school bus transportation services to the students who attended school in the School District (See attached Exhibits “10” and “12”).

79. By refusing to provide school bus transportation services to the School District for the upcoming 2020-2021 school year if the School District does not pay the \$379,299.75 amount that Defendant improperly claims is due in connection with the 2019-2020 school year and/or pay the entire bulk rate to Defendant during period of virtual schooling for 4-6 weeks at the beginning of the 2020-2021 school year when the School District did not need and Defendant would not be providing school bus transportation services to the students who attended school in the School District, Defendant has, to the detriment and irreparable injury of the School District, willfully breached and otherwise performed acts contrary to and in violation of the Agreement by expressing a definite and unconditional repudiation of the obligations under the Agreement when it informed the School District that Defendant will not be performing the agreed to and required school bus transportation services under the Agreement for the imminent school year.

80. The aforesaid acts by Defendant did not occur in good faith; constitute willful misconduct by Defendant; and constitute Defendant's failure to perform the school bus transportation services as agreed to by the Parties under the Agreement.

81. The aforesaid acts by Defendant have injured and caused irreparable harm to the School District by depriving it of rights to which it was entitled under the Agreement and by otherwise wasting and diminishing the resources and opportunities of the School District.

82. Although repeated demands have been made, Defendant has willfully refused to perform its Services under the Agreement.

83. Due to the timing of Defendant's repudiation or notification that it did not intend to honor its obligation to provide the school bus transportation services required under the

Agreement, there is no possibility of the School District being able to publicly bid and enter into a contract with another transportation company before the start of the school year on August 19, 2020.

84. Thus, the School District does not have an adequate remedy at law under the circumstances contained herein, and the School District will suffer irreparable harm and injury if Defendant's willful violation of the Agreement is not prevented.

85. Unless this Honorable Court acts, Defendant will continue to willfully refuse to perform its obligations to the School District under the Agreement.

86. The School District is, therefore, entitled to and justice requires that this Honorable Court enter an order preventing Defendant's willful violation of the terms of the Agreement and enjoining Defendant from committing any further acts in violation its obligations under the Agreement.

An Injunction is Necessary to Prevent Immediate and Irreparable Harm

87. An injunction is necessary in this case to prevent the immediate and irreparable harm to the School District and its students that will result from Defendant's failure to provide the agreed-upon school bus transportation services to the School District and its students, including but not limited to, the potential complete shutdown of the School District's operations, an indefinite delay of live, in classroom instruction during the school year and substantial harm to the students and families in the School District.

Greater Injury Would Result from Refusing an Injunction Than from Granting It

88. Greater harm would result to the School District by allowing Defendant to willfully breach and otherwise refuse to perform its obligation to provide the school bus transportation

services required under the Agreement than would occur to Defendant if an injunction is imposed as there is no real harm to Defendant because:

- a. Defendant will continue to receive exactly its expected payments pursuant to the Rate Schedule it proposed to the School District; and
- b. Defendant cannot articulate any harm in comparison to the complete and irreparable harm the School District and its students face if the Services are not provided.

An Injunction Will Properly Preserve the Status Quo

89. Injunctive relief will serve only to preserve the status quo of the Parties' obligations under the Agreement, while the properly submitted dispute regarding the re-negotiation or elimination of the bulk rate, and/or what, if any amounts were owed to Defendant for the remainder of the 2019-2020 school year after the issuance of the first of the Closure Orders is mediated, and, if necessary, arbitrated as required under the terms of the Agreement.

90. Injunctive relief will only require the Parties to simply continue to operate under the terms of the Agreement as they have since May 2, 2018.

The School District is Likely to Prevail on the Merits

91. As stated in the foregoing paragraphs, the School District is likely to prevail on the merits of this case because:

- a. Paragraph 4 the Agreement also contained provisions, which required the School District and Defendant to renegotiate the bulk rate for school bus transportation services in the event of: (1) a five percent (5%) increase or

decrease in the number of students who were provided school bus transportation services by the School District; or (2) the discontinuance of school bus transportation services for the School District's students at any time after the 2016 – 2017 school year (See ¶4 of Exhibit "1");

- b. The Agreement also contained a negotiated mechanism for dispute resolution provision, which required the parties to mediate and then, if necessary, to arbitrate any disputes if the parties were unable to renegotiate a revised bulk rate or the elimination of the bulk rate for school bus transportation services or agree upon a modification to the bulk rate that was satisfactory to both the School District and Defendant after the occurrence of one of the triggering events identified in subparts (a) or (b) of Paragraph 4 of the Agreement;
- c. Commencing March 13, 2020, Pennsylvania Governor Tom Wolf issued the Closure Orders in an effort to limit the spread of the COVID-19 virus, which required all schools within the Commonwealth of Pennsylvania to remain closed from March 16, 2020 through the end of the 2019-2020 school year;
- d. Following Governor Wolf's issuance of the Closure Orders, the School District exercised its right to request a modification or elimination of the bulk rate identified in the Agreement during the course of the school closures that were mandated by the Closure Orders, and the School District notified Defendant through separate letters dated April 30, 2020 and June 19, 2020 that the School District was not obligated under the terms of the Agreement to pay any portion of the bulk rate during the period of time while its schools were required to remain closed due to the Closure Orders (See attached Exhibits "2" and "6");
- e. On June 25, 2020, Defendant's counsel sent a letter to the School District's counsel, acknowledging that the Closure Orders required the parties to renegotiate the bulk rate and demanding mediation, because it contended that "[t]he parties are at an impasse as to whether the District owes the

\$379,299.75 bulk rate covering the remainder of the 2019-2020 school year”
(See attached Exhibit “7”);

- f. Defendant did *not* provide any school bus transportation services to the School District between March 16, 2020 and the end of the 2019-2020 school year.
- g. The School District notified or disclosed to Defendant that it was only going to have virtual schooling during at least the first 4-6 weeks of the 2020-2021 school year which could be extended further;
- h. The School District notified Defendant that it was discontinuing school bus transportation services for the School District’s students during at least the first 4-6 weeks of the 2020-2021 school year due to safety concerns relating to the COVID-19;
- i. The School District notified Defendant that it was discontinuing school bus transportation services for the School District’s students during at least the first 4-6 weeks of the 2020-2021 school year due to safety concerns relating to the COVID-19 pandemic;
- j. The School District properly exercised its right to request a modification or elimination of the bulk rate identified in the Agreement due to its discontinuance of school bus transportation services for the School District’s students during at least the first 4-6 weeks of the 2020-2021 school year; and
- k. The Defendant has improperly failed or refused to provide school bus transportation services for the School District for the 2020-2021 school year and/or to honor its obligations under the terms of the Agreement.

The Injunction is Reasonably Suited to Abate the Offending Activity

92. The requested injunctive relief is not overbroad, but rather is reasonably suited to abate the offending activity in that:

- a. It only seeks to prevent Defendant from resorting to self-help;
- b. It only requires Defendant to submit itself to mediation, and if necessary, the jurisdiction of the American Arbitration Association for an arbitration in connection with the dispute regarding the re-negotiation or elimination of the bulk rate, as agreed-to by the Parties under Paragraph 4 of the Agreement; and/or what, if any amounts were owed to Defendant for the remainder of the 2019-2020 school year after the issuance of the first of the Closure Orders and/or for the first 4-6 weeks of the 2020-2021 school year when the Defendant will not be providing school bus transportation to the majority of the School District's students due the District's decision to provide instruction solely in an on-line, virtual schooling format; and
- c. It simply preserves the contractually defined status quo to allow the Parties to attempt to resolve the current dispute regarding the re-negotiation or elimination of the bulk rate; and/or what, if any amounts were owed to Defendant for the remainder of the 2019-2020 school year after the issuance of the first of the Closure Orders through mediation and/or, if necessary, an AAA arbitration panel to make a determination, as agreed-to by the Parties under Paragraph 4 of the Agreement.

The Injunction Requested Will Not Adversely Affect Any Public Interest

93. The injunction requested will not adversely affect any public interest. Rather, it will keep the School District operating, preserve the integrity of the public education system and protect the School District's students and their families from incurring substantial harm.

WHEREFORE, Plaintiff, South Allegheny School District, respectfully requests that this Honorable Court issue an appropriate Order:

- (1) Enjoining Defendant, from failing or refusing to provide school bus transportation services under the terms of Agreement;
- (2) Enjoining Defendant from repudiating the Agreement;
- (3) Directing that Defendant comply with and otherwise perform its obligations to the School District under the Agreement; and
- (4) Granting such other relief as the Court deems just and proper.

COUNT III

BREACH OF CONTRACT – CLAIM FOR DAMAGES

(PLEAD IN THE ALTERNATIVE TO COUNT II)

South Allegheny School District v. Sun Coach Lines, LLC

94. The School District hereby incorporates the allegations set forth in Paragraphs 1 through 93 of this Complaint as if the same were set forth more fully at length herein.

95. On or about May 2, 2018, the School District and Defendant entered into a written contract (hereinafter referred to as "the Agreement"), under which Defendant agreed to continue

to provide all school bus transportation services to the School District for an additional seven (7) year term, commencing on August 1, 2016, and continuing through July 31, 2023 in return for the School District's agreement to pay Defendant in accordance with certain yearly bulk rates that were identified in the attached Exhibit "A" to the Agreement. A true and correct copy of the Agreement is attached hereto and incorporated herein by reference as **Exhibit "1."**

96. Defendant's failure or refusal to provide school bus transportation services to the School District for the upcoming 2020-2021 school year if the School District does not pay the \$379,299.75 amount that Defendant improperly and unjustifiably claims is due for the 2019-2020 school year and/or pay the entire bulk rate to Defendant during the period of virtual schooling for at least the 4-6 weeks at the beginning of the 2020-2021 school year when the School District did not need and Defendant would not be providing school bus transportation services to the students who attended school in the School District, constituted a definite and unconditional repudiation of the obligations under the Agreement.

97. Defendant willfully and materially breached the Agreement by expressing a definite and unconditional repudiation of the obligations under the Agreement when it informed the School District that Defendant will not be performing the agreed to and required school bus transportation services under the Agreement for the imminent school year.

98. As a direct and proximate result of the breach identified above in Paragraphs 96-97, the School District has suffered or will suffer substantial damages, included, *inter alia*:

- a. the increased premium costs for transporting the School District's students to and from school;
- b. the costs associated with delaying live, in classroom instruction during the 2020-2021 school year;

- c. the increased costs associated with having to contract with other outside transportation vendors at an increased cost, including, the added costs associated with contracting out for special education transportation, homeless student transportation, vocational-technical school transportation, Parochial school transportation, charter school transportation, activity busing, and/or for providing substitute busing on those days when Defendant failed or refused to provide the required school bus transportation services.

WHEREFORE, Plaintiff, South Allegheny School District, respectfully requests that this Honorable Court enter judgment in its favor and against Defendant, Sun Coach Lines, LLC, in an amount in excess of the jurisdictional limit of \$35,000.00, together with interest, costs and such other and further relief as this Honorable Court deems just and proper.

Respectfully submitted,

MAIELLO, BRUNGO & MAIELLO, LLP.

/s/ Steven P. Engel

Steven P. Engel, Esquire

Pa. I.D. #74524

Falco A. Muscante, Esquire

Pa. I.D. #

Peter J. Halesey, Esquire

Pa. I.D. #313708

Southside Works

424 South 27th Street, Suite #210

Pittsburgh, PA 15203

(412) 242-4400

Attorney for Plaintiff, *South Allegheny School District*

VERIFICATION

I, Dr. Lisa Duval, Superintendent of the South Allegheny School District verify that the factual allegations set forth in the foregoing document are based upon facts of which I have personal knowledge; that the language of the document is that of counsel and not my own; that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief; and that I am authorized to execute this Verification on behalf of South Allegheny School District.

I understand that the statements made herein are made subject to the penalties of 18 Pa. Cons. Stat. Ann. Sec. 4904 relating to unsworn falsification to authorities.

A handwritten signature in cursive script, appearing to read "Lisa Duval", is written over a horizontal line.

CERTIFICATE OF COMPLIANCE

I certify that the documents hereby being filed fully comply with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Date: 8/25/20

By: /s/ Steven P. Engel
Steven P. Engel, PA ID. No.74524

AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of February, 2018, by and between the SOUTH ALLEGHENY SCHOOL DISTRICT, a municipal corporation and political subdivision of the Commonwealth of Pennsylvania, located at 2743 Washington Boulevard, Liberty Borough, Allegheny County, Pennsylvania, hereinafter referred to as the "SCHOOL DISTRICT,"

AND

SUN COACH LINES, LLC, a Pennsylvania Corporation, with offices located at P.O. Box 3052, McKeesport, Allegheny County, Pennsylvania 15134, hereinafter referred to as the "CONTRACTOR."

WITNESSETH:

WHEREAS, the CONTRACTOR and/or its affiliates has heretofore provided continuous school bus transportation services to the SCHOOL DISTRICT from August 1, 1997, through July 31, 2016; and WHEREAS, the CONTRACTOR has submitted a proposal to the SCHOOL DISTRICT to continue to provide all school bus transportation services to the SCHOOL DISTRICT for a seven (7) year term commencing August 1, 2016, through July 31, 2023, and which proposal by the CONTRACTOR is attached hereto as Exhibit "A"; and

WHEREAS, the SCHOOL DISTRICT desires to accept the submitted proposal of the CONTRACTOR for continuing to provide such school bus transportation services to the SCHOOL DISTRICT commencing August 1, 2016, in accordance with Exhibit "A" attached hereto; and

WHEREAS, the SCHOOL DISTRICT and the CONTRACTOR herein desire to enter into a written agreement for said school bus transportation services consistent with the proposal of the CONTRACTOR to the SCHOOL DISTRICT.

NOW, THEREFORE, in consideration of the mutual promises, covenants and undertakings hereinafter set forth, the SCHOOL DISTRICT and the CONTRACTOR, intending to be legally bound, hereby agree as follows:

CONTRACT DOCUMENTS

1. The CONTRACTOR shall provide all school bus transportation services to the SCHOOL DISTRICT for a term of seven (7) years commencing August 1, 2016, through July 31, 2023, in strict accordance with the provisions of this Agreement, or unless 1 terminated by the SCHOOL DISTRICT sooner pursuant to paragraphs 4, 15, 42, 45 or 46 of the Agreement. If the provisions of this Agreement conflict with the provisions of Exhibit "A" hereto, then the provisions of this Agreement shall prevail.



INDEPENDENT CONTRACTOR

2. For purposes of this Agreement, the CONTRACTOR shall be deemed an independent contractor, and not an officer, agent, or employee of the SCHOOL DISTRICT.

SCOPE OF AGREEMENT

3. For the consideration hereinafter mentioned, the CONTRACTOR agrees to provide all school bus transportation services to the SCHOOL DISTRICT, on school days designated by the SCHOOL DISTRICT during the term of this Agreement, for the resident school pupils designated by the SCHOOL DISTRICT, to and from their respective residences and the public schools of the SCHOOL DISTRICT, or, at the direction and approval of the SCHOOL DISTRICT, to and from non-public elementary and secondary schools not operated for profit and located within the SCHOOL DISTRICT, or non-public elementary and secondary schools not operated for profit and located within ten (10) miles of the closest boundary of the SCHOOL DISTRICT where that boundary intersects the road or series of roads which leads most directly to the grounds of the non-public elementary or secondary school, to and from special education facilities utilized by the SCHOOL DISTRICT, and to and from SCHOOL DISTRICT sponsored extracurricular or educational activities.

COMPENSATION

4. In consideration of the performance on the part of the CONTRACTOR under the terms of this Agreement, the SCHOOL DISTRICT agrees to pay the CONTRACTOR in accordance with the yearly bulk rates attached hereto, made a part hereof, and identified as part of Exhibit "A" for the initial one (1) year period commencing August 1, 2016, through July 31, 2017, and for each subsequent year thereafter throughout the term of this Agreement, unless one (1) or both of the following events occur:

(a) The number of students provided school bus transportation services by the SCHOOL DISTRICT increases or decreases at any time during the term of this Agreement by 5% or more from the number of students provided school bus transportation services as of the first student day of the 2016-2017 School Year, which was August 24, 2016;

(b) The SCHOOL DISTRICT, for whatever reason, discontinues school bus transportation services for its students beyond the 2016-2017 School Year, except for those school bus transportation services mandated by federal or state law; and

If either or both of the above (a) and/or (b) events occur, the CONTRACTOR and the SCHOOL DISTRICT agree that, notwithstanding any other provisions of this Agreement, they will renegotiate the bulk rate for school bus transportation services set forth in Exhibit "A" hereto to provide an appropriate increase, reduction, or elimination in such bulk rate to the SCHOOL DISTRICT by the CONTRACTOR. Further, if the CONTRACTOR and SCHOOL DISTRICT are unable to renegotiate a revised bulk rate or the elimination of the bulk rate for school bus transportation services satisfactory to the SCHOOL DISTRICT or to CONTRACTOR because of

the occurrence of either or both events (a) and/or (b) above, then, again notwithstanding any other provisions of this Agreement, the parties agree to submit such issue (s) in dispute of a reasonable and appropriate reduced bulk rate to the SCHOOL DISTRICT or the elimination of the bulk rate to the SCHOOL DISTRICT to mediation and, if necessary, binding arbitration through the American Arbitration Association. Additionally, the CONTRACTOR will provide buses for and accommodate all early dismissals of the SCHOOL DISTRICT, at no additional charge during the entire term of this Agreement. Also, the CONTRACTOR will provide buses for and accommodate all extra-curricular activities and athletic events of the SCHOOL DISTRICT set forth in Exhibit "A."

5. Notwithstanding anything herein to the contrary and as an addendum to Exhibit "A" attached hereto, the Parties agree that in the seventh (7th) year of the contract there shall be 0% increase in the rates as set forth. However, the parties further agree that in the event that the parties hereto, including the affiliates or subsidiaries of CONTRACTOR, do not execute a five (5) year extension of the existing contract or a new contract of at least five (5) years in length, Contractor shall be entitled to receive a lump sum payment, at contract termination, equal to what a 3% increase would have otherwise been for the last year of the contract. Nothing in this provision, nor this Agreement, shall prohibit the Parties from negotiating a five (5) year extension and/or five (5) year new contract that allows for a "claw back" provision entitling CONTRACTOR to recapture the 3% increase from the final year of the within Agreement.

6. For purposes of implementing the payments due the CONTRACTOR by the SCHOOL DISTRICT under the terms of this Agreement, the CONTRACTOR will invoice the SCHOOL DISTRICT on the first (1st) day of April 2018 for School Bus Transportation services for the period from June 1, 2017, through March 30, 2018, which have not previously been paid, and on the 1st day of each month thereafter for school bus transportation services rendered during the preceding month through August 31, 2018. Thereafter, the CONTRACTOR will invoice the SCHOOL DISTRICT on the 1st day of the month on a monthly basis in ten (10) equal payments beginning in September 2018 for school bus transportation services through June 30th of each successive school year. Any school bus transportation services provided in July and August 2019 will be billed in accordance with Exhibit "A."

7. The SCHOOL DISTRICT agrees to remit all payments due the CONTRACTOR within thirty (30) days of receipt of the invoice, subject to any right on the part of the SCHOOL DISTRICT to deduct monies for failure on the part of the CONTRACTOR to provide school bus transportation services to the SCHOOL DISTRICT in accordance with the terms of this Agreement.

8. In the event the SCHOOL DISTRICT disputes any specific amounts due the CONTRACTOR on any invoice, the SCHOOL DISTRICT shall notify the CONTRACTOR of the amounts disputed in writing and set forth the reasons for such dispute within ten (10) days of receipt of invoice. Any amounts which are not disputed on any invoice shall be paid to the CONTRACTOR within the time period hereinabove stated. Any disputed amounts

will be paid to the CONTRACTOR within ten (10) days of settlement of such dispute between the CONTRACTOR and the SCHOOL DISTRICT.

INSURANCE

9. The CONTRACTOR shall, at its expense, procure and keep in force during the entire term of this Agreement, public liability and property damage liability insurance protecting the SCHOOL DISTRICT, its Board, officers, employees and agents, and CONTRACTOR, its drivers and other personnel. CONTRACTOR shall provide limits of liability of not less than Five Million Dollars (\$5,000,000) Combined Single Limit for bodily injury and damage to property. All insurance policies shall provide that no coverage shall be cancelled except by ten (10) days written notice to the CONTRACTOR and the SCHOOL DISTRICT. The CONTRACTOR shall provide the SCHOOL DISTRICT with evidence of Workers' Compensation coverage in the amount required by law. The CONTRACTOR shall provide to the SCHOOL DISTRICT a certificate of insurance, with the SCHOOL DISTRICT named as an additional insured, evidencing that the CONTRACTOR maintains worker's compensation, comprehensive, automobile liability, contractual liability, bodily injury and property damage liability and umbrella liability insurance in the amounts specified below:

COMPREHENSIVE GENERAL LIABILITY

Including coverage for:

- a. Premises Operations
- b. Independent Contractors

Bodily Insurance and Property Damage

\$5,000,000 each occurrence

\$5,000,000 aggregate

AUTOMOBILE LIABILITY

Bodily Injury and Property Damage

\$5,000,000 each occurrence

WORKER'S COMPENSATION POLICY

Statutory Coverage

10. The CONTRACTOR guarantees that the above stated certificates and policies of insurance coverages, of the kinds and amounts specified above, with the SCHOOL DISTRICT as an additional insured, shall remain in full force and effect throughout the term of this Agreement.

11. The CONTRACTOR shall assume the sole and exclusive cost for maintaining the above stated insurance coverages.

12. The CONTRACTOR shall furnish the above stated certificates of insurance to the SCHOOL DISTRICT, with the SCHOOL DISTRICT as an additional insured, within thirty (30) days of execution of this Agreement.

RECORD KEEPING

13. The CONTRACTOR agrees to keep and file in a timely manner any records or reports as may be required by the SCHOOL DISTRICT including, but not limited to, passenger count, mileage, vehicle identification, vehicle dispatching information, maintenance and fuel records and disciplinary reports. Additionally, the CONTRACTOR agrees to provide the SCHOOL DISTRICT with all information necessary for the completion and submission of all State Transportation reimbursement applications. Time and Mileage Reports will be submitted to the SCHOOL DISTRICT Business Office by the 10th of each month reflecting the previous month's activity for all buses transporting South Allegheny students.

EQUIPMENT REQUIREMENTS

14. The SCHOOL DISTRICT shall leave to the CONTRACTOR the right to designate the make of school buses used by the CONTRACTOR in the performance of the work outlined in the terms of this Agreement, except all such vehicles must comply with all State of Pennsylvania requirements for school buses and all other provisions of this Agreement.

15. The CONTRACTOR agrees that all school buses used during the term of this Agreement, being August 1, 2016, through July 31, 2023, for Intra District Transportation shall be appropriately sized passenger school buses or vans.

16. All buses used to transport SCHOOL DISTRICT students shall be available for inspection by the SCHOOL DISTRICT on or before August 10, 2016, and on or before August 10th of each calendar year thereafter throughout the term of this Agreement. If the CONTRACTOR cannot make such school buses available for inspection by the SCHOOL DISTRICT on or before August 10, 2016, and on or before August 10th of each calendar year thereafter throughout the term of this Agreement, or if such school buses do not meet the requirements of this Agreement, then notwithstanding any other provisions of this Agreement the SCHOOL DISTRICT shall have the right to immediately terminate this entire Agreement with the CONTRACTOR, and with no liability on the part of the SCHOOL DISTRICT.

17. All school buses used by the CONTRACTOR shall be maintained in sound mechanical condition and at all times during the term of this Agreement shall conform to the standards promulgated by the Bureau of Traffic Safety, Pennsylvania Department of Transportation, or other similar governmental agency, and shall bear evidence of approval by such bureau and proof of satisfactory inspection by the Pennsylvania State Police. The CONTRACTOR shall keep all school buses in a clean and sanitary condition. The SCHOOL

DISTRICT may at its sole expense inspect any one or more of the school buses at any reasonable time.

18. The CONTRACTOR shall keep one (1) standby school bus for each ten (10) school buses in the regular fleet, which standby school bus shall be a seventy-two (72) passenger school bus and/or seventy-seven (77) passenger school bus. Standby school buses shall comply with all minimum standards of regular school buses.

19. The CONTRACTOR shall comply with and observe the provisions of the Pennsylvania Motor Vehicle Code, the Public School Code of 1949, as amended, and all other laws of the Commonwealth of Pennsylvania, including the rules and regulations of its departments, agencies and political subdivisions applicable to the transportation of pupils.

20. Regular preventative maintenance, as approved by the bus manufacturer, shall be practiced on all school buses used in providing school bus transportation services to the SCHOOL DISTRICT under this Agreement, and the CONTRACTOR shall wash each school bus at least once every two (2) weeks, and, in addition thereto, constantly maintain such school buses in clean and tidy condition.

21. All school buses shall be equipped with "digital video cameras," and have the ability to record all activities on the school buses. Additionally, at the request of the SCHOOL DISTRICT, and provided the SCHOOL DISTRICT requests recordings in a timely manner, the SCHOOL DISTRICT will be given a copy of any and all recordings of such cameras saved to an SD card. The SCHOOL DISTRICT shall provide such SD cards to the CONTRACTOR as needed. Further, such SD cards provided by the SCHOOL DISTRICT shall meet or exceed all camera manufacturer's recommendations and/or specifications for compatible SD cards.

DRIVERS

22. All operators of school buses used by the CONTRACTOR shall meet the regulations and rules of the Bureau of Traffic Safety of the Pennsylvania Department of Transportation in regard to age, fitness, competence, conduct, licensing, physical examination and continuing eligibility. An annual physical examination by a licensed physician is required of each driver and evidence of his ability to perform as a bus driver must be supplied to the SCHOOL DISTRICT.

23. The CONTRACTOR shall provide a competent, properly licensed operator for each school bus operating for the SCHOOL DISTRICT; however, the operator shall remain the sole employee of the CONTRACTOR.

24. All school bus drivers employed by the CONTRACTOR must have a minimum of one (1) year of school bus driving experience or educational equivalence.

25. The CONTRACTOR shall keep available standby drivers, who may be maintenance men or mechanics duly licensed to operate a school bus. The standby driver

shall be used when the regular driver is not ready to start his run within ten (10) minutes of the regular departure time.

26. The CONTRACTOR shall keep a record of check-in and check-out times of all drivers in order to determine whether or not all school buses have been dispatched, and a copy of such record shall be provided to the SCHOOL DISTRICT upon request by the SCHOOL DISTRICT.

27. The SCHOOL DISTRICT reserves the privilege of meeting with the CONTRACTOR to discuss the removal of any driver who, in the judgment of the SCHOOL DISTRICT, is not rendering satisfactory service because of his physical or mental condition or driving record.

28. Before the start of the school year, the CONTRACTOR shall supply the SCHOOL DISTRICT with a list of names, addresses and phone numbers of the drivers it is planning to use. On the first day of each month thereafter, the CONTRACTOR shall supply the SCHOOL DISTRICT with a list of any additional names, addresses and phone numbers of new drivers to be employed, and/or present drivers to be discharged.

29. The CONTRACTOR shall obtain a completed annual Physical Inspection form for each school bus driver who operates a school bus for the CONTRACTOR under the terms of this Agreement. Within the limitations set forth by the Americans with Disabilities Act, 42 U.S.C. Section 12112, and other applicable federal and state laws, the CONTRACTOR agrees to make a good faith effort to supply the SCHOOL DISTRICT with copies of the completed annual physical inspection forms upon request.

30. The CONTRACTOR shall require driver attendance at a minimum of four (4) In-Service Safety meetings per year to be conducted by the CONTRACTOR as part of In-Service training, and the cost of which is to be borne entirely by the CONTRACTOR. Further, the CONTRACTOR shall have driver orientation of a route before assigning such route to the driver. Each driver shall thoroughly understand and be acquainted with his/her bus route.

EMPLOYEE BACKGROUND CHECK

31. All persons employed by the CONTRACTOR under this Agreement shall be in full compliance with Act 34 of 1985, Act 151, Act 24 of 2011, and Section 111 of the Public School Code of 1949, as amended, relating to employee background checks, criminal conviction reporting requirements, and all other applicable Federal, State, and local statutes and regulations relating to employee background checks and criminal conviction reporting requirements. All drivers must have their required legal Clearances prior to transporting any SCHOOL DISTRICT students and copies of all such Clearances must be forwarded by the CONTRACTOR to the SCHOOL DISTRICT prior to the start of each school year. The CONTRACTOR shall submit updated clearances to the SCHOOL DISTRICT on a four (4) year rotation for twenty-five (25%) percent of approved drivers. Every driver must report any conviction after original clearances are submitted to the CONTRACTOR who will

inform the SCHOOL DISTRICT immediately. The CONTRACTOR further agrees to indemnify the SCHOOL DISTRICT, Board, officers, employees, administrators, and agents for any civil penalty assessed on account of noncompliance with said Acts and regulations with respect to the CONTRACTOR, its agents, or employees.

INSPECTION OF MOTOR VEHICLE OPERATING RECORD
AND DRUG AND ALCOHOL TESTING

32. All persons employed by the CONTRACTOR under this Agreement will be subject to inspection of their entire Motor Vehicle Operating Record. In the event of an accident, and to the extent required and/ or permitted by law, necessary drug and alcohol testing shall be performed on the operator (s) and mechanic(s) of the school bus or school buses involved in the accident which are provided by the CONTRACTOR to the SCHOOL DISTRICT under the terms of this Agreement.

IMMIGRATION REFORM AND CONTROL ACT OF 1986

33. Any persons employed by the CONTRACTOR under this Agreement shall be subject to the Immigration Reform and Control Act of 1986. The CONTRACTOR shall make certain that all such employees comply with the requirements of said law.

NON-DISCRIMINATION AND EMPLOYMENT

34. The CONTRACTOR shall comply with all Federal and State Laws and Regulations relating to non-discrimination and employment for all persons employed or considered for employment by the CONTRACTOR under this Agreement.

PENALTY FOR FAILURE TO COMPLY WITH DRIVER OR VEHICLE REQUIREMENTS

35. If the CONTRACTOR fails to conform with any of the requirements for the provision of drivers or vehicles, he shall pay a penalty equal to the daily rate applicable to the route in question as set forth on attached Exhibit "A" hereto. In addition to those items listed, the CONTRACTOR shall be penalized for, but not limited to, the following:

- (a) Drivers changing a route or stop without notifying and securing approval from the SCHOOL DISTRICT, except in emergency cases where the normal route of travel is obstructed, and the CONTRACTOR has not been notified at least twenty-four (24) hours in advance of the obstruction;
- (b) Driver leaving bus unattended with children on board;
- (c) Driver failing to complete run or caused to be late due to running out of gas;
- (d) Failure to cover breakdown with a spare within thirty (30) minutes of breakdown;

- (e) Failure to notify the SCHOOL DISTRICT of any known problems causing bus to be late.

ROUTING/ SCHEDULING

36. Operating Schedules for bus routes and bus stops shall be prepared by the CONTRACTOR with the cooperation and approval of the SCHOOL DISTRICT, and the CONTRACTOR must submit such Operating Schedules to the SCHOOL DISTRICT on or before August 10, 2016, and on or before August 10th of each calendar year thereafter throughout the term of this Agreement. The schedules shall designate the time and place of all bus stops, both morning and evening, and shall be posted in the appropriate bus and in the appropriate school. The bus shall not depart from any designated stop before one minute after the scheduled time, unless all pupils to be transported from that point are aboard. The time schedule may be modified by the SCHOOL DISTRICT as occasion demands but only after due notice has been given to parents and the CONTRACTOR. The operator of the CONTRACTOR's vehicle shall not deviate from the designated route except by the consent of the SCHOOL DISTRICT or in the case of an emergency, which shall be reported promptly to the SCHOOL DISTRICT or the SCHOOL DISTRICT's designated representative.

Bulk Rate Guidelines: In order for the CONTRACTOR to provide the SCHOOL DISTRICT with a yearly bulk rate, the SCHOOL DISTRICT agrees to cooperate and abide by the following bulk rate transportation guidelines:

(a) The CONTRACTOR has the sole responsibility for proposing scheduling and routing of the SCHOOL DISTRICT's student transportation services, but subject to the cooperation and approval of the SCHOOL DISTRICT as set forth above.

(b) The primary objective is to maximize the ridership of every route to the legal seating capacity of each school bus.

(c) Students will only be picked up and dropped off at SCHOOL DISTRICT approved bus stops.

(d) Students will be picked up and dropped off at the closest SCHOOL DISTRICT designated stop, based on the relative distance from the student's residence to the stop. Students' stops will be chosen based on the following factors: geographic, safety and logical soundness for each particular route. It is the CONTRACTOR's prerogative to propose the routes and assign each student to their respective stop, but again subject to the cooperation and approval of the SCHOOL DISTRICT as set forth above.

(e) The CONTRACTOR will make every effort to limit the amount of time a student spends on a bus to less than one (1) hour for intra-district routes. On out-of-district routes, the CONTRACTOR will endeavor to limit routes to less than one and one-half (1-1/2) hours.

Additional Charges: If the SCHOOL DISTRICT fails to adhere to the above-mentioned guidelines, and as a result additional vehicles need to be added by the CONTRACTOR, the

SCHOOL DISTRICT will be charged for such additional vehicles and at the rates set forth and identified as part of Exhibit "A" attached hereto.

If the SCHOOL DISTRICT changes the current four tier pupil transportation scheme to a three tier pupil transportation scheme, the SCHOOL DISTRICT will be charged for any additional vehicles required to comply with the three tier pupil transportation scheme, at the rates set forth and identified as part of Exhibit "A" attached hereto.

ROSTER

37. The SCHOOL DISTRICT shall provide an accurate electronic file of student data base information necessary for the development of rosters/routes by the CONTRACTOR using software owned by the CONTRACTOR on or before June 15th preceding the next school year for each calendar year throughout the term of this Agreement.

LOADING/DISCHARGING STUDENTS

38. Pupils shall be taken on and discharged from the bus only at designated stops and at extreme right of the road. No pupils shall be permitted to get on or off the bus while it is in motion. No vehicle which has stopped in compliance with the provisions of Section 3208 of the School Laws of Pennsylvania shall proceed until after each child who may have alighted therefrom shall have reached a place of safety.

PASSENGERS

39. No persons other than a school pupil shall be transported in a contracted vehicle except that a teacher, other school official, or parent may ride when approved by the SCHOOL DISTRICT's designated representatives. Nothing except passengers and their belongings shall be transported in the contracted vehicle while it is engaged in transporting pupils to and from school.

SEATING CAPACITY

40. All school buses operated by the CONTRACTOR during the term of this Agreement shall not be loaded beyond the seating capacity as set forth in minimum standards and as indicated on the "Approved School Bus Sticker" or the manufacturer's rated seating schedule/sticker.

VEHICLE SPEED

41. The speed of the school buses operated under the terms of this Agreement shall at all times be consistent with the safety of the passengers and shall at no time exceed the posted speed limit as set forth in the minimum standards of the Bureau of Traffic Safety, Pennsylvania Department of Transportation, as promulgated under the Pennsylvania Motor Vehicle Code.

SAFETY EQUIPMENT

42. The CONTRACTOR agrees to furnish in each contracted vehicle the following safety related items: Grade A first aid kit, dry-chemical type fire extinguisher, a pry-bar (or axe), safety triangles and two (2) way radios. Additionally, all 72 and/or 77 passenger school buses shall have Global Positioning Satellite (GPS) digital video cameras, "stop arms" and "crossing arms."

EVALUATION OF PERFORMANCE OF CONTRACTOR

43. The performance of the CONTRACTOR under this Agreement shall be evaluated by the SCHOOL DISTRICT as often as deemed necessary by the SCHOOL DISTRICT. The evaluation process will take into consideration, by way of illustration but not limitation, the following items:

- (a) CONTRACTOR's safety records;
- (b) Transportation complaints record;
- (c) CONTRACTOR's vehicles condition, cleanliness and mechanical condition;
- (d) CONTRACTOR's vehicle facility-housing and maintenance;
- (e) CONTRACTOR's general responsiveness to SCHOOL DISTRICT's transportation needs.

If at any time after any evaluation conducted by the SCHOOL DISTRICT, the SCHOOL DISTRICT, in its sole discretion and provided the SCHOOL DISTRICT complies with the provisions set forth in paragraph 46 hereafter, determines that the CONTRACTOR's performance is unsatisfactory, the SCHOOL DISTRICT may immediately terminate this Agreement. Any decision by the SCHOOL DISTRICT to terminate this Agreement is final and binding on the parties, and is not reviewable, notwithstanding any other provisions of this Agreement.

DISPATCHER AND BUS AIDE SERVICES

44. The CONTRACTOR agrees to provide at least one (1) dispatcher who will be available to the SCHOOL DISTRICT during any and all hours that the CONTRACTOR's school buses are providing school bus transportation services to the SCHOOL DISTRICT. In addition, the CONTRACTOR shall provide bus aides on those buses designated by the SCHOOL DISTRICT in a number deemed sufficient by the SCHOOL DISTRICT, or as required by Federal, State or local laws, at the compensation rate set forth and identified on attached Exhibit "A" hereto.

COMPLIMENTARY BUSES FOR EXTRA CURRICULAR ACTIVITIES AND
EDUCATIONAL ACTIVITIES

45. During each year of this Agreement, the CONTRACTOR agrees to provide twenty (20) school buses, on a complimentary basis, to the SCHOOL DISTRICT for use by SCHOOL DISTRICT personnel and SCHOOL DISTRICT students for various extracurricular and educational activities to any point within Allegheny County. These complimentary school buses will be made available to the SCHOOL DISTRICT during what otherwise would be a normal school day, and shall be made available on days designated solely by the SCHOOL DISTRICT. The SCHOOL DISTRICT shall have the right to the use of the buses in any combination that it deems appropriate.

TERM OF AGREEMENT

46. This Agreement shall become effective on the 1st day of August, 2016, and shall continue in full force and effect for a period of seven (7) years, terminating on July 31, 2023, in accordance with the proposal of the CONTRACTOR attached hereto as Exhibit "A," unless terminated by the SCHOOL DISTRICT sooner pursuant to paragraphs 4, 15, 42 or 46 of the Agreement, or unless the CONTRACTOR violates any other terms or conditions of this agreement and fails to remedy same within thirty (30) days, after written notice of such violation is given to the CONTRACTOR by the SCHOOL DISTRICT in writing.

ALL PROVISIONS OF AGREEMENT MATERIAL AND SUBSTANTIAL

47. Both the CONTRACTOR and the SCHOOL DISTRICT agree that all of the provisions of this Agreement are material and substantial and each such provision or term of this agreement, standing alone, if violated by the CONTRACTOR and allowed to continue for a period of thirty (30) days, after written notice of such violation to the CONTRACTOR by the SCHOOL DISTRICT, constitutes sufficient cause for the SCHOOL DISTRICT to terminate this Agreement immediately, and without any further liability on the part of the SCHOOL DISTRICT to the CONTRACTOR.

REGULATIONS

48. In providing school bus transportation services to the SCHOOL DISTRICT, the CONTRACTOR shall comply with any and all Federal, State, County and Local laws, ordinances, rules and regulations which are applicable to said services.

HOLD HARMLESS

49. The CONTRACTOR shall hold the SCHOOL DISTRICT, its governing board, officers and employees harmless and does hereby indemnify the SCHOOL DISTRICT, its governing board, officers and employees from and against every claim or demand which may be made by any person, firm or corporation, or other entity arising from or caused by any act, neglect, default or omission of the CONTRACTOR in the performance of this Agreement, except to the extent that such claim or demand arises from or is caused

by the negligence or willful misconduct of the SCHOOL DISTRICT, its agents, or employees.

To the extent permitted by law, the SCHOOL DISTRICT shall hold the CONTRACTOR, its officers, employees, agents, successors and assigns harmless and does hereby indemnify the CONTRACTOR, its officers, employees, agents, successors and assigns from and against every claim or demand which may be made by any person, firm, corporation or other entity arising from or caused by act, neglect, default or omission of the SCHOOL DISTRICT, its governing board, officers, employees or agents, except to the extent that such claim or demand arises from or is caused by the negligence or willful misconduct of the CONTRACTOR, its agents or employees.

NON-ASSIGNMENT

50. The CONTRACTOR shall not assign this Agreement without the written consent of the SCHOOL DISTRICT: an assignment does not include an assignment between commonly owned entities. Further, a business merger by the CONTRACTOR with another company or individual(s) shall be considered a non-assignment transaction hereunder, and shall not occur without the written consent of the SCHOOL DISTRICT.

CONSTRUCTION AND APPLICABLE LAW

51. This Agreement shall be deemed to have been made at the offices of the SCHOOL DISTRICT, located at 2743 Washington Boulevard, Liberty Borough, Allegheny County, Pennsylvania 15133, and shall be construed in accordance with the laws of the Commonwealth of Pennsylvania.

WAIVER OF MODIFICATION TO BE IN WRITING

52. No modification or waiver of any kind of the terms of this Agreement shall be valid unless made in writing and signed by the CONTRACTOR and the SCHOOL DISTRICT.

NO WAIVER OF DEFAULT

53. This Agreement shall remain in full force and effect unless and until terminated under and pursuant to the terms of this Agreement. The failure of the CONTRACTOR or the SCHOOL DISTRICT to insist upon strict performance of any of the provisions of this agreement shall in no way affect the right of the CONTRACTOR or the SCHOOL DISTRICT hereafter to enforce the same, nor shall the waiver of any breach or default of any provision hereof be construed as a waiver of any subsequent breach or default of the same or similar nature, nor shall it be construed as a waiver of strict performance of any other obligations herein.

SEVERABILITY

54. If any term, condition, clause or provision of this Agreement shall be determined or declared to be void or invalid in law or otherwise, then only that term,

condition, clause or provision shall be stricken from this Agreement and in all other respects this Agreement shall be valid and continue in full force, effect and operation. Likewise, the failure of either the CONTRACTOR or the SCHOOL DISTRICT to meet its obligations under any one (1) or more of the paragraphs herein, with the exception of the satisfaction of the conditions precedent, shall in no way void or alter the remaining obligations of the CONTRACTOR and/or the SCHOOL DISTRICT.

INTEGRATION

55. This Agreement constitutes the entire understanding of the CONTRACTOR and the SCHOOL DISTRICT and supersedes any and all prior agreements and negotiations between them. There are no representations or warrants other than those expressly set forth herein.

HEADINGS NOT PART OF AGREEMENT

56. Any headings preceding the text of the several paragraphs and subparagraphs hereof are inserted solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

NOTICES

57. Whenever any notice is required to be given by the SCHOOL DISTRICT to the CONTRACTOR under the provisions of this Agreement, the SCHOOL DISTRICT shall provide such notice to the CONTRACTOR by certified mail, return receipt requested, addressed to the following addresses:

Sun Coach Lines, LLC
P.O. Box 3052
McKeesport, Pennsylvania 15134
ATTN: David Sunstein, President

58. Whenever any notice is required to be given by the CONTRACTOR to the SCHOOL DISTRICT under the provisions of this Agreement, the CONTRACTOR shall provide such notice to the SCHOOL DISTRICT by certified mail, return receipt requested, addressed to the following address:

South Allegheny School District
2743 Washington Boulevard
McKeesport, Pennsylvania 15133
ATTN: Lois Murphy
Board of Directors Secretary

DATE OF EXECUTION

59. The "date of execution" or "execution date" of this Agreement shall be defined as the date upon which it is executed by the CONTRACTOR and the SCHOOL

DISTRICT, if they have each executed the agreement on the same date. Otherwise, the "date of execution" or "execution date" of this Agreement shall be defined as the date of execution by the party last executing this Agreement.

[SEE SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the CONTRACTOR and the SCHOOL DISTRICT hereto have caused this Agreement to be signed by their duly authorized officers on the dates set forth below their respective signatures.

ATTEST:


SOUTH ALLEGHENY SCHOOL DISTRICT

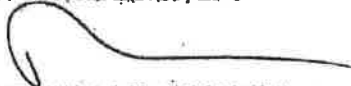

Lois Murphy, Secretary


Shawn DeVerse, President
Board of School District

DATE: April 27, 2018

SUN COACH LINES, LLC


Secretary: Scott Lundberg


BY: David Sunstein, President

DATE: MAY 2, 2018

Exhibit "A"
(Effective August 1, 2016)
Rate Schedule

School Term	2016/2017	2017/2018	2018/2019	2019/2020	2020/2021	2021/2022	2022/2023
Yearly Bulk Rate	3% increase \$1,191,754.63	3% increase \$1,227,507.30	122,150.12 0% increase*	126,145.50 3% increase*	130,930.47 3% increase*	136,858.39 3% increase*	142,964.24 0% increase*
Daily Monitor Rate	\$13.54-Per Hour, 4 Hour Minimum	\$13.96-Per Hour, 4 Hour Minimum	14.35	14.87	15.41	15.97	16.54
Charter Rates:							
In-District: Between Buildings	\$75.35	\$77.61	79.94	82.33	84.80	87.34	89.95
In-District	\$110.12	\$113.43	116.83	120.33	123.94	127.66	131.49
Out of District	\$150.71 - 4 Hour Minimum, \$34.77 Each Additional Hour	\$155.24 - 4 Hour Minimum, \$35.82 Each Additional Hour	159.90	164.79	169.79	174.90	180.12
School Bus	\$252.73 - 4 Hours of Service, \$34.77 Each Additional Hour	\$260.31 - 4 Hours of Service, \$35.82 Each Additional Hour	268.12	276.16	284.43	292.93	301.66
School Van	\$206.35 - 4 Hours of Service, \$34.77 Each Additional Hour	\$212.55 - 4 Hours of Service, \$35.82 Each Additional Hour	218.93	225.57	232.36	239.30	246.49

As of the date of this Agreement, the Yearly Bulk Rate for the [2016-2017] School Year includes the provision of all necessary 72 and/or 77 passenger school buses and all necessary vans and lift buses for school bus transportation services by the CONTRACTOR to the SCHOOL DISTRICT for the numerous bus routes and van routes and runs, both intra-district and inter-district, by the CONTRACTOR to the SCHOOL DISTRICT including, but not limited to, all Steel Center, Mon Valley, parochial school, private school and charter school bus and van routes and runs within Allegheny County. During the entire term of this

Agreement, if the CONTRACTOR adds any 72 and/or 77 passenger school buses, vans or lift vehicles or any additional bus or van runs or routes to the number of vehicles or bus or van runs or routes included in the [2016-2017] School Year Bulk Rate as of the date of execution of this Agreement, the addition of such vehicles will be entirely at the CONTRACTOR's expense, provided the SCHOOL DISTRICT complies with the Bulk Guidelines of this Exhibit as delimited in Section 35 subsections A-G of the Transportation Agreement.

* The three percent (3%) Yearly Bulk Rate increase represents the maximum amount the Yearly Bulk Rate is subject to increase under this Agreement. SCHOOL DISTRICT and CONTRACTOR agree that the Yearly Bulk Rate increase will increase subject to the Consumer Price Index up to three percent (3%).

Fuel Adjustment Clause

If it proves advantageous to the Contractor, as determined by the Contractor, in its sole discretion, the School District shall be required to participate in the Allegheny Intermediate Unit Joint Fuel Purchasing program, or any other program, including, but not limited to, NYMEX Future Diesel Commodity Contracts, that would prove beneficial to the contractor, but will not be disadvantages to the School District. In the event that the cost of fuel exceeds the ceiling price during a school year, as set forth below, as determined by the fuel program contracted price, the School District shall absorb all fuel costs in excess of the ceiling price.

School Term	2017/2018	2018/2019	2019/2020	2020/2021	2021/2022	2022/2023
Ceiling Price of Fuel Per Gallon ¹	\$2.25	2% increase	2% increase	2% increase	2% increase	2% increase

¹ The ceiling price of fuel per gallon shall be the net price of fuel exclusive of any Federal, State or local Taxes or fees which the SCHOOL DISTRICT is not required to pay because of its Tax Exempt Status.

Dr. Lisa N. Duval
Superintendent

Christy Chicklo
Coordinator of Special Education

Maria Borkowski
Director of Technology

Sheila R. Lubert
Business Manager/Board Secretary

SOUTH ALLEGHENY SCHOOL DISTRICT

2743 Washington Boulevard
Liberty Borough
McKeesport, Pennsylvania 15133
Phone (412) 675-3070
Fax (412) 672-2836

David McDonald
High School Principal

Mark Mayer
Middle School Principal

Charles Michael
Elementary Principal

Alisa King
Director of Elementary Education

April 30, 2020

Sun Coach Lines, LLC
P.O. Box 3052
McKeesport, Pennsylvania 15134
ATTN: David Sunstein, President

Re: Balance of Contract Price for Transportation Services

Dear Mr. Sunstein:

As you are aware, Governor Wolf ordered all public school districts to close physical locations as of March 13, 2020. Since that time Sun Coach Lines, LLC (Sun Coach) has not provided any transportation services to the South Allegheny School District (School District) and has had no communications with the School District.

The District received an invoice for \$146,989.71 from Sun Coach for March 2020. Payment of that invoice is enclosed. Sun Coach provided transportation on ten (10) of the anticipated twenty (20) school days in March 2020. However, it has been standard practice for Sun Coach to submit ten (10) invoices to the School District over the course of the school year, each reflecting one-tenth (1/10) of the contractual price of \$1,264,332.52. This equated to a monthly invoice of \$126,433.25. If calculated on a per diem basis, assuming 178 days of transportation service at a total contractual price of \$1,264,332.52, the per diem rate for transportation services is \$7,102.99.

In total, over the course of the 2019-2020 School Year, Sun Coach provided service on 127 of the 178 contractual days. When calculated at the per diem rate of \$7,102.99, the School District's contractual obligation to Sun Coach is \$902,079.73 for services performed in the 2019-2020 School Year. However, Sun Coach only submitted seven (7) invoices, through March 2020, totaling \$885,032.75 for the 2019-2020 School Year. Accordingly, the remaining contractual obligation of the School District to Sun Coach is \$17,047.19. Please submit an additional invoice to my office reflecting this amount for the School District to satisfy its contractual obligation.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Sheila Lubert
Business Manager, South Allegheny School District

cc: Mr. Shawn Deverse, Board President (via E-Mail only)
Dr. Lisa Duval, District Superintendent (via E-Mail only)
Peter J. Halesy, Esq., Solicitor (via E-Mail only)
Ms. Janet Beisler, Transportation Coordinator (via E-Mail only)



310957,129660.6



LIBERTY BOROUGH

GLASSPORT

PORT VUE BOROUGH

LINCOLN BOROUGH

Ray F. Middleman
412.566.6054
rmiddleman@eckertseamans.com

May 18, 2020

Via U.S. Mail

Sheila Lubert
Business Manager
South Allegheny School District
2743 Washington Boulevard
Liberty Borough
McKeesport, PA 15133

Rec'd
5-21-2020
JK

Re: *Payment for Student Transportation Services*

Dear Ms. Lubert:

On behalf of my client, Sun Coach Lines, LLC ("Sun Coach"), I write in response to your April 30, 2020 letter regarding the remaining balance of the contract price due under the parties' Transportation Agreement dated February 21, 2018 (the "Agreement"). I want to explain our position that, notwithstanding the school closures, the District continues to owe Sun Coach the full amount due under the Agreement for the school year ending in 2020, *i.e.*, three more monthly payments totaling \$379,299.75. I also write to remind the District of two new laws underscoring the District's obligation to continue payments to transportation contractors like Sun Coach.

Pursuant to Section 4 and Exhibit A of the Agreement, the District agreed to pay Sun Coach a yearly bulk rate for all transportation services. The District's obligation in this regard does not diminish if Sun Coach is unable to provide 178 days of transportation services through no fault of its own. Indeed, the Bulk Guidelines attached to the Agreement specifically provide that if the District requires *additional* transportation services due to an extension to the school year, the District must pay a prorated rate for such services. The parties could have, but did not, negotiate a corollary provision for circumstances when the District requires *fewer* transportation service days. Notwithstanding this narrow exception, the parties agreed—as is standard in the industry—to a yearly bulk rate in order to maintain fixed, predictable costs. The suggestion in your April 30 letter that the District's remaining obligation should be calculated on a per diem basis complies with neither the letter nor the spirit of the parties' contract.

Furthermore, the funds used to pay transportation providers are reimbursed by the Pennsylvania Department of Education. In fact, Governor Wolf recently signed into law Act 13 of 2020,



amending the PA School Code to clarify this very situation. As amended, Section 15-1501.8(1)(2) of the Code now provides:

Notwithstanding any other provision of this act, if a school entity continues to pay a school bus transportation contractor or operates its own school bus transportation, the school entity shall be eligible for reimbursement from the Department of Education at a rate the school entity would have received had the pandemic of 2020 not occurred, had the minimum instruction days requirement not been waived under subsection (b)(1) or had the Secretary of Education not taken action under subsection (b)(2).

24 Pa. Stat. § 15-1501.8 (emphasis added). Accordingly, the District cannot credibly claim that the school closures caused by the pandemic and any associated financial hardships serve as a basis for refusing to pay Sun Coach under the Agreement.

We likewise remind you of new legislation at the federal level ensuring school districts continue to pay their transportation contractors. Specifically, the CARES Act created the Education Stabilization Fund that, among other things, allocated approximately \$13.2 billion to the Elementary and Secondary School Emergency Relief (ESSER) Fund. Pennsylvania has been approved to receive \$523.8 million from the ESSER Fund, to be allocated to local education agencies such as the District. We understand that the Commonwealth has, in turn, allocated \$380,156 to the District. Importantly, the CARES Act, which creates and controls this funding, specifically provides:

A local educational agency, State, institution of higher education, or other entity 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.

Section 18006 (emphasis added). Both the language and intent of this provision are clear: school districts receiving funding from the CARES Act must continue to pay contractors during any school closures. The application to receive such funds (*i.e.*, the Certification and Agreement for Funding under the ESSER Fund submitted to the Commonwealth) likewise requires the District to agree to this condition. Thus, assuming the District obtains such federal funding, it must continue to pay Sun Coach for the remainder of the school year as it would have absent the closures.

Finally, on a more practical level, the grave shortage of qualified CDL drivers should strongly incentivize the District to continue paying under the terms of the Agreement. Sun Coach makes significant efforts to retain its drivers assigned to the District’s routes. However, if the District refuses to continue to pay Sun Coach as required under the Agreement, Sun Coach will be

unable to pay its drivers. This will, in turn, create potentially irreversible harm to both parties when Sun Coach does not have the drivers to cover the District's routes when school is back in session.

We understand these are unprecedented times creating new challenges in our industry. Nonetheless, in light of the above, Sun Coach expects and anticipates that the District will honor its obligations under the Agreement and make payments on the remaining three invoices for the 2019-2020 school year.

Sincerely,

/s/ Ray Middleman

Ray Middleman

cc: David Sunstein (*via email*)
Peter J. Halsey, Solicitor (*via U.S. Mail*)

From: Falco Muscante
Sent: Monday, June 8, 2020 4:58 PM
To: rmiddleman@eckertseamans.com
Cc: Peter J. Halsey <PJH@mbm-law.net>
Subject: South Allegheny School District and Sun Coach Lines, LLC

Mr. Middleman-

As a follow up to my email of Friday, June 5, 2020, our office will be reviewing your letter demanding full payment to Sun Coach for the yearly bulk rate for the 2019 – 2020 School Year with the School Board this upcoming Thursday.

As part of your position, you indicated that the School District is required to pay Sun Coach the entirety of the yearly bulk rate identified in the Agreement on the basis that Sun Coach needs to maintain its fixed costs throughout the year. In order for our office to properly advise the School Board, please provide our office with supporting documentation showing that Sun Coach has continued to maintain its complement of personnel (drivers, mechanics, aides, administrative staff, etc.) during the period of school shutdown beginning on March 16, 2020 and continuing to the present day. Additionally, please provide documentation related to any other funding source that Sun Coach has pursued, including but not limited to, any application for Paycheck Protection Protection loans, if applicable, and any other federal or state funding to assist Sun Coach in maintaining its fixed costs.

Please provide the requested documentation by noon on Thursday, June 11, for us to review it and advise the School Board at their meeting that evening.

Falco A. Muscante



Falco A. Muscante, Partner
MAIELLO BRUNGO & MAIELLO, LLP
SouthSide Works • 424 South 27th St, #210 • Pittsburgh, PA 15203
p 412.242.4400 f 412.242.4377 e fam@mbm-law.net
w mbm-law.net [Bio](#) [Linked In](#)

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From: Falco Muscante
Sent: Friday, June 12, 2020 6:02 PM
To: rmiddleman@eckertseamans.com
Cc: Peter J. Halesy <PJH@mbm-law.net>
Subject: RE: South Allegheny School District and Sun Coach Lines, LLC

Mr. Middleman-

Will your client be providing the information/documentation that I requested in my below email? Specifically, please provide our office with supporting documentation showing that Sun Coach has continued to maintain its complement of personnel (drivers, mechanics, aides, administrative staff, etc.) during the period of school shutdown beginning on March 16, 2020 and continuing to the present day. Additionally, please provide documentation related to any other funding source that Sun Coach has pursued, including but not limited to, any application for Paycheck Protection Protection loans, if applicable, and any other federal or state funding to assist Sun Coach in maintaining its fixed costs.

I did discuss this matter with the School Board last evening, but to finalize the District's response to your client's demand, this information is needed. Please either provide the information/documentation on Monday or let me know whether or when it will be provided. I will then finalize the School Board's position and provide it to you.

Thank you for your attention to this matter.

Falco

Falco A. Muscante, Partner
MAIELLO BRUNGO & MAIELLO, LLP
SouthSide Works • 424 South 27th St, #210 • Pittsburgh, PA 15203
p 412.242.4400 f 412.242.4377 e fam@mbm-law.net
w mbm-law.net Bio [Linked In](#)

Maiello Brungo & Maiello
ATTORNEYS AT LAW

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Maiello Brungo & Maiello

ATTORNEYS AT LAW

Falco A. Muscante
412-242-4400, Ext. 119
fam@mbm-law.net

June 19, 2020

VIA FIRST-CLASS MAIL AND EMAIL (rmiddleman@eckertseamans.com)

Ray F. Middleman, Esquire
Eckert Seamans Cherin & Mellott, LLC
U.S. Steel Tower
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

RE: Response to Letter of May 18, 2020 Regarding Payment for Student Transportation Services

Dear Mr. Middleman:

As indicated in my email of May 22, 2020, the undersigned and our office serve as Solicitors for the South Allegheny School District (the "School District"). The School District forwarded your May 18, 2020 correspondence to our office for a response. As I indicated in that email, as well as my June 5, June 8 and June 12 email, the School District Board of School Directors has now had the opportunity to consider the position of your client, Sun Coach, LLC ("Sun Coach"), which you outlined in your letter of May 18, 2020. I requested that you provide additional information/documentation in my email of June 8 and June 12, but nothing has been provided as of this date. Therefore, the School District's position is based on the information currently available.

In your May 18, 2020 letter, you indicated that Sun Coach's position was that the School District owed Sun Coach the amount of \$379,299.75, representing the purported remaining balance of what you referenced as the yearly bulk rate for transportation services for the 2019 – 2020 School Year, pursuant to the existing agreement between Sun Coach and the School District (the "Agreement"). For the reasons outlined in this letter, the School District disagrees with your position, reiterates its own position that it owes no more money to Sun Coach for the remainder of the 2019 – 2020 School Year other than as referenced in Ms. Lubert's April 30, 2020 letter, and will not be issuing payment on any other invoices for the 2019 – 2020 School Year.

In your letter of May 18, 2020, you state your position that the language of Section 4 and Exhibit "A" of the Agreement requires the School District to pay the balance of the 2019 – 2020 Contract Year price. Section 4 of the Agreement states as follows, in full:

4. ***In consideration of the performance*** on the part of the CONTRACTOR under the terms of this Agreement, the SCHOOL DISTRICT agrees to pay the CONTRACTOR in accordance with the yearly bulk rates attached hereto, made a part hereof, and identified as part of Exhibit "A" for the initial one (1) year period commencing August 1, 2016 through July 31, 2017, and for each subsequent year



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PITTSBURGH, PA 15203

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thereafter throughout the term of this Agreement, ***unless one (1) or both of the following events occur:***

- (a) ***The number of students provided school bus transportation services by the SCHOOL DISTRICT increases or decreases at any time during the term of this Agreement by 5% percent or more from the number of students provided school bus transportation services mandated by federal or state law; and***
- (b) ***The SCHOOL DISTRICT, for whatever reason, discontinues school bus transportation services for its students beyond the 2016 – 2017 school year, except for those school bus transportation services mandated by state or federal law; and***

If either or both of the above (a) and/or (b) events occur, the CONTRACTOR and the SCHOOL DISTRICT agree that, notwithstanding any other provisions of this Agreement, they will renegotiate the bulk rate for school bus transportation services set forth in Exhibit "A" hereto to provide an appropriate increase, reduction, or elimination in such bulk rate to the SCHOOL DISTRICT by the CONTRACTOR. Further, if the CONTRACTOR and SCHOOL DISTRICT are unable to renegotiate a revised bulk rate or the elimination of the bulk rate for school bus transportation services satisfactory to the SCHOOL DISTRICT or to CONTRACTOR because of the occurrence of either or both events (a) and/or (b) above, then, again notwithstanding any other provisions of this Agreement, the parties agree to submit such issue(s) in dispute of a reasonable and appropriate reduced bulk rate to the SCHOOL DISTRICT or the elimination of the bulk rate to the SCHOOL DISTRICT to mediation and, if necessary, binding arbitration through the American Arbitration Association. Additionally, the CONTRACTOR will provide buses for and accommodate all early dismissals of the SCHOOL DISTRICT, at no additional charge during the entire term of this Agreement. Also, the CONTRACTOR will provide buses for and accommodate all extra-curricular activities and athletic events of the SCHOOL DISTRICT set forth in Exhibit "A".

(Emphasis Added).

Exhibit "A" of the Agreement is a chart containing a pricing structure for all years of the Agreement. In addition to the chart, Exhibit "A" contains the following language,

"As of the date of this Agreement, the Yearly Bulk Rate for the [2016-2017] School Year includes the provision of all necessary 72 and/or 77 passenger school buses and all necessary vans and lift buses for school bus transportation services by the CONTRACTOR to the SCHOOL DISTRICT for the numerous buses and van routes and runs, both intra-district and inter-district, by the CONTRACTOR to the SCHOOL DISTRICT including, but not limited to, all Steel Center, Mon Valley, parochial school, private school and charter school bus and van routes and runs within Allegheny County. During the entire term of this Agreement, if the CONTRACTOR adds any 72 and/or 77 passenger school buses, vans or lift

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vehicles or any additional bus or van runs or routes to the number of vehicles or bus or van runs or routes included in the [2016-2017] School Year Bulk Rate as of the date of execution of this Agreement, the addition of such vehicles will be entirely at the CONTRACTOR'S expense, provided the SCHOOL DISTRICT complies with the Bulk Guidelines of this Exhibit as delineated in Section 35 subsections A-G of the Transportation Agreement. The three percent (3%) Yearly Bulk Rate increase represents the maximum amount the Yearly Bulk Rate is subject to increase under this Agreement. SCHOOL DISTRICT and CONTRACTOR agree that the Yearly Bulk Rate increase will increase subject to the Consumer Price Index up to three percent (3%)."

The first phrase of Section 4 states that compensation is to be paid in consideration of the "performance" of Sun Coach. Clearly, Sun Coach did not perform its transportation services since March 13, 2020 since no student has been transported since that time. Also, despite your claim that the parties never negotiated any mechanism to reduce Sun Coach's fees under the Agreement, subsections (a) and (b) of Section 4 clearly state contingent events which trigger a re-negotiation of the bulk rate. In this case, the School District completely discontinued bus service as of March 13, 2020, a date after the 2016 – 2017 school year (as per subsection (b)), and the number of students who required transportation services decreased to 0% as of March 13, 2020 (as per subsection (a)). Such contingencies permit the School District to renegotiate an appropriate reduction or elimination of the bulk rate, as per the plain language of Section 4. Your contention that the parties never negotiated a possible reduction or elimination of the bulk rate is contrary to the explicit language of Section 4, which clearly and unambiguously provides for the reduction and/or complete elimination of the bulk rate.

In addition, despite your contention that the term "yearly bulk rate" is a "standard in the industry" which purportedly stands for the proposition that the School District must pay the entire amount of \$1,264,332.52, regardless whether or not Sun Coach actually performs under the Contract, both Section 4 and Exhibit "A" are devoid of any language guaranteeing Sun Coach a minimum payment. In fact, as stated above, the opposite is the case. The parties actually negotiated language in Section 4 that anticipates a reduction and/or complete elimination of the bulk rate if "the School District, for whatever reason, discontinues school bus transportation services for its students." Clearly, the forced closure of the school facilities, based on the Governor's Order due to the COVID-19 pandemic, and the resulting complete elimination of school bus transportation services, fall within the "whatever reason" basis for complete elimination of the bulk rate.

Finally, the parties negotiated language in Section 4 of the Agreement for the parties to submit disputes regarding the reduction and/or complete elimination of the bulk rate to mediation and subsequent arbitration. The School District sees no benefit from ongoing negotiation. Due to the forced closure of Pennsylvania schools caused by the COVID-19 pandemic, the School District completely discontinued transportation services for the remainder of the 2019 – 2020 School Year. As such, since transportation services were neither required nor provided, the complete elimination of the bulk rate is fully warranted. Any attempt to litigate this matter in Court will be opposed based on the parties' negotiated dispute resolution process to proceed to mediation and then binding AAA arbitration.

Regarding Sun Coach's reliance on Act 13 of 2020, your May 18, 2020 letter only cites a portion of the relevant language in Act 13. As it relates to bus transportation companies, Act 13 reads as follows, in pertinent part:

- (1) Each school entity *may* renegotiate a contract for school bus transportation services ***to ensure contracted personnel and fixed costs, including administrative and equipment, are maintained during the period of school closure.*** During the period of school closure, the school bus transportation contractor ***shall submit weekly documentation to the school entity that its complement levels remain at or above the level on March 13, 2020, in order to continue being paid.***
- (2) Notwithstanding any other provision of this act, if a school entity continues to pay a school bus transportation contractor or operates its own school bus transportation, the school entity shall be eligible for reimbursement from the Department of Education at a rate the school entity would have received had the pandemic of 2020 not occurred, had the minimum instruction days requirement not been waived under subsection (b)(1) or had the Secretary of Education not taken action under subsection (b)(2).

See 24 P.S. §15-1501.8. (emphasis added).

The argument in your May 18, 2020 letter focuses solely on the language of Subsection (2), while completely ignoring the language preceding it in Subsection (1). Under Subsection (1) a School District may, but is not mandated to, renegotiate a contract for school bus transportation services to ensure that its transportation provider can maintain its complement of personnel (i.e. drivers, mechanics, aides, administrative staff) and equipment during the period of school closure. Two issues exist which prevent the School District from even considering paying Sun Coach pursuant to Act 13. First, other than the aforementioned invoices, Sun Coach has made no effort to contact the School District to discuss the potential re-negotiation of the terms of the Agreement for the remainder of the 2019 – 2020 School Year. Other than your May 18, 2020 letter, no communications from Sun Coach has been received. Second, and more notably, it is the School District's understanding that Sun Coach has furloughed its drivers. By the plain language of Act 13, Sun Coach is not eligible for continued payment from the School District as it cannot show that it has maintained its complement levels as of March 13, 2020. As you will recall, by email of June 8 and 12, 2020, I requested information from you to support whether or not Sun Coach maintained its personnel complement levels as of March 13, 2020, in accordance with Act 13. Such information has not been provided, and the School District must assume that Sun Coach cannot establish that its personnel complement levels remain the same as they were on March 13, 2020. Accordingly, the School District is precluded from making continued payments to Sun Coach under Act 13. If a request is made to proceed to mediation and/or binding arbitration, a similar discovery request will be submitted.

Finally, your letter of May 18, 2020 cites the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") in support of your argument that Sun Coach should be paid as a contractor of the District, citing the following specific language:

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June 19, 2020
Mr. Ray Middleman
Page 5 of 5

"A local educational agency, State, institution of higher education, or other entity 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.

See Section 18006.

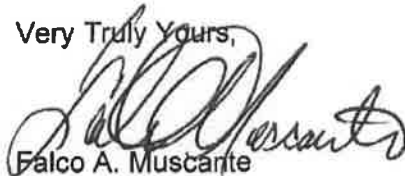
The CARES Act does not create an unqualified mandate for school districts to continue payments to employees and contractors. Rather it qualifies the requirement by stating that payments must be made "to the greatest extent practicable." The CARES Act does not define the term "to the greatest extent practicable", nor has the federal government provided any supplemental guidance to clarify the term. Statutory and case law have determined that "[t]he phrase "to the greatest extent practicable" has a blurred edge, [an] uncertain line, [i]t depends on the facts and circumstances of the particular case." Case law suggests no clear standard for the term, and further suggests that whether or not actions were taken "to the greatest extent practicable" is a fact-specific determination. Applying the above facts to this standard clearly support that it is not "practicable" to use taxpayers' monies to pay for a service that was not performed because of the forced closure of the school facilities. In addition, by my June 8 and 12, 2020 email, I requested information whether Sun Coach has received funds from any other source, such as the Payroll Protection Program. Again, no response was received, leaving the School District with the assumption that other funding was received, making it even less "practicable" to pay twice for the same costs, thereby providing Sun Coach with a windfall. Again, if this matter proceeds to mediation and/or binding arbitration, a discovery request will be made for this documentation.

Based on the above, it remains the position of the School District that no further amount is owed to Sun Coach for the 2019-2020 school year, other than as set forth in Ms. Lubert's April 30, 2020 letter. If an invoice for the remaining balance, as calculated by Ms. Lubert, is received by the District, it will be paid with no further amounts being owed for the 2019-2020 school year.

As of this date, the School District fully expects Sun Coach to honor its contractual obligations to South Allegheny School District at the commencement of the 2020-2021 school year.

If you have any questions, please do not hesitate to contact me at your earliest convenience.

Very Truly Yours,



Falco A. Muscarite

cc: Mr. Shawn Deverse, Board President (via E-Mail only)
Dr. Lisa Duval, Superintendent (via E-Mail only)
Ms. Sheila Lubert, Business Manager (via E-Mail only)

312878, 12170.6

June 25, 2020

Via Email (fam@mbm-law.net)

Falco A. Muscante
Maiello Brungo & Maiello
Southside Works
424 South 27th Street, #210
Pittsburgh, PA 15203

Re: Payment for Student Transportation Services

Dear Mr. Muscante:

On behalf of Sun Coach Lines, LLC ("Sun Coach"), we write in response to your June 19, 2020 letter and in follow-up to our May 18, 2020 letter to the South Allegheny School District (the "District").

It seems the parties are at an impasse as to whether the District owes the \$379,299.75 bulk rate balance covering the remainder of the 2019-2020 school year. As you pointed out, Section 4 of the parties' Agreement obligates the parties to submit certain disputes regarding the bulk rate to mediation and, if necessary, binding AAA arbitration. ***Per the Agreement, Sun Coach hereby demands mediation with a neutral mediator to be mutually agreed upon by the parties.*** Please propose one or two qualified mediators in the Greater Pittsburgh area, and we will do the same.

Sun Coach will not respond to each of the arguments in your letter regarding the District's obligation to continue paying the bulk rate and the effect of recent legislative changes. Suffice it to say, Sun Coach wholly disagrees with the District's position. Sun Coach is puzzled by the District's position that it can demand information about Sun Coach's employee complement levels and whether it has received funding from the Payroll Protection Program, and is disturbed by the implication that it has somehow engaged in suspect behavior. To be clear, Sun Coach is not receiving, or seeking to receive, a "windfall." Any "windfall" in this matter would seem to fall to the District for having received \$380,156 in federal emergency relief funds while failing to honor its bulk rate transportation obligations.

Given the impasse, Sun Coach will not be submitting the invoice requested by the District, as its position remains unchanged that the District owes the remainder of the bulk rate for the 2019-2020 school year. We also note, as your letter so studiously avoids, that an increase in the applicable bus rate, whether bulk or otherwise, is also authorized by the Agreement.



We look forward to resolving this matter through mediation and, if necessary, arbitration. Please forward the District's suggestion for a mediator as soon as possible.

Sincerely,

/s/ Ray Middleman

Ray Middleman

cc: David Sunstein (*via email*)

Maiello Brungo & Maiello

ATTORNEYS AT LAW

Falco A. Muscante
412-242-4400, Ext. 119
fam@mbm-law.net

July 6, 2020

VIA FIRST-CLASS MAIL AND EMAIL (rmiddleman@eckertseamans.com)

Ray F. Middleman, Esquire
Eckert Seamans Cherin & Mellott, LLC
U.S. Steel Tower
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

RE: *Response to Letter of June 25, 2020 Regarding Payment for Student Transportation Services*

Dear Mr. Middleman:

As you acknowledge in your June 25, 2020 correspondence, Section 4 of the parties' Agreement provides for a dispute resolution process as follows:

4. In consideration of the performance on the part of the CONTRACTOR under the terms of this Agreement, the SCHOOL DISTRICT agrees to pay the CONTRACTOR in accordance with the yearly bulk rates attached hereto, made a part hereof, and identified as part of Exhibit "A" for the initial one (1) year period commencing August 1, 2016 through July 31, 2017, and for each subsequent year thereafter throughout the term of this Agreement, unless one (1) or both of the following events occur:

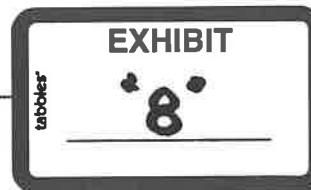
- (a) The number of students provided school bus transportation services by the SCHOOL DISTRICT increases or decreases at any time during the term of this Agreement by 5% percent or more from the number of students provided school bus transportation services mandated by federal or state law; and
- (b) The SCHOOL DISTRICT, for whatever reason, discontinues school bus transportation services for its students beyond the 2016 – 2017 school year, except for those school bus transportation services mandated by state or federal law; and

If either or both of the above (a) and/or (b) events occur, the CONTRACTOR and the SCHOOL DISTRICT agree that, notwithstanding any other provisions of this Agreement, they will renegotiate the bulk rate for school bus transportation services set forth in Exhibit "A" hereto to provide an appropriate increase, reduction, or elimination in such bulk rate to the SCHOOL DISTRICT by the

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424 SOUTH 27TH STREET, #210
PITTSBURGH, PA 15203



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July 6, 2020
Mr. Ray Middleman
Page 2 of 2

CONTRACTOR. Further, if the CONTRACTOR and SCHOOL DISTRICT are unable to renegotiate a revised bulk rate or the elimination of the bulk rate for school bus transportation services satisfactory to the SCHOOL DISTRICT or to CONTRACTOR because of the occurrence of either or both events (a) and/or (b) above, then, again notwithstanding any other provisions of this Agreement, the parties agree to submit such issue(s) in dispute of a reasonable and appropriate reduced bulk rate to the SCHOOL DISTRICT or the elimination of the bulk rate to the SCHOOL DISTRICT to mediation and, if necessary, binding arbitration through the American Arbitration Association. Additionally, the CONTRACTOR will provide buses for and accommodate all early dismissals of the SCHOOL DISTRICT, at no additional charge during the entire term of this Agreement. Also, the CONTRACTOR will provide buses for and accommodate all extra-curricular activities and athletic events of the SCHOOL DISTRICT set forth in Exhibit "A".

As you requested, the School District proposes either Thomas Frampton or Louis Kushner to serve as mediators for this matter. Please advise if you agree with either of them or propose other qualified mediators for consideration.

At this time, the School District will not be responding to any further arguments raised in your June 25, 2020 correspondence, but rather will provide its position in mediation, and if necessary, in AAA arbitration. However, as stated in my June 19, 2020 correspondence, it remains the position of the School District that no further amount is owed to Sun Coach for the 2019-2020 school year, other than as set forth in Ms. Lubert's April 30, 2020 letter. If an invoice for the remaining balance, as calculated by Ms. Lubert, is received by the District, it will be paid with no further amounts being owed for the 2019-2020 school year.

Further, as of this date, the School District fully expects Sun Coach to honor its contractual obligations to South Allegheny School District at the commencement of the 2020-2021 school year.

If you have any questions, please do not hesitate to contact me at your earliest convenience.

Very Truly Yours,



Falco A. Muscante

FAM/ray

cc: Mr. Shawn Deverse, Board President (via E-Mail only)
Dr. Lisa Duval, Superintendent (via E-Mail only)
Ms. Sheila Lubert, Business Manager (via E-Mail only)

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Ray F. Middleman
412.566.6054
rmiddleman@eckertseamans.com

July 27, 2020

Via Email (fam@mbm-law.net)

Falco A. Muscante, Esquire
Maiello Brungo & Maiello
Southside Works
424 South 27th Street, #210
Pittsburgh, PA 15203

Re: South Allegheny School Bus Contract

Dear Mr. Muscante:

In response to your correspondence of July 6, 2020, my client remains willing to mediate the above matter pursuant to the terms of the Parties' contractual obligations.

While I have respect for both Mr. Kushner and Mr. Frampton as mediators, we would respectfully suggest either David White or recently retired Judge Ron Folino as mediators for this matter. Obviously, we would like to get this scheduled in the next few weeks, if possible. We await your reply as to our suggested mediators.

Very truly yours,

Ray F. Middleman

Ray F. Middleman

cc: *David Sunstein (via email)*



Ray F. Middleman
412.566.6054
rmiddleman@eckertseamans.com

August 6, 2020

Via Email (fam@mbm-law.net)

Falco A. Muscante
Maiello Brungo & Maiello
Southside Works
424 South 27th Street, #210
Pittsburgh, PA 15203

Re: Payment for Student Transportation Services

Dear Mr. Muscante:

On behalf of Sun Coach Lines, LLC ("Sun Coach"), we write in furtherance of Sun Coach's claim for payment under the parties' Agreement and the recent correspondence regarding alternative dispute resolution.

Upon further reflection and analysis since our June 25, 2020 letter to you, Sun Coach's position is that it is not compelled to mediate and/or arbitrate the instant dispute under Section 4 of the parties' Agreement. Neither subsection (a) or (b) of Section 4 requires Sun Coach to mediate and/or arbitrate its claim for payment under the bulk rate contract in these circumstances.

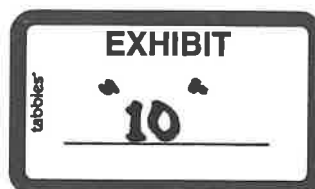
As such, and in light of the District's continued failure to remit the balance owed for the remainder of the 2019-2020 school year, Sun Coach hereby places the District on notice of default under the Agreement. If the District does not cure its default by paying the \$379,299.75 balance it owes with thirty (30) days, Sun Coach reserves the right to direct its resources to other districts in need of school busing services and to take legal action against the District.

Sincerely,

/s/ Ray Middleman

Ray Middleman

cc: David Sunstein (*via email*)



Maiello Brungo & Maiello

ATTORNEYS AT LAW

Falco A. Muscante
412-242-4400, Ext. 119
fam@mbm-law.net

August 18, 2020

VIA FIRST-CLASS MAIL AND EMAIL (rmiddleman@eckertseamans.com)

Ray F. Middleman, Esquire
Eckert Seamans Cherin & Mellott, LLC
U.S. Steel Tower
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

RE: Demand Notice for Strict Compliance with Agreement Dated May 2, 2018 (the "Agreement") between Sun Coach, LLC ("Sun Coach") and the South Allegheny School District ("School District")- Response to Letters dated July 27, 2020 and August 6, 2020 and Confirmation of August 7, 2020 Telephone Call

Dear Mr. Middleman:

Please recall that by my letter to you of June 19, 2020, I stated the School District's position that the parties negotiated language in Section 4 of the Agreement for the parties to submit disputes regarding the reduction and/or complete elimination of the bulk rate to mediation and subsequent AAA arbitration. At that time, I advised you that the School District saw no benefit from ongoing negotiation. Due to the forced closure of Pennsylvania schools caused by the COVID-19 pandemic, the School District completely discontinued transportation services for the remainder of the 2019 – 2020 School Year. As such, since transportation services were neither required nor provided, the complete elimination of the bulk rate was fully warranted. I advised that any attempt to litigate this matter in Court would be opposed based on the parties' negotiated dispute resolution process to proceed to mediation and then binding AAA arbitration. I indicated that the School District fully expected Sun Coach to honor its contractual obligations to the School District at the commencement of the 2020-2021 school year.

By your correspondence of June 25, 2020, you indicated that the parties were at an impasse and stated that "Section 4 of the parties' Agreement obligates the parties to submit certain disputes regarding the bulk rate to mediation, and, if necessary, binding AAA arbitration. ***Per the Agreement, Sun Coach hereby demands mediation with a neutral mediator to be mutually agreed upon by the parties.***" (Your emphasis). You then requested that our office propose one or two acceptable choices to serve as neutral mediators. At no time did you indicate that Sun Coach would not fulfill its contractual obligations at the commencement of the 2020-2021 school year.

As requested, by my letter to you of July 6, 2020, the School District proposed either Thomas Frampton or Louis Kushner as neutral mediators. I again indicated that the School District fully expected Sun Coach to honor its contractual obligations to the School District at the commencement of the 2020-2021 school year.

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August 18, 2020
Mr. Ray Middleman
Page 2 of 3

You then responded by your correspondence on July 27, 2020 in which you stated that Sun Coach "remains willing to mediate the above matter pursuant to the terms of the Parties' contractual obligations." You then rejected the neutral mediators proposed by the School District and proposed David White or retired Judge Ron Folino as alternative neutral mediators. You also expressed that you would like to get the mediation scheduled in the next few weeks. Again, at no time did you indicate that Sun Coach would not fulfill its contractual obligations at the commencement of the 2020-2021 school year.

You then issued your August 6, 2020 correspondence in which you claim that Sun Coach is not required to mediate and/or arbitrate the disputed claim. You provided no legal explanation of your change of position in either your letter or our discussion on August 7, 2020. You then stated your client's position that the District owes a balance of Three Hundred Seventy-Nine Thousand Two Hundred Ninety-Nine Dollars and Seventy-Five Cents (\$379,299.75) from the 2019-2020 school year. As you are aware, this is the disputed amount that you have acknowledged, in writing, on multiple occasions, is subject to the mediation and AAA arbitration provisions of Section 4 of the Agreement. As I advised you in our discussion on August 7, 2020, the District continues to deny that it owes your client any money, as your client did not provide transportation services under the Agreement since mid-March, 2020. The District further denies that it is in breach of the Agreement. I also advised you in our discussion and now confirm, in writing, that the District remains ready, willing and able to move forward with expedited mediation with The Honorable Ronald Folino, one of your proposed neutral mediators. Please confirm, in writing, whether you remain willing to comply with the terms of Section 4 of the Parties' Agreement and are prepared to move forward with mediation as soon as possible.

Finally, as I have stated in multiple written communications as stated above, the School District demands strict compliance by Sun Coach with the terms of the Agreement and fully expects Sun Coach to honor its contractual obligations to the School District at the commencement of the 2020-2021 school year. However, based on your letter of August 6, 2020, as well as the representations you made during our above-referenced telephone discussions on August 7, 2020, the District has serious concerns that your client will refuse to provide further transportation services to the District while the parties move forward with mediation and/or AAA arbitration as required by Section 4 of the Agreement. Unless, ultimately, the AAA Arbitrator enters a decision that requires the District to submit a different payment to Sun Coach, as both the School District, by the April 30, 2020 letter of Ms. Lubert, and our office, by letters dated June 19, 2020 and July 6, 2020, has indicated, it remains the position of the School District that no further amount is owed to Sun Coach for the 2019-2020 school year, other than as set forth in Ms. Lubert's April 30, 2020 letter. We requested that Sun Coach provide an invoice for the remaining balance, as calculated by Ms. Lubert, and payment for that amount would be issued immediately. By your letter of June 25, 2020, you indicated that Sun Coach refused to issue a revised invoice. Regardless, the School District has issued payment for that amount to Sun Coach and is prepared to immediately forward it to Sun Coach as payment in full for the remaining balance owed for the 2019-2020 school year.

Be advised that if Sun Coach fails to perform its contractual obligations under the Agreement, such default will cause substantial disruption to the District's operations and irreparable harm to the District's students and their families, including those students entitled to special education services. Therefore, demand is hereby made that you provide written confirmation that your client

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August 18, 2020
Mr. Ray Middleman
Page 3 of 3

will perform its obligations under the terms of the Agreement for the 2020-2021 school year no later than 5:00pm on Wednesday, August 19, 2020. If written confirmation is not received by that date, the School District has authorized our office to pursue appropriate legal action to compel compliance with the terms of the Agreement. Any such action will include a claim for attorney fees, costs and all other appropriate remedies.

Your immediate attention to this matter is required. If you have any questions, please do not hesitate to contact me at your earliest convenience.

Very Truly Yours,



Falco A. Muscante

cc: Mr. Shawn Deverse, Board President (via E-Mail only)
Dr. Lisa Duval, Superintendent (via E-Mail only)
Ms. Sheila Lubert, Business Manager (via E-Mail only)

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August 19, 2020

Via Regular U.S. Mail and Email (fam@mbm-law.net)

Falco A. Muscante, Esquire
Maiello Brungo & Maiello
Southside Works
424 South 27th Street, #210
Pittsburgh, PA 15203

Re: South Allegheny Transportation Agreement

Dear Mr. Muscante:

In reply to yours of August 18, 2020, please be advised that we are comfortable with our position that neither Section 4(a) nor 4(b) of the Transportation Agreement are applicable to the present situation existing between the South Allegheny School District and Sun Coach Lines.

To be clear, under the Bulk Rate Contract between the parties, we are aware that there are only two instances which compel mediation/arbitration. The first instance is found under Section 4(a) of the Agreement, which states that there must be a 5% increase or decrease in the number of students provided school bus transportation services when compared to the number of students provided such service as of August 24, 2016. We are aware of no such increase or decrease in the number of students.

Under Section 4(b) of the Agreement, we are unaware of any facts to support the contention that the School District has "discontinued" school bus transportation services for its students. To the contrary, we are aware that the School District plans to use school buses in the 2020/2021 school year, after a period of virtual schooling for 4-6 weeks at the beginning of the school year.

After consultation with my client, they are in agreement to provide service to South Allegheny for the 2020/2021 school year pursuant to the terms and conditions of the Parties' Bulk Rate Contract. This would contemplate timely payment by the district beginning with the September invoice. Your client's failure to abide by its payment obligations under the provisions of the Bulk Rate Contract will result in irreparable harm to Sun Coach Lines. In consideration of your client's failure to abide by the Bulk Rate Contract related to the payments due and owing for the end of the 2019/2020 school year – in total derogation of the Parties' Agreement – we believe that the commitment by Sun Coach Lines to provide services for the 2020/2021 school year is above and beyond what is justified under the circumstances of your client's actions.



Sun Coach reserves all rights under the Agreement as well as the right to pursue payment for all monies owed to it.

Very truly yours,

Ray F. Middleman

Ray F. Middleman

cc: *David Sunstein*
Lindsey Conrad Kennedy
Carolyn Boucek

Maiello Brungo & Maiello

ATTORNEYS AT LAW

Falco A. Muscante
412-242-4400, Ext. 119
fam@mbm-law.net

August 20, 2020

VIA FIRST-CLASS MAIL AND EMAIL (rmiddleman@eckertseamans.com)

Ray F. Middleman, Esquire
Eckert Seamans Cherin & Mellott, LLC
U.S. Steel Tower
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

RE: Response to Letter of August 19, 2020

Dear Mr. Middleman:

Please allow this letter to serve as a response to your letter of August 19, 2020, in which you indicate that Sun Coach maintains the position that Sections 4(a) and 4(b) of the Transportation Agreement are not applicable to the instant matter.

In response, we remind you that Section 4 of the Agreement states as follows, in full:

4. ***In consideration of the performance*** on the part of the CONTRACTOR under the terms of this Agreement, the SCHOOL DISTRICT agrees to pay the CONTRACTOR in accordance with the yearly bulk rates attached hereto, made a part hereof, and identified as part of Exhibit "A" for the initial one (1) year period commencing August 1, 2016 through July 31, 2017, and for each subsequent year thereafter throughout the term of this Agreement, ***unless one (1) or both of the following events occur:***

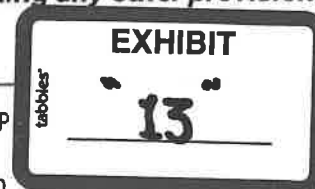
- (a) ***The number of students provided school bus transportation services by the SCHOOL DISTRICT increases or decreases at any time during the term of this Agreement by 5% percent or more from the number of students provided school bus transportation services mandated by federal or state law; and***
- (b) ***The SCHOOL DISTRICT, for whatever reason, discontinues school bus transportation services for its students beyond the 2016 – 2017 school year, except for those school bus transportation services mandated by state or federal law; and***

If either or both of the above (a) and/or (b) events occur, the CONTRACTOR and the SCHOOL DISTRICT agree that, notwithstanding any other provisions

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FAX: 412.242.4377
MBM-LAW.NET

MAIELLO BRUNGO & MAIELLO, LLP
SOUTHSIDE WORKS
424 SOUTH 27TH STREET, #210
PITTSBURGH, PA 15203



EXFORD OFFICE
MURCHILL OFFICE

of this Agreement, they will renegotiate the bulk rate for school bus transportation services set forth in Exhibit "A" hereto **to provide an appropriate increase, reduction, or elimination** in such bulk rate to the SCHOOL DISTRICT by the CONTRACTOR. Further, if the CONTRACTOR and SCHOOL DISTRICT are unable to renegotiate a revised bulk rate or **the elimination of the bulk rate** for school bus transportation services satisfactory to the SCHOOL DISTRICT or to CONTRACTOR because of the occurrence of either or both events (a) and/or (b) above, then, again notwithstanding any other provisions of this Agreement, the parties agree to submit such issue(s) in dispute of a **reasonable and appropriate reduced bulk rate** to the SCHOOL DISTRICT or the **elimination of the bulk rate** to the SCHOOL DISTRICT to mediation and, if necessary, binding arbitration through the American Arbitration Association. Additionally, the CONTRACTOR will provide buses for and accommodate all early dismissals of the SCHOOL DISTRICT, at no additional charge during the entire term of this Agreement. Also, the CONTRACTOR will provide buses for and accommodate all extra-curricular activities and athletic events of the SCHOOL DISTRICT set forth in Exhibit "A".

(Emphasis Added).

Exhibit "A" of the Agreement is a chart containing a pricing structure for all years of the Agreement. In addition to the chart, Exhibit "A" contains the following language,

"As of the date of this Agreement, the Yearly Bulk Rate for the [2016-2017] School Year includes the provision of all necessary 72 and/or 77 passenger school buses and all necessary vans and lift buses for school bus transportation services by the CONTRACTOR to the SCHOOL DISTRICT for the numerous buses and van routes and runs, both intra-district and inter-district, by the CONTRACTOR to the SCHOOL DISTRICT including, but not limited to, all Steel Center, Mon Valley, parochial school, private school and charter school bus and van routes and runs within Allegheny County. During the entire term of this Agreement, if the CONTRACTOR adds any 72 and/or 77 passenger school buses, vans or lift vehicles or any additional bus or van runs or routes to the number of vehicles or bus or van runs or routes included in the [2016-2017] School Year Bulk Rate as of the date of execution of this Agreement, the addition of such vehicles will be entirely at the CONTRACTOR'S expense, provided the SCHOOL DISTRICT complies with the Bulk Guidelines of this Exhibit as delineated in Section 35 subsections A-G of the Transportation Agreement. The three percent (3%) Yearly Bulk Rate increase represents the maximum amount the Yearly Bulk Rate is subject to increase under this Agreement. SCHOOL DISTRICT and CONTRACTOR agree that the Yearly Bulk Rate increase will increase subject to the Consumer Price Index up to three percent (3%)."

The first phrase of Section 4 states that compensation is to be paid in consideration of the "performance" of Sun Coach. Clearly, for the 2019-2020 school year, Sun Coach did not perform its transportation services since March 13, 2020 since no student has been transported since that time. Despite your previous agreement in your June 25, 2020 and July 27, 2020 correspondence that the mediation/AAA arbitration process of Section 4 applied, you now argue that this provision

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does not apply because you claim that the number of students has not decreased and the District is still providing transportation services. This is clearly not the case. In fact, the School District completely discontinued bus service as of March 13, 2020 and continuing through the first portion of the 2020-2021 school year, a date after the 2016 – 2017 school year (as per subsection (b)), and the number of students “provided school bus transportation services” decreased to 0% as of March 13, 2020 (as per subsection (a)). Clearly, the forced closure of the school facilities, based on the Governor’s Order due to the COVID-19 pandemic, and the resulting complete elimination of school bus transportation services, fall within the “whatever reason” basis for complete elimination of the bulk rate. Due to the forced closure of Pennsylvania schools caused by the COVID-19 pandemic and the continued closure into the beginning of the 2020-2021 school year due to ongoing health and safety issues from COVID-19, the School District completely discontinued transportation services for the remainder of the 2019 – 2020 School Year and the beginning of the 2020-2021 school year. As such, transportation services were neither required nor provided. Such contingencies permit the School District to renegotiate an appropriate reduction or elimination of the bulk rate, as per the plain language of Section 4. Your past contention that the parties never negotiated a possible reduction or elimination of the bulk rate is contrary to the explicit language of Section 4, which clearly and unambiguously provides for the reduction and/or complete elimination of the bulk rate. Since there is an obvious impasse between the parties on the amount of the bulk rate that is owed, the School District remains willing to proceed immediately with the mediation/AAA arbitration process of Section 4 of the Agreement.

Further, in your letter, you indicate that Sun Coach is agreeable to provide service to the South Allegheny School District for the 2020 – 2021 School Year *only if the School District agrees to pay the entirety of the “bulk rate” pursuant to the September, 2020 invoice.* As stated above, subsections (a) and (b) of Section 4 of the Agreement clearly require a re-negotiation of the bulk rate when there is a significant reduction in the number of students within the District who are “provided school bus transportation services” or a discontinuance of school bus transportation services for “whatever reason.” As your own letter acknowledges, due to ongoing concerns for its students’ safety due to the issues surrounding the ongoing COVID-19 pandemic, the School District has elected to conduct classes remotely for the first 4-6 weeks (or extended time due to ongoing concerns with COVID-19) of the 2020-2021 school year. This means that there has clearly been a reduction in the number of students who will be “provided school bus transportation services” due to the discontinuance of school bus transportation services. As a result, the parties’ obligation to renegotiate the bulk rate under either Section 4(a) or 4(b) of the Agreement was triggered and the School District hereby exercises its right to a renegotiation of the bulk rate. Although the School District fully expects Sun Coach to honor its contractual obligation to provide school bus transportation services and is agreeable to paying Sun Coach for the services *actually provided*, it cannot agree to pay the entire bulk rate for services that are not performed/provided. The School District therefore will only agree to pay Sun Coach for the actual services provided during the first 4-6 weeks (or extended time due to ongoing concerns with COVID-19) of the 2020-2021 school year at a re-negotiated or lowered rate, based on the significant decrease in students “provided school bus transportation services” and it will continue to dispute any obligation to pay the full bulk rate.

As you surely know, the South Allegheny School District has an ongoing obligation to provide transportation services to certain students, including those students receiving special education services, and those students attending vo-tech, parochial and charter schools, which are in

August 20, 2020
Mr. Ray Middleman
Page 4 of 4

session. The School District therefore is extremely concerned by the inference in your letter and in prior correspondence that Sun Coach may cease providing transportation services to the School District if the School District does not agree to its demand to be paid the entire bulk rate even when Sun Coach is not providing any services or is transporting a dramatically reduced number of students. The School District simply cannot wait until the last minute to secure service from an alternative provider if Sun Coach intends to refuse to perform or suspend school bus services. The School District is therefore demanding that Sun Coach confirm that it will honor its obligation to provide school bus transportation services as required by the School District for the 2020-2021 school year. Accordingly, please let us know by **5:00p.m. on Thursday, August 20, 2020** if your client will provide the required school bus transportation services for the School District. Also, please advise if your client agrees to re-negotiate the bulk rate or to discuss a reasonable reduction to the bulk rate to reflect the actual services that are expected to be required to be provided during the first 4-6 weeks of the 2020-2021 school year (or extended time due to the ongoing concerns with COVID-19) as required by the above-referenced sections of the Agreement. If we do not have your response by that time, it will be assumed that Sun Coach does not intend to perform its obligations under the Agreement and the School District reserves the right to pursue any and all legal remedies to ensure the continued provision of transportation services to its students. Any such action will include a claim for attorney fees, costs and all other appropriate remedies.

Your immediate attention to this matter is required. If you have any questions, please do not hesitate to contact me at your earliest convenience.

Very Truly Yours,



Falco A. Muscante

cc: Mr. Shawn Deverse, Board President (via E-Mail only)
Dr. Lisa Duval, Superintendent (via E-Mail only)
Ms. Sheila Lubert, Business Manager (via E-Mail only)

314847, 12170.6

SOUTH ALLEGHENY SCHOOL DISTRICT

Alisa King
Director of Elementary Education

Christy Chicklo
Special Education Director K-5

Shella Lubert
Business Manager/Board Secretary

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Elementary School Principal
Student Services Coordinator
Federal Programs Coordinator

2743 Washington Boulevard
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Dr. Lisa N. Duval
Superintendent

David McDonald
High School Principal
Director of Secondary Education

Katelyn Vogel
Elementary School Principal

Charles Michael
Middle School Principal
Special Education Director 6-12

August 20, 2020

VIA CERTIFIED MAIL

Sun Coach Lines, LLC
P.O. Box 3052
McKeesport, Pennsylvania 15134
ATTN: David Sunstein, President

Re: Balance of 2019-2020 Contract Price for Transportation Services

Dear Mr. Sunstein:

Reference is made to my April 30, 2020 letter in which I explained that the School District calculated its total payment obligation to Sun Coach Lines, LLC for services performed during the 2019 – 2020 School Year at Nine Hundred Two Thousand Seventy Nine Dollars and Seventy-Three Cents (\$902,079.73). Further, I indicated that Sun Coach had only submitted invoices through March 2020 for amounts totaling Eight Hundred Eighty Five Thousand Thirty Two Dollars and Seventy-Five Cents (\$885,032.75). As you will recall, I requested that Sun Coach submit a final invoice to the School District reflecting the difference in these amounts, Seventeen Thousand Forty Seven Dollars and Nineteen Cents (\$17,047.19). To date, although other disputed invoices have been provided, I have not received any such invoice from Sun Coach.

It is my understanding that the School District's Solicitors, Maiello, Brungo & Maiello, LLP, also have repeated the request for this final invoice by their correspondence of June 19, 2020, July 6, 2020 and August 18, 2020 to your attorney. However, the Solicitors informed the School District that your attorney, by his letter of June 25, 2020, indicated that Sun Coach refused to issue a revised invoice.

As indicated by our Solicitors in their August 18, 2020 correspondence, the School District has issued and now encloses a check in the amount of Seventeen Thousand Forty Seven Dollars and Nineteen Cents (\$17,047.19), reflecting payment in full for the final amount owed to Sun Coach from the School District for transportation services rendered during the 2019 – 2020 School Year.

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LIBERTY BOROUGH GLASSPORT PORT VUE BOROUGH LINCOLN BOROUGH

August 18, 2020
Mr. Ray Middleman
Page 2 of 2

As indicated by the School District's Solicitors, the School District remains willing to engage in mediation and/or AAA arbitration with your company, as required by Section 4 of the Contract, to resolve any disputed amount for the 2019-2020 school year and for the upcoming 2020-2021 school year, and to issue payment if so directed by that process.

If you have any questions, please direct them through your attorneys to the School District's Solicitors.

Sincerely,



Sheila R. Lubert, PCSBA
Business Manager
South Allegheny School District

cc: Mr. Shawn Deverse, Board President (via E-Mail only)
Dr. Lisa Duval, Superintendent (via E-Mail only)
Ms. Janet Beisler, Transportation Coordinator (via E-Mail only)
Mr. Falco A. Muscante, Solicitor (via E-Mail only)

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SOUTH ALLEGHENY SCHOOL DISTRICT GENERAL FUND CHECK DATE: 08/20/20

CHECK NUMBER: 00056961

56961 Amount

Account Number	PO Number	Invoice Number	Description	Amount
10-0421.002.000.00.00.000.00			REM BAL/19-20 SY/BUL Accounts Payable - AUDIT; 10-2711.513	17047.19

04275 PENNSYLVANIA COACH LINES, INC. CHECK AMOUNT: \$17,047.19

FOR SECURITY PURPOSES, THE FACE OF THIS DOCUMENT CONTAINS A TWO-TONED COLORED BACKGROUND AND MICROPRINTING IN THE BORDER

SOUTH ALLEGHENY SCHOOL DISTRICT
 2743 WASHINGTON BLVD
 MCKEESPORT, PA 15133
 GENERAL FUND

DOLLAR BANK
 3 GATEWAY CENTER, 401 LIBERTY AVENUE
 PITTSBURGH, PA 15222

56961
 00056961

Seventeen Thousand Forty Seven Dollars And 19 Cents

DATE	AMOUNT
08/20/20	*****17,047.19

PAY TO THE ORDER OF

PENNSYLVANIA COACH LINES, INC.
 P.O. BOX 3052
 MCKEESPORT PA 15132

Sharon DeKore
Debra DiFelice
Sheila R. Lubert

SECURITY FEATURES INCLUDED. DETAILS ON BACK

⑈056961⑈ ⑆243074385⑆ 2675524970⑈

SOUTH ALLEGHENY SCHOOL DISTRICT GENERAL FUND CHECK DATE: 08/20/20

CHECK NUMBER: 00056961

56961 Amount

Account Number	PO Number	Invoice Number	Description	Amount
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