

## **AGREEMENT**

**THIS AGREEMENT** is made by and between Elmira Heights Central School District (hereinafter referred to as “EHCS D”), a public school district of the State of New York, having its principal office at 2083 College Avenue, Elmira Heights, New York 14903,

**AND**

Horseheads Central School District (hereinafter referred to as “HCS D”), a public school district of the State of New York, having its principal office at 143 Hibbard Road, Horseheads, New York 14845.

**WHEREAS**, EHCS D owns and operates buses, vehicles, and other mobile equipment (e.g., lawnmowers, snowplows); and

**WHEREAS**, HCS D operates its own maintenance facilities; and

**WHEREAS**, EHCS D wishes to contract with HCS D for maintenance services;

**NOW, THEREFORE**, it is mutually agreed between the parties as follows:

1. **TERM OF AGREEMENT**

This Agreement shall be effective from July 1, 2021, through June 30, 2022, and shall expire June 30, 2022, unless sooner terminated or extended as permitted herein.

2. **SERVICES**

- A. HCS D agrees to perform maintenance and repair services (hereinafter “services”) on EHCS D’s buses, other motor vehicles, and other mobile equipment (whether self-propelled, manually propelled, or attached to vehicles) (hereinafter “serviced equipment”). Such serviced equipment does not include equipment that is commonly attached to or otherwise fixed inside buildings or on real property, or that is commonly used only in indoor environments.
- B. HCS D will perform such services in a commercially reasonable manner and in compliance with all laws applicable to each type of serviced equipment.
- C. With respect to routine/scheduled maintenance, HCS D and EHCS D agree to cooperate in scheduling such services for the convenience of both parties. With respect to unscheduled repairs or maintenance requests, HCS D will give such services priority to the extent that HCS D can, in its sole discretion, allocate labor and/or other resources to the services.
- D. All serviced equipment must be delivered by EHCS D to HCS D’s maintenance facilities, or other locations as directed from time to time by HCS D, except that HCS D will perform on-site services for serviced equipment that has become inoperable or immobile, and such on-site service may include moving the serviced equipment to HCS D facilities as determined in HCS D’s sole discretion.

- E. HCSD recognizes that EHCS D would benefit from having serviced equipment removed from service for the shortest durations possible. HCSD does not, however, guarantee that serviced equipment will be returned to service at any particular time.

3. **COMPENSATION**

- A. The total contract cost for HCSD's services shall be a base rate of \$78,755 for labor and \$15,000 for parts/consumables. A reconciliation of labor and parts/consumables actually used during the contract period will be done on June 30, 2022, with the cost of labor not to fall below the base rate previously stated.
- B. HCSD shall be entitled to charge the following additional charges:
  - 1. Charge a small parts & consumables surcharge for untracked items used on EHCS D equipment equal to HCSD's cost of such items from vendors for the year pro-rated for EHCD's percentage of the total maintenance jobs performed during the year.
  - 2. HCSD shall charge \$17.95 to wash a bus, per wash.
- C. To the extent HCSD employees are required to take additional training to legally perform services under this agreement on EHCS D serviced equipment because it is produced by a different manufacturer than HCSD equipment, any additional costs associated with the additional training incurred by HCSD shall be billed to EHCS D. Such costs include but are not limited to course or instructor fees and transportation, salary, and benefits of employees while attending classes in accordance with any collective bargaining agreement and state and Federal Law.
- D. HCSD shall invoice for services on a monthly basis on or about the twentieth of each month with a term of 30 days for payment.

4. **INDEMNIFICATION and INSURANCE**

- A. Each party agrees to defend, indemnify, and hold harmless the other and the other's board members, officers, employees, and agents against all claims, causes of action, liabilities, judgments, costs, and expenses (including, without limitation, reasonable attorney's fees) arising out of the acts or omissions of the indemnitor, its agents, officers, employees, or anyone else under the control of indemnitor in performing under this Agreement. The obligations of each party as set forth in this section shall survive the termination of this Agreement. Such indemnification shall not extend to the negligence or intentional misconduct of indemnitee, or indemnitee's officers, employees, agents or other representatives.
- B. EHCS D shall maintain such insurance coverage as is required by law for owners of buses and other school vehicles and shall name HCSD as an additional insured to the greatest extent permitted by the policy(ies). HCSD shall maintain such insurance coverage as will protect it and EHCS D from any and all third-party claims which arise out of or which result from HCSD's performance under this agreement including, but not limited to, the acts of anyone directly or indirectly employed or retained by HCSD. HCSD shall name

EHCSO as an additional insured on all such coverage. HCSO's General Liability Insurance shall be in an amount not less than \$1,000,000 for injuries, including accidental death, to any one person and in an amount not less than \$1,000,000 on account of any one occurrence, and in an amount not less than \$1,000,000 for property damage on account of any one occurrence.

5. **TERMINATION**

- A. Each party shall have the right to terminate this Agreement by giving 90 days' prior written notice to the other party.
- B. Upon early termination for any reason, EHCSO shall be responsible for payment of all invoices for services provided by HCSO prior to termination of this Agreement.

6. **NOTICES**

All notices required or otherwise made pursuant to this Agreement shall be made in writing and shall be addressed to the parties at the addresses first set forth above or at any other address as designated in writing from time to time by each party. All notices shall be sent by either certified mail, return receipt requested, or by overnight service. All notices will be deemed delivered three days after the date of transmittal.

7. **GENERAL PROVISIONS**

- A. This Agreement contains all the terms and conditions agreed upon by the parties and supersedes all prior or contemporaneous agreements and understandings, oral or otherwise, regarding the subject matter of this Agreement.
- B. The paragraph headings in the Agreement are inserted for convenience and reference only and shall not be used in any way to interpret this Agreement.
- C. This Agreement may be amended only by a writing executed by the authorized representatives of both parties.
- D. Each party hereto represents and warrants that this Agreement has been duly authorized and executed by each and constitutes a valid and binding Agreement.
- E. If either party waives or excuses any breach by the other party, such waiver or excusal shall not be construed to be a waiver or excusal of any other breach, whether such other breach arises before or after such waiver or excusal. A waiver or excusal shall be binding only if in writing and executed by the waiving or excusing party.
- F. This Agreement shall be construed in accordance with the laws of the State of New York, determined without regard for conflict of laws principles. Any legal action or proceeding pertaining to this Agreement shall be brought in the courts of

the State of New York in the County of Chemung and all parties consent to such personal jurisdiction.

- G. If any term or provision of this Agreement or the application thereof shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, other than those portions as to which it is held invalid or unenforceable, shall not be affected.
- H. This Agreement may be executed in any number of counterparts and all such counterparts, taken together, shall constitute one document. Signatures transmitted by fax shall be deemed originals for all purposes.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized officers on the dates herein written:

DATE: \_\_\_\_\_ ELMIRA HEIGHTS CENTRAL SCHOOL DISTRICT  
 By: \_\_\_\_\_  
 Title: \_\_\_\_\_

DATE: \_\_\_\_\_ HORSEHEADS CENTRAL SCHOOL DISTRICT  
 By: \_\_\_\_\_  
 Title: \_\_\_\_\_