

SOUTH MONTEREY COUNTY JOINT UNION HIGH SCHOOL DISTRICT  
BOARD OF EDUCATION  
SPECIAL BOARD MEETING (Study Session)

Tuesday, September 5, 2017

South Monterey County Joint Union High School District Office – Board Room  
800 Broadway  
King City, CA 93930

**VISION**

South Monterey County Joint Union High School District is a progressive academic learning community that is committed to life-long educational success

**MISSION**

South Monterey County Joint Union High School District inspires and empowers all students with the knowledge and skills necessary to achieve their full potential to succeed as responsible and productive citizens

BOARD OF EDUCATION

Paulette Bumbalough - President  
David Gaboni - Clerk  
Joe Santibanez - Member  
Paul Dake – Member  
Leslie Girard - Member

SUPERINTENDENT

Brian Walker, Ed.D.

OPEN SESSION: 5:30 PM

- A. CALL TO ORDER
- B. FLAG SALUTE
- C. APPROVAL OF AGENDA
- D. PUBLIC COMMENT

*Unless otherwise determined by the Board/Superintendent, each person is limited to 3 (three) minutes. If a large number wish to speak on a specific item, there is a limit of 20 minutes total input on an item. For matters that are not listed on the agenda, the Board may refer the matter to the Superintendent or designee, or take it under advisement, but shall not take action at that time except as allowed by law.*

*El público puede dirigirse a la Mesa Directiva de Educación con respecto a asuntos generales o a asuntos especificados en la agenda. La persona que quiera hablar debe de pedir la forma que se le da a la comunidad pidiendo permiso antes de la junta, indicando si se desea hacer algún comentario sobre un tema de la agenda o algún otro asunto y presentarlo a la Secretaría de el Superintendente. Esta es una oportunidad de dirigirse a la Mesa Directiva de Educación cuando un asunto se esté llevando acabo. A menos que se determine de otra manera por el Superintendente, cada persona tiene un máximo de 3 minutos para hablar. Se hay muchas personas que quieran hablar sobre un asunto específico entonces habrá un limite de 20 minutos en total para cada asunto. Para asuntos que no estén enlistados en la agenda, La Mesa Directiva podrá referir ese asunto al Superintendente o su designado o poner ese asunto en sobre aviso, pero no se tomara ninguna acción en ese momento excepto cuando la ley lo permita.*

CLOSED SESSION: 5:35 PM

- A. Public Employment
- B. Employee Discipline/Dismissal/Release/Complaint
- C. Negotiations with Employee Organizations and Litigation Settlements
- D. Threatened/Potential Litigation

OPEN SESSION: 6:00 PM

- A. CALL TO ORDER
- B. FLAG SALUTE

C. APPROVAL OF AGENDA

D. REPORT OF CLOSED SESSION ACTIONS

ACTION ITEMS

1. Approval to Award Avila Construction the Contract for Site Work and Hookups for the Relocatable Buildings and Restroom Renovation at KCHS 2017/18 (*Sherrie S. Castellanos, CBO*) (Pages 1-7)
2. Approval of Compromise and Release Agreement for OAH Case No. 2017050717 (*Sherrie S. Castellanos, CBO*) (Pages 8-15)

INFORMATION

1. 45-Day 2017/2018 Budget Revision Review (*Sherrie S. Castellanos, CBO*)
2. Governance Handbook (*Brian Walker, Ed.D., Superintendent*)

E. FUTURE AGENDA ITEMS/MEETING DATES

- September 27, 2017 – Regular Board Meeting – King City
- October 3, 2017 – Study Session - King City
- October 25, 2017 – Regular Board Meeting – King City
- November 7, 2017 – Study Session – King City
- November 15, 2017 – Regular Board Meeting – Greenfield High School
- December 5, 2017 – Study Session – King City
- December 13, 2017 – Regular Board Meeting – King City

F. ADJOURNMENT (TO CLOSED SESSION) (if required)

**SOUTH MONTEREY COUNTY JOINT UNION HIGH SCHOOL  
DISTRICT**

**SUBJECT:** Approval to Award Avila Construction the Contract for Site Work and Hookups for the Relocatable Buildings and Restroom Renovation at KCHS 2017/18

**MEETING:** September 5, 2017

**AGENDA SECTION:**

**ACTION**

**INFORMATION**

**ACTION/CONSENT**

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**GOVERNING BOARD**

Board Goals:

- Improve, Monitor and Sustain Student Achievement
- Improve School Climate in Support of Teaching, Learning and Student Safety
- Develop/Sustain Fiscal Solvency
- Ensure that Facilities are Safe for Staff and Students
- Ensure compliance with Education/Other Codes/Updating Board Policies and Administrative Regulations

Summary:

The District prepared bid documents and went out to bid for the King City High School Relocatable Site Work for Relocatable Buildings and Restroom Renovation. The original bid opening occurred July 12, 2017. At that bid opening, there was only one bidder and the amount was \$850K. We felt the amount was unreasonable and decided to go back out to bid.

Our second bid opening was August 30, 2017. The bid results and recommendation is to award the contract to Avila Construction.

Recommendation:

It is recommended that the Board of Education approve awarding the Site Work and Hookups for Relocatable Buildings and Restroom Renovations at KCHS to Avila Construction.

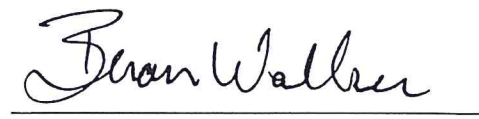
Fiscal Impact:

\$459,000 General Fund

Submitted By:

  
Sherrie S. Castellanos  
Chief Business Official

Approved:

  
Brian Walker, Ed.D.  
Superintendent



## AGREEMENT BETWEEN OWNER AND CONTRACTOR

This Agreement effective September 6, 2017, by and between South Monterey County Joint Union High School District, Monterey County, California, hereinafter called the "Owner" and Avila Construction Company, Inc. hereinafter called the "Contractor."

**WITNESSETH:** That the Contractor and the Owner for the consideration hereinafter named agree as follows:

**ARTICLE I. SCOPE OF WORK.** The Contractor agrees to furnish all labor, equipment and materials, including tools, implements, and appliances required, and to perform all the work in a good and workmanlike manner, free from any and all liens and claims from mechanics, material suppliers, subcontractors, artisans, machinists, teamsters, freight carriers, and laborers required for:

**Relocatable Classroom Buildings and Restroom Renovations  
at King City High School  
DSA File 27-H2, Application No. 01-116555**

all in strict compliance with the plans, drawings and specifications therefore prepared by:

**Teter, LLP, Fresno, CA 559-437-0887  
Dustin Graef ([dustin.graef@teterae.com](mailto:dustin.graef@teterae.com)), Construction Administrator  
James E. Hickman, Jr. ([jamie.hickman@teterae.com](mailto:jamie.hickman@teterae.com)), Architect of Record**

and other contract documents relating thereto.

**ARTICLE II. CONTRACT DOCUMENTS.** The Contractor and the Owner agree that all of the documents listed in Article 1.1.1 of the General Conditions form the Contract Documents which form the Contract.

**ARTICLE III. TIME TO COMPLETE AND LIQUIDATED DAMAGES.** Time is of the essence in this contract, and the time of completion for this Project shall be One Hundred Twenty (120) **calendar days** from the date established in the Owner's Notice to Proceed. Failure to complete the Project within the time and in the manner provided for by the Contract Documents shall subject the Contractor to liquidated damages. The actual occurrence of damages and the actual amount of the damages which the Owner would suffer if the Project were not completed within the specified times set forth are dependent upon many circumstances and conditions which could prevail in various combinations and, from the nature of the case, it is impracticable and extremely difficult

include, but are not limited to, loss of the use of the Project, disruption of activities, costs of administration, supervision and the loss suffered by the public.

Accordingly, the parties agree that the amount herein set forth shall be the amount of damages which the Owner shall directly incur upon failure of the Contractor to complete the Project within the time specified: \$250.00, for each calendar day by which completion of the Project is delayed beyond the completion date.

If the Contractor becomes liable under this section, the Owner, in addition to all other remedies provided by law, shall have the right to withhold any and all retained percentages of payments and/or progress payments, and to collect the interest thereon, which would otherwise be or become due the Contractor until the liability of the Contractor under this section has been finally determined. If the retained percentages and withheld progress payments appear insufficient to discharge all liabilities of the Contractor incurred under this Article, the Contractor and its sureties shall continue to remain liable to the Owner for such liabilities until all such liabilities are satisfied in full.

If the Owner accepts any work or makes any payment under this Agreement after a default by reason of delays, the payment or payments shall in no respect constitute a waiver or modification of any Agreement provisions regarding time of completion and liquidated damages.

**ARTICLE IV. PAYMENT.** The Owner agrees to pay the Contractor in current funds for the performance of the Contract Four Hundred, Fifty-Nine Thousand and No Cents (\$459,000) and to make payments on account thereof as provided in the General Conditions.

**ARTICLE V. CHANGES.** Changes in this Agreement or in the Work to be done under this Agreement shall be made as provided in the General Conditions.

**ARTICLE VI. TERMINATION.** The Owner or Contractor may terminate the Contract as provided in the General Conditions.

**ARTICLE VII. PREVAILING WAGES.** Pursuant to the provisions of Section 1770 et seq. of the Labor Code of the State of California, which are hereby incorporated by reference and made a part hereof, the Director of Industrial Relations has determined the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the work is to be performed, for each craft, classification or type of worker needed to execute this Contract. Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, apprenticeship or other training programs, and similar purposes. Copies of the rates are on file at the Owner's principal office. The rate of prevailing wage for any craft, classification or type of workmanship to be employed on this Project is the rate established by the applicable collective bargaining agreement which rate so provided is hereby adopted by reference and shall be effective for the life of this Agreement or until the Director of the Department of Industrial Relations determines that another rate be



adopted. It shall be mandatory upon the Contractor and on any subcontractor to pay not less than the said specified rates to all workers employed in the execution of this Agreement.

The Contractor and any subcontractor under the Contractor as a penalty to the Owner shall forfeit not more than Fifty Dollars (\$50.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for such work or craft in which such worker is employed. The difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.

The Contractor and each Subcontractor shall keep or cause to be kept an accurate record for work on this Project showing the names, addresses, social security numbers, work classification, straight time and overtime hours worked and occupations of all laborers, workers and mechanics employed by them in connection with the performance of this Contract or any subcontract thereunder, and showing also the actual per diem wage paid to each of such workers, which records shall be open at all reasonable hours to inspection by the Owner, its officers and agents and to the representatives of the Division of Labor Law Enforcement of the State Department of Industrial Relations.

**ARTICLE VIII. WORKING HOURS.** In accordance with the provisions of Sections 1810 to 1815, inclusive, of the Labor Code of the State of California, which are hereby incorporated and made a part hereof, the time of service of any worker employed by the Contractor or a Subcontractor doing or contracting to do any part of the Work contemplated by this Agreement is limited and restricted to eight hours during any one calendar day and forty hours during any one calendar week, provided, that work may be performed by such employee in excess of said eight hours per day or forty hours per week provided that compensation for all hours worked in excess of eight hours per day, and forty hours per week, is paid at a rate not less than one and one-half (1½) times the basic rate of pay. The Contractor and every Subcontractor shall keep an accurate record showing the name of and the actual hours worked each calendar day and each calendar week by each worker employed by them in connection with the Work. The records shall be kept open at all reasonable hours to inspection by representatives of the Owner and the Division of Labor Law Enforcement. The Contractor shall as a penalty to the Owner forfeit Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day, and forty hours in any one calendar week, except as herein provided.

**ARTICLE IX. APPRENTICES.** The Contractor agrees to comply with Chapter 1, Part 7, Division 2, Sections 1777.5 and 1777.6 of the California Labor Code, which are hereby incorporated and made a part hereof. These sections require that contractors and subcontractors employ apprentices in apprenticeable occupations in a ratio of not less

than one hour of apprentice's work for each five hours of work performed by a journeyman (unless an exemption is granted in accordance with Section 1777.5) and that contractors and subcontractors shall not discriminate among otherwise qualified employees as indentured apprentices on any public works solely on the ground of sex, race, religious creed, national origin, ancestry or color. Only apprentices as defined in Labor Code Section 3077, who are in training under apprenticeship standards and who have signed written apprentice agreements, will be employed on public works in apprenticeable occupations. The responsibility for compliance with these provisions is fixed with the Contractor for all apprenticeable occupations.

**ARTICLE X. INDEMNIFICATION AND INSURANCE.** The Contractor will defend, indemnify and hold harmless the Owner, its governing board, officers, agents, trustees, and employees against and from any and all liability for damages on account of injury to or death of persons or damage to property or delay or damage to another contractor resulting from or arising out of or in any way connected with the performance by the Contractor of this Agreement and reimburse the Owner for all costs, attorney's fees, expenses and loss incurred by it in consequence of any claims, demands, and causes of action which may be brought against it arising out of the performance by the Contractor of this Agreement. This indemnification shall be in addition to the other indemnification provisions contained in the Contract Documents.

By this statement, the Contractor represents that it has secured the payment of Workers' Compensation in compliance with the provisions of the Labor Code of the State of California and during the performance of the work contemplated herein will continue so to comply with said provisions of said Code. The Contractor shall supply the Owner with certificates of insurance evidencing that Workers' Compensation Insurance is in effect and providing that the Owner will receive thirty (30) days' notice of cancellation.

Contractor shall provide the insurance set forth in the General Conditions. The amount of general liability insurance shall be \$1,000,000 per occurrence for bodily injury, personal injury and property damage and the amount of automobile liability insurance shall be \$1,000,000 per accident for bodily injury and property damage combined single limit.

**ARTICLE XI. ENTIRE AGREEMENT.** The Contract constitutes the entire agreement between the parties relating to the Project, and supersedes any prior or contemporaneous agreement between the parties, oral or written, including the Owner's award of the Project to Contractor, unless such agreement is expressly incorporated herein. The Owner makes no representations or warranties, express or implied, not specified in the Contract. The Contract is intended as the complete and exclusive statement of the parties' agreement pursuant to Code of Civil Procedure section 1856.

**ARTICLE XII. EXECUTION OF OTHER DOCUMENTS.** The parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of the Contract.



**ARTICLE XIII. EXECUTION IN COUNTERPARTS.** This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

**ARTICLE XIV. BINDING EFFECT.** Contractor, by execution of this Agreement, acknowledges that Contractor has read this Agreement and the other Contract Documents, understands them, and agrees to be bound by their terms and conditions. The Contract shall inure to the benefit of and shall be binding upon the Contractor and the Owner and their respective successors and assigns.

**ARTICLE XV. SEVERABILITY.** If any provision of the Contract shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. The Contract shall be governed by the laws of the State of California and venue shall be in the appropriate Superior Court in Monterey County, California.

**ARTICLE XVI. AMENDMENTS.** The terms of the Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties and approved or ratified by the Governing Board.

**ARTICLE XVII. ASSIGNMENT OF CONTRACT.** The Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of the surety on the payment bond, the surety on the performance bond and the Owner.

**ARTICLE XVIII. WRITTEN NOTICE.** Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the person who gives the notice.



**AVILA CONSTRUCTION COMPANY**

**SOUTH MONTEREY COUNTY  
JOINT UNION HIGH SCHOOL  
DISTRICT**

\_\_\_\_\_  
SIGNED BY (Contractor)

\_\_\_\_\_  
Brian Walker, Ed.D.  
Superintendent (Title)

\_\_\_\_\_  
September 5, 2017  
Date

\_\_\_\_\_  
LICENSE EXPIRATION DATE

**NOTE:** Contractor must give the full business address of the Contractor and sign with Contractor's usual signature. Partnerships must furnish the full name of all partners and the Agreement must be signed in the partnership name by a general partner with authority to bind the partnership in such matters, followed by the signature and designation of the person signing. The name of the person signing shall also be typed or printed below the signature. Corporations must sign with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the chairman of the board, president or any vice president, and then followed by a second signature by the secretary, assistant secretary, the chief financial officer or assistant treasurer. All persons signing must be authorized to bind the corporation in the matter. The name of each person signing shall also be typed or printed below the signature. Satisfactory evidence of the authority of the officer signing on behalf of a corporation shall be furnished.

**SOUTH MONTEREY COUNTY JOINT UNION HIGH SCHOOL  
DISTRICT**

**SUBJECT:** Approval of Compromise and Release Agreement for OAH Case No. 2017050717      **MEETING:** September 5, 2017

**AGENDA SECTION:**

**ACTION**

**INFORMATION**

**ACTION/CONSENT**

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**GOVERNING BOARD**

Board Goals:

- Improve, Monitor and Sustain Student Achievement
- Improve School Climate in Support of Teaching, Learning and Student Safety
- Develop/Sustain Fiscal Solvency
- Ensure that Facilities are Safe for Staff and Students
- Ensure compliance with Education/Other Codes/Updating Board Policies and Administrative Regulations

Summary:

An agreement was reached for OAH Case No. 2015050717 between the District and Student/Parents.

Recommendation:

It is recommended that the Board of Education approve the Compromise and Release Agreement regarding OAH Case No. 2017050717.

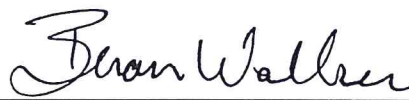
Fiscal Impact:

\$64,000 General Fund

Submitted By:

  
\_\_\_\_\_  
Sherrie S. Castellanos  
Chief Business Official

Approved:

  
\_\_\_\_\_  
Brian Walker, Ed.D.  
Superintendent



## COMPROMISE AND RELEASE AGREEMENT

v. South Monterey County Joint Union High School District,  
OAH Case No. 2017050717

August 31, 2017

This Compromise and Release Agreement ("Agreement") is between ("Student") and his parents, a ("Parents," together with the Student, "Petitioner"), who are authorized to enter into this Agreement and release claims as provided herein, and the South Monterey County Joint Union High School District ("District," together with Petitioner, "Parties"), who, in consideration of the promises below, agree as follows:

### NATURE AND EFFECT OF AGREEMENT

1. This Agreement consists of a compromise and settlement by the Parties of the Petitioner's claims against the District arising from the dispute described in Paragraph 2 and a release given by Petitioner to the District relinquishing the Petitioner's claims against the District prior to and through the date of full execution of this Agreement.

### NATURE AND STATUS OF DISPUTE

2. Student is a who presently qualifies for special education and related services under the categories of autism (primary) and speech or language impairment (secondary).
  - a. On May 12, 2017, Petitioner filed a due process hearing complaint against the District with the Office of Administrative Hearings ("OAH") which the OAH entitled OAH Case No. 2017050717. In OAH Case No. 2015050717, Petitioner alleged that the District denied Student a free appropriate public education ("FAPE") by failing to comply with the procedural and substantive requirements of the Individuals with Disabilities Education Act ("IDEA"). Petitioner's requested remedies include compensatory education, reimbursement for a privately obtained speech assessment, and in-person speech therapy. On July 26, 2017, Petitioner filed an amended hearing request with the OAH against the District raising additional claims against the District including an alleged failure by the District to comply with the terms of a prior settlement agreement between the Parties and an alleged failure by the District to provide appropriate reading instruction to
  - b. The District's perspective is that the District has made a FAPE available to Student from the commencement of the 2015-16 school year to the present. As specified below and by way of compromise, the District agrees to certain of Petitioner's requests and Petitioner agrees to release all claims against the District prior to and through the date of full execution of this Agreement.

## COMPROMISE AND RELEASE

3. Except as otherwise specified herein, Petitioner agrees that by signing this Agreement that Petitioner is settling any and all past and present claims or causes of action arising from or related to Student's educational program in the District (herein referred to as "educationally-related" claims or causes of action) that Petitioner has or may have against the District, including the District's Board of Education and District employees in their individual capacities, arising from or related to Student's educational program, including, but not limited to placement, related services, Student's IEP or IEPs, reimbursement for privately obtained services and assessments, requests for independent educational evaluations, compensatory education, assessments, and transportation prior to and through the date of full execution of this Agreement. Petitioner agrees that this Agreement also settles any and all claims or causes of action for attorneys' fees and costs arising from or related to Student's educational program through the date of full execution of this Agreement including, but not limited to, any claims or causes of action for attorneys' fees and costs arising from OAH Case No. 2017050717.

Except as otherwise provided herein, this release and discharge applies to any action or proceeding based on any educationally-related state or federal statute, regulation, and case decision including, but not limited to, claims under the Individuals with Disabilities Education Act (20 U.S.C. § 1400, et seq.), Section 504 of the Rehabilitation of Act of 1973 (29 U.S.C. § 732), the Americans with Disabilities Act (42 U.S.C. § 12101), and California Education Code § 56000, et seq.

This waiver does not include tort or common law claims or any claim for indemnification. This release and discharge otherwise applies to all educationally-related claims for injuries, damages, or losses related to Student's educational program prior to and through the date of full execution of this Agreement regardless of whether those injuries, damages, or losses are currently known or unknown, foreseen or unforeseen, or patent or latent.

Petitioner certifies that Petitioner has read, and hereby waives the application of, the following provision of California Civil Code § 1542 in regard to the above-noted educationally-related claims:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known to him or her must have materially affected his settlement with the debtor."



a. The Petitioner shall:

- (1) Concurrently with the execution of this Agreement, Petitioner shall consent to implementation of the IEP addendum attached to this Agreement as Exhibit A. No later than ten business days after the date of full execution of this Agreement, the District will commence implementation the services set forth in the IEP addendum attached to this Agreement as Exhibit A regardless of whether the Board of Education approves this Agreement.
- (2) Petitioner acknowledges that this Agreement requires approval by the Board of Education of the District. The Board of Education will consider the Agreement at its next regularly scheduled meeting for which consideration of this Agreement can be timely agendized. If the Board of Education does not approve the Agreement at said meeting, the Agreement shall be null and void except that the District shall continue to implement the IEP addendum attached to this Agreement as Exhibit A.

b. The District shall:

- (1) Subsequent to the Board of Education approving this Agreement, the District shall fund compensatory education services for Student in an amount not to exceed \$52,500. Parent shall inform the District in writing of the non-public agency or agencies or appropriately credentialed related services providers Parents have selected to provide compensatory education services to Student and the District shall enter into a contract with the non-public agency or agencies or appropriately credentialed related services providers to provide the compensatory education services to Student subject to the \$52,500 limit with the exception that in no event shall the District contact with Tucci Learning Solutions, Inc. Compensatory education services shall be limited to educational services that are provided directly to Student and which qualify as “special education” or “related services” as those phrases are defined in the IDEA. No portion of the fund may be used to purchase assistive technology for Student. The District will not fund any services under this Paragraph 3.b.(1) that are provided to Student when he should be accessing his District educational program during the regular school year. No item funded under this Paragraph 3.b.(1) is part of Student’s stay put placement and any portion of the \$52,500 not utilized by August 31, 2021, shall be forfeited by Petitioner. Petitioner may use a portion of the fund to obtain reimbursement at the applicable Internal Revenue Service mileage rate from the District for transporting Student to receive compensatory education services funded under this Paragraph 3.b.(1) under the following conditions: Parents transport Student in their motor vehicle; Parents submit to the District an invoice evidencing the dates on which Student received educational services related to the transportation; Parents submit

to the District evidence of a valid driver's license and proof of insurance for their motor vehicle; and Parents submit a mapquest.com or similar printout identifying the mileage driven. Reimbursement for transportation will issue to Parents within 60 calendar days after the District's receipt of the above-noted documentation. Reimbursement for mileage will not be part of Student's stay put placement. In no event will the funding and transportation reimbursement issued under this Paragraph 3.b.(1) exceed \$52,500.

- a. If Parents elect to utilize any portion of the \$52,500 in compensatory education funding in Paragraph 3.b.(1) to obtain instructional services for Student during the period of time that extended school year services are made available to Student through an IEP ("the ESY IEP"), then Parents agree to waive any and all claims against the District regarding a denial of a FAPE in regard to the extended school year services made available to Student through the ESY IEP.
- (2) Subsequent to the Board of Education approving this Agreement and as compensatory education, the District will provide one session per week of individual speech therapy to Student during the 2017-18 and 2018-19 regular school years. A District employee will provide the therapy to Student in-person. The session will be provided to Student on Fridays when the District's schools are in session and shall not be part of Student's stay put placement. The individual speech therapy shall commence no later than 5 business days after the Board of Education approves this Agreement. Any sessions of speech therapy that are not provided by reason of the provider not being available or the following District holidays shall be made up on a later date: Veteran's Day; and "fair day" (May 18, 2017, during the 2017-18 school year).
  - (3) Subsequent to the Board of Education approving this Agreement, the District shall issue payment to "Shaw Firm" in the amount of \$11,500 for attorneys' fees and costs arising from or related to OAH Case No. 2017050717. Payment will be made to Shaw Firm at 3220 S. Higuera St., Suite 303, San Luis Obispo, California 93401 no later than 60 calendar days after all of the following occur: the Agreement is fully executed; the Agreement is approved by the District's Board of Education; and the District receives an invoice for attorneys' fees and costs consistent with the standard of practice in the professional community evidencing attorneys' fees and costs of \$11,500 or more.

#### CONFIDENTIALITY

4. This Agreement shall remain confidential to the extent allowed by federal and state law. The Parties agree not to comment on or disclose any term or provision of this settlement



agreement or the settlement encompassed herein. The Parties may disclose this Agreement for purposes of implementation, enforcement, or to demonstrate non-compliance with the terms of the Agreement.

#### NO ADMISSION OF LIABILITY

5. This Agreement is entered into by the Parties for the purpose of settling the dispute described in section 2, above. It does not constitute, nor shall it be construed as, an admission of liability by any party for any purpose, including the provision of a FAPE.

#### ENTIRE AGREEMENT

6. This Agreement constitutes the entire agreement and understanding between the Parties. There are no oral understandings, terms, or conditions, and neither party has relied upon any representation, express or implied, not contained in this Agreement. All prior understandings, terms, or conditions are deemed merged into this Agreement and its attachments. This Agreement cannot be changed or supplemented orally and may be modified or superseded only by written document signed by the Parties.

#### EXECUTION BY FACSIMILE OR IN COUNTERPARTS

7. This Agreement may be signed in counterparts and the signatures may appear on separate signature pages. A copy or an original, with all signatures attached, shall be deemed a fully executed Agreement. A facsimile version of any party's signature shall be deemed an original signature.

#### SEVERABILITY

8. If any provision of this Agreement is held to be void or unenforceable, the remaining portions of the Agreement shall remain in full force and effect.

#### INTERPRETATION

9. The language of all sections of this Agreement shall be construed as a whole, according to its fair meaning, and not strictly for or against any party.

#### NO PRIOR ASSIGNMENT OF RIGHTS

10. The Parties, and each of them, represent and warrant that no other person or entity has claimed or now claims any interest in the subject matter of this Agreement, and that each such Party has the sole right and exclusive authority to execute this Agreement, and that they have not sold, assigned, transferred, or otherwise set over to any other person or entity, any claim, lien, demand, cause of action, obligation, damage, or liability covered thereby.

## VOLUNTARY AGREEMENT

11. The Parties represent that they have, as of the date of signing of this Agreement, the legal capacity to understand, agree to, and sign this Agreement. The Parties have voluntarily resolved all disputed matters and enter into this settlement, which fully disposes of all of the issues in controversy between the Parties. **The Parties are represented by legal counsel and have conferred with their respective legal counsel regarding this Agreement. The Parties represent that they fully understand the meaning of this document and enter into this Agreement knowingly and voluntarily.** The Parties expressly represent that they enter into this Agreement freely and without fraud, undue influence, or duress and that prior to entering into this Agreement they fully discussed with their counsels the remedies available to the Parties. Parents further acknowledge that this Agreement, including its terms and conditions providing for a waiver and release of claims on behalf of Petitioner against the District, has been adequately explained to and reviewed with them in their native language of Spanish such that they understood the Agreement prior to their decision to execute the Agreement.

## GOVERNING LAW

12. This Agreement shall be governed by and construed in accordance with the laws of the State of California and applicable federal special education law.

## BREACH

13. Any material breach of this Agreement by any party shall entitle the non-breaching party to all available legal and equitable remedies, including liability for reasonable prevailing party attorneys' fees.



**Petitioner:**

08-31-2017

Date

8-31-2017

Date

**District:**

8/31/17

Dr. Brian Walker  
Superintendent

Date

South Monterey County Joint Union High School District

8/31/17

Sherrie Castellanos  
Chief Business Officer

Date

South Monterey County Joint Union High School District

**Approved as to form:**

SHAW FIRM

8/31/17

Daniel Shaw  
Attorneys for Petitioner

Date

Law Office of Peter Sansom

8-31-17

Peter A. Sansom  
Attorney for  
South Monterey County Joint Union High School District

Date