



# AGENDA REQUEST FORM

## THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

**Special Order Request**

Yes  No

**Time**

**Open Agenda**

Yes  No

<b>MEETING DATE</b>	Mar 17 2015 10:15AM - Regular School Board Meeting
<b>AGENDA ITEM</b>	OPEN ITEMS
<b>CATEGORY</b>	EE. OFFICE OF STRATEGY & OPERATIONS
<b>DEPARTMENT</b>	Transportation

**ITEM No.:**

EE-2.

**TITLE:**

Transportation Agreements for City and Non-Profit Organization Recreation Programs

**REQUESTED ACTION:**

Approve agreements between The School Board of Broward County, Florida, and the City of Lauderdale Lakes, the City of Plantation, the non-profit organizations of After School Programs, Inc., New Horizon Community Development Corporation, Inc., and the YMCA of Broward County, Florida, Inc., to provide school bus transportation for recreational programs for the period of one year.

**SUMMARY EXPLANATION AND BACKGROUND:**

The transportation agreements allow the cities and non-profit organizations to utilize District school buses for city/organizational sponsored recreation programs and events that are dependent on transportation. City/organization sponsored recreation programs provide a valuable service to their respective communities.

Transportation services will be provided during the times school buses are not being utilized for service to Broward County Public Schools. The City of Lauderdale Lakes, the City of Plantation, the non-profit organizations of After School Programs, Inc., New Horizon Community Development Corporation, Inc., and the YMCA of Broward County, Florida, Inc., will reimburse the District for the full cost of this service at the approved reimbursement rate. This reimbursement rate fully covers the costs incurred by the District.

These agreements have been reviewed and approved as to form and legal content by the Office of the General Counsel.

**SCHOOL BOARD GOALS:**

Goal 1: High Quality Instruction  Goal 2: Continuous Improvement  Goal 3: Effective Communication

**FINANCIAL IMPACT:**

The cities and non-profit organizations will reimburse the District for the cost of this service at the current approved reimbursement rate of \$70 per hour.

**EXHIBITS: (List)**

(1) City of Lauderdale Lakes Transportation Agreement (2) City of Plantation Transportation Agreement (3) After School Programs Transportation Agreement (4) New Horizon Community Development Corp Transportation Agreement (5) YMCA of Broward County Transportation Agreement

**BOARD ACTION:**

APPROVED

(For Official School Board Records Office Only)

**SOURCE OF ADDITIONAL INFORMATION:**

Name: Patricia A. Snell	Phone: 754-321-4400
Name: Cyrilla Bradley	Phone: 754-321-4427

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**

**Senior Leader & Title**

Maurice L. Woods - Chief Strategy & Operations Officer

Signature

*Maurice Woods*

Tue Feb 24 11:56:10 2015

Approved In Open Board Meeting On:

MAR 17 2015

By:

School Board Chair

**AGREEMENT**

THIS AGREEMENT is made and entered into as of this 17<sup>th</sup> day of March, by and between

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**  
(hereinafter referred to as "SBBC"),  
a body corporate and political subdivision of the State of Florida,  
whose principal place of business is  
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

**CITY OF LAUDERDALE LAKES**  
(hereinafter referred to as "CITY"),  
whose principal place of business is  
4300 NW 36<sup>th</sup> Street  
Lauderdale Lakes, Florida 33319

**WHEREAS**, the SBBC owns and operates a fleet of vehicles for the transportation of pupils; and

**WHEREAS**, the CITY provides recreational programs dependent upon availability of transportation; and

**WHEREAS**, Florida Statute 1006.261 (1) (c) provides for nonprofit corporations and nonprofit civic associations to use school buses to transport school-age children for their sponsored activities; and

**WHEREAS**, the CITY, being eligible under this legislation to use school buses, desires to enter into this Agreement with the SBBC to define the relationship between the two parties and set forth the rights and obligations herein;

**NOW, THEREFORE**, in consideration of the premises and of mutual covenants contained hereafter and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

**ARTICLE 1 - RECITALS**

1.01 **Recitals.** The Parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

## ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on May 1, 2015 and conclude on April 30, 2016.

2.02 **Transportation Needs.** Prior to the execution of the Agreement, the two parties have discussed the transportation needs of the CITY and the approximate number of school buses that may be made available to the CITY; however, nothing herein contained will obligate the SBBC to provide buses to the CITY, if it is deemed by the SBBC that such action will reduce or delay transportation of pupils. The CITY, through its Contract Administrator, agrees to provide the SBBC with two (2) weeks notice in order to obtain the school vehicles for transportation purposes as described within the Agreement. Said requests for transportation are limited to days that school is not in session, such as employee planning days, summer or holiday breaks and/or weekends. The SBBC agrees to provide the referenced school vehicles to the CITY on an emergency notice basis of between forty-eight (48) hours and two (2) weeks notice time prior to needed services. This emergency notice basis must not exceed four (4) times per Agreement year.

2.03 **Payment of Operation Cost by CITY.** The CITY agrees to fully reimburse the SBBC for the operating cost of school buses used by the CITY during the term of this Agreement. The CITY shall pay the SBBC posted transportation rate for a minimum of four (4) hours per day for each regular school bus provided, which sum shall cover use, operational costs, and reimbursement for driver's hours and all other costs and expenses incurred by the SBBC in supplying the regular buses. Should a wheelchair lift equipped bus be required, the CITY shall pay the SBBC's posted bus attendant rate, for a minimum of four (4) hours per day for each wheelchair lift equipped bus provided, in addition to the posted transportation rate.

2.04 **Lack of Petroleum Products.** It is further agreed that in the event petroleum products required to operate this Agreement, or part of this Agreement, become unavailable, the obligations of each party hereunder may be terminated by the SBBC upon no less than twenty-four (24) hours notice in writing to the CITY. The SBBC shall be the final authority as to the availability of petroleum products.

2.05 **Bus Drivers Assigned by SBBC.** When school vehicles are used by the CITY, under no circumstances will the vehicle be driven by anyone other than bus drivers qualified, trained, certified, and assigned by the SBBC. School buses will be operated under the same rules, regulations, policies, and procedures as those relating to school pupil transportation and governed accordingly. Drivers shall at all times be considered employees or agents of the SBBC.

2.06 **Damage to the Vehicles Paid by CITY.** The CITY agrees to pay for any damage to the school vehicles while such vehicles are under the CITY's use

which damage is attributable directly to that use, and caused by the CITY, its' employees, or its' program participants. All accidents involving a school vehicle will be reported as provided by procedures now existent or required in the daily operation of the SBBC.

2.07 **Reporting of Incidents Involving Non Pupil Passengers.** The CITY agrees to report to the SBBC the nature and extent if any incidents resulting in property damage or personal injury to a passenger while boarding, riding in, or deboarding from such vehicle and indemnify and hold harmless the SBBC from any and all claims arising out of such incidents, to the fullest extent allowed by the Constitution and the laws of the state of Florida, if such injury or damage is caused by any act of omission of an employee of the CITY.

2.08 **Method of Reimbursement.** Unless otherwise agreed upon by the parties in writing, the costs borne by the SBBC on behalf of the CITY under this Agreement will be reimbursed as invoiced; and in a reimbursement period not to exceed thirty (30) days from presentment or receipt of the referenced invoice to the CITY's Contract Administrator. Past due invoices will be sent for all invoices not paid within thirty days.

2.09 **Geographic Limitations on the Use of School Vehicles.** The CITY will limit its use of school vehicles to and within the confines of the Tri-County Area. Under no circumstances should the vehicle be taken outside of the geographical limits set forth in this paragraph.

2.10 **Passenger Load Limit.** When the CITY's use of the school vehicle (s) is made, the passenger capacity transported shall not exceed the rated capacity of the said vehicle(s). Standees shall not be permitted at any time. The CITY shall not use school vehicles for any purpose whatsoever outside of the use covered by this Agreement.

2.11 **Cancellation.** The CITY reserves the right to cancel any trips it deems necessary with a minimum of twenty-four (24) hours notice prior to the scheduled trip at no charge. Otherwise, cancellations not meeting the minimum notice will result in a four hour charge at the posted transportation rate.

2.12 **Contract Administrator and Contract Representative.** The CITY's Contract Administrator for this Agreement Jonathan Allen, City Manager, or designee. The Contract Representative for the SBBC is the Director of Student Transportation and Fleet Services, 3895 Northwest 10th Avenue, Oakland Park, Florida 33309, or designee.

2.13 **Inspection of CITY's Records by SBBC.** The CITY shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All CITY's Records, regardless of the form in which they are

kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify any and all invoices, billings, payments and/or claims submitted by the CITY or any of the CITY's payees pursuant to this Agreement. CITY's Records subject to examination shall include, without limitation, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. CITY's Records subject to this section shall include any and all documents pertinent to the evaluation, analysis, verification and reconciliation of any and all expenditures under this Agreement without regard to funding sources.

(a) CITY's Records Defined. For the purposes of this Agreement, the term "CITY's Records" shall include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement.

(b) Duration of Right to Inspect. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to the CITY's Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to the CITY pursuant to this Agreement.

(c) Notice of Inspection. SBBC's agent or its authorized representative shall provide the City reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction.

(d) Audit Site Conditions. SBBC's agent or its authorized representative shall have access to the CITY's facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(e) Failure to Permit Inspection. Failure by the CITY to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this Section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the denial of some or all of any the CITY's claims for payment by SBBC.

(f) Overcharges and Unauthorized Charges. If an audit conducted in accordance with this Section discloses overcharges or unauthorized charges to SBBC by

CITY in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by the CITY. If the audit discloses billings or charges to which the CITY is not contractually entitled, the CITY shall pay said sum to SBBC within twenty (20) days of receipt of written demand under otherwise agreed to in writing by both parties.

(g) Inspection of Subcontractor's Records. The CITY shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by the CITY to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payee's costs from amounts payable by SBBC to the CITY pursuant to this Agreement and such excluded costs shall become the liability of the CITY.

(h) Inspector General Audits. The CITY shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.14 Notice. When any of the parties desire to give notice to the other, such notice must be in writing, sent by US Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of the paragraph. For the present, the parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools  
The School Board of Broward County, FL  
600 Southeast Third Avenue  
Fort Lauderdale, Florida 33301

With a Copy to: Director of Student Transportation & Fleet Services  
The School Board of Broward County, FL  
3895 NW 10 Avenue  
Fort Lauderdale, Florida 33309

To CITY: City of Lauderdale Lakes  
Jonathan Allen, City Manager  
4300 NW 36st Street  
Lauderdale Lakes, FL 33319

2.15 Background Screening. The CITY agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be

conducted by SBBC in advance of the CITY or its personnel providing any services under the conditions described in the previous sentence. The CITY will bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to the CITY and its personnel. The Parties agree that the failure of the CITY to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. To the extent permitted by law, the CITY agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting in the CITY's failure to comply with the requirements of this section or Sections 1012.32 and 1012.465, Florida Statutes. Nothing herein shall be construed as a waiver by SBBC or the City of sovereign immunity or of any rights or limits to liability existing under Section 768.28, Florida Statutes.

2.16 **Indemnification.** Each party agrees to be fully responsible for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

### **ARTICLE 3 – GENERAL CONDITIONS**

3.01 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

3.03 **Independent Contractor.** The parties to this agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the

other party unless specifically authorized in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.04 **Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

3.05 **Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof upon thirty (30) days written notice to the other parties of its desire to terminate this Agreement. SBBC shall have no liability for any property left on SBBC's property by any party to this Agreement after the termination of this Agreement. Any party contracting with SBBC under this Agreement agrees that any of its property placed upon SBBC's facilities pursuant to the Agreement shall be removed with ten (10) business days following the termination, conclusion or cancellation of this Agreement and that any such property remaining upon SBBC's facilities after that time shall be deemed to be abandoned, title to such property shall pass to SBBC, and SBBC may use or dispose of such property as SBBC deems fit and appropriate.

3.06 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.07 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated



or liable for any future payments due or any damages as a result of termination under this section.

3.08 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBBC.

3.09 **Public Records.** Pursuant to Section 119.0701, Florida Statutes, any party contracting with SBBC is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that SBBC would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost, to SBBC all public records in that party's possession upon termination of its agreement with SBBC and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored electronically must be provided to SBBC in a format that is compatible with SBBC's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets

3.10 **Student Records.** Notwithstanding any provision to the contrary within this Agreement, any party contracting with SBBC under this Agreement shall fully comply with the requirements of Sections 1002.22 and 1002.221, Florida Statutes; FERPA, and any other state or federal law or regulation regarding the confidentiality of student information and records. Each such party agrees, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, to the extent permitted by law that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes.

3.11 **Compliance with Laws.** Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.12 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.13 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

3.14 **Entirety of Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.15 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.16 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

3.17 **Incorporation by Reference.** Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

3.18 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.19 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.20 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and

that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.21 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.22 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.23 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.24 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.25 **Contract Administration.** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.26 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date first above written.

FOR SBBC

(Corporate Seal)

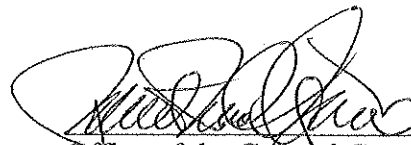
THE SCHOOL BOARD OF  
BROWARD COUNTY, FLORIDA

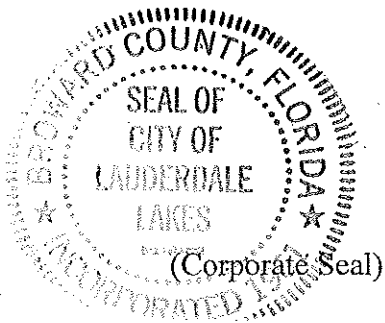
ATTEST:

By   
Donna P. Korn, Chair

  
Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

 02/13/15  
Office of the General Counsel



FOR CITY

CITY OF LAUDERDALE LAKES

ATTEST:

Sharon Hausler  
Secretary

By:

Jonathan K. Allen City Manager  
Name and Title

-or-

Jonathan K. Allen  
Printed Name

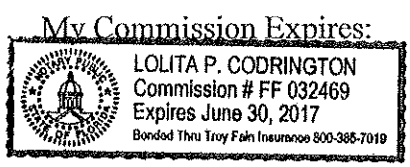
\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

**The Following Notarization is Required For Every Agreement Without Regard to Whether the CITY Chose to Use a Secretary's Attestation or Two (2) Witnesses.**

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 5<sup>TH</sup> day of FEB, 2015 by Jonathan K. Allen of CITY OF LAUDERDALE LAKES on behalf of the corporation/agency. He/She is personally known to me or produced as identification and did/did not first take an oath.



(SEAL)

Lolita P. Codrington  
Signature - Notary Public

LOLITA P. CODRINGTON  
Printed Name of Notary

\_\_\_\_\_  
Notary's Commission No.

**AGREEMENT**

**THIS AGREEMENT is made and entered into as of this** 17<sup>th</sup> **day of**  
March, **by and between**

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**  
(hereinafter referred to as "SBBC"),  
a body corporate and political subdivision of the State of Florida,  
whose principal place of business is  
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

**CITY OF PLANTATION**  
(hereinafter referred to as "CITY"),  
whose principal place of business is  
9151 NW 2<sup>nd</sup> Street  
Plantation, Florida 33324

**WHEREAS**, the SBBC owns and operates a fleet of vehicles for the transportation of pupils; and

**WHEREAS**, the CITY provides recreational programs dependent upon availability of transportation; and

**WHEREAS**, Florida Statute 1006.261 (1) (c) provides for nonprofit corporations and nonprofit civic associations to use school buses to transport school-age children for their sponsored activities; and

**WHEREAS**, the CITY, being eligible under this legislation to use school buses, desires to enter into this Agreement with the SBBC to define the relationship between the two parties and set forth the rights and obligations herein;

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2.03 **Payment of Operation Cost by CITY.** The CITY agrees to fully reimburse the SBBC for the operating cost of school buses used by the CITY during the term of this Agreement. The CITY shall pay the SBBC posted transportation rate for a minimum of four (4) hours per day for each regular school bus provided, which sum shall cover use, operational costs, and reimbursement for driver's hours and all other costs and expenses incurred by the SBBC in supplying the regular buses. Should a wheelchair lift equipped bus be required, the CITY shall pay the SBBC's posted bus attendant rate, for a minimum of four (4) hours per day for each wheelchair lift equipped bus provided, in addition to the posted transportation rate.

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2.05 **Bus Drivers Assigned by SBBC.** When school vehicles are used by the CITY, under no circumstances will the vehicle be driven by anyone other than bus drivers qualified, trained, certified, and assigned by the SBBC. School buses will be operated under the same rules, regulations, policies, and procedures as those relating to school pupil transportation and governed accordingly. Drivers shall at all times be considered employees or agents of the SBBC.

2.06 **Damage to the Vehicles Paid by CITY.** The CITY agrees to pay for any damage to the school vehicles while such vehicles are under the CITY's use

which damage is attributable directly to that use, and caused by the CITY, its' employees, or its' program participants. All accidents involving a school vehicle will be reported as provided by procedures now existent or required in the daily operation of the SBBC.

2.07 **Reporting of Incidents Involving Non Pupil Passengers.** The CITY agrees to report to the SBBC the nature and extent if any incidents resulting in property damage or personal injury to a passenger while boarding, riding in, or deboarding from such vehicle and indemnify and hold harmless the SBBC from any and all claims arising out of such incidents, to the fullest extent allowed by the Constitution and the laws of the state of Florida, if such injury or damage is caused by any act of omission of an employee of the CITY.

2.08 **Method of Reimbursement.** Unless otherwise agreed upon by the parties in writing, the costs borne by the SBBC on behalf of the CITY under this Agreement will be reimbursed as invoiced; and in a reimbursement period not to exceed thirty (30) days from presentment or receipt of the referenced invoice to the CITY's Contract Administrator. Past due invoices will be sent for all invoices not paid within thirty days.

2.09 **Geographic Limitations on the Use of School Vehicles.** The CITY will limit its use of school vehicles to and within the confines of the Tri-County Area. Under no circumstances should the vehicle be taken outside of the geographical limits set forth in this paragraph.

2.10 **Passenger Load Limit.** When the CITY's use of the school vehicle (s) is made, the passenger capacity transported shall not exceed the rated capacity of the said vehicle(s). Standees shall not be permitted at any time. The CITY shall not use school vehicles for any purpose whatsoever outside of the use covered by this Agreement.

2.11 **Cancellation.** The CITY reserves the right to cancel any trips it deems necessary with a minimum of twenty-four (24) hours notice prior to the scheduled trip at no charge. Otherwise, cancellations not meeting the minimum notice will result in a four hour charge at the posted transportation rate.

2.12 **Contract Administrator and Contract Representative.** The CITY's Contract Administrator for this Agreement is ~~Gary Shimun~~, Chief Administrative Officer, or designee. The Contract Representative for the SBBC is the Director of Student Transportation and Fleet Services, 3895 Northwest 10th Avenue, Oakland Park, Florida 33309, or designee.

2.13 **Inspection of CITY's Records by SBBC.** The CITY shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All CITY's Records, regardless of the form in which they are



kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify any and all invoices, billings, payments and/or claims submitted by the CITY or any of the CITY's payees pursuant to this Agreement. CITY's Records subject to examination shall include, without limitation, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. CITY's Records subject to this section shall include any and all documents pertinent to the evaluation, analysis, verification and reconciliation of any and all expenditures under this Agreement without regard to funding sources.

(a) CITY's Records Defined. For the purposes of this Agreement, the term "CITY's Records" shall include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement.

(b) Duration of Right to Inspect. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to the CITY's Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to the CITY pursuant to this Agreement.

(c) Notice of Inspection. SBBC's agent or its authorized representative shall provide the City reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction.

(d) Audit Site Conditions. SBBC's agent or its authorized representative shall have access to the CITY's facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(e) Failure to Permit Inspection. Failure by the CITY to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this Section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the denial of some or all of any the CITY's claims for payment by SBBC.

(f) Overcharges and Unauthorized Charges. If an audit conducted in accordance with this Section discloses overcharges or unauthorized charges to SBBC by

CITY in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by the CITY. If the audit discloses billings or charges to which the CITY is not contractually entitled, the CITY shall pay said sum to SBBC within twenty (20) days of receipt of written demand under otherwise agreed to in writing by both parties.

(g) Inspection of Subcontractor's Records. The CITY shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by the CITY to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payee's costs from amounts payable by SBBC to the CITY pursuant to this Agreement and such excluded costs shall become the liability of the CITY.

(h) Inspector General Audits. The CITY shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.14 Notice. When any of the parties desire to give notice to the other, such notice must be in writing, sent by US Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of the paragraph. For the present, the parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools  
The School Board of Broward County, FL  
600 Southeast Third Avenue  
Fort Lauderdale, Florida 33301

With a Copy to: Director of Student Transportation & Fleet Services  
The School Board of Broward County, FL  
3895 NW 10 Avenue  
Fort Lauderdale, Florida 33309

To CITY: City of Plantation  
James S Romano, Director of Parks and Recreation  
9151 NW 2<sup>nd</sup> Street  
Plantation, FL 33324

2.15 Background Screening The CITY agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be

conducted by SBBC in advance of the CITY or its personnel providing any services under the conditions described in the previous sentence. The CITY will bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to the CITY and its personnel. The Parties agree that the failure of the CITY to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. To the extent permitted by law, the CITY agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting in the CITY's failure to comply with the requirements of this section or Sections 1012.32 and 1012.465, Florida Statutes. Nothing herein shall be construed as a waiver by SBBC or the City of sovereign immunity or of any rights or limits to liability existing under Section 768.28, Florida Statutes.

2.16 **Indemnification** Each party agrees to be fully responsible for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

### **ARTICLE 3 – GENERAL CONDITIONS**

3.01 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

3.03 **Independent Contractor.** The parties to this agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless

specifically authorized in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.04 **Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

3.05 **Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof upon thirty (30) days written notice to the other parties of its desire to terminate this Agreement. SBBC shall have no liability for any property left on SBBC's property by any party to this Agreement after the termination of this Agreement. Any party contracting with SBBC under this Agreement agrees that any of its property placed upon SBBC's facilities pursuant to the Agreement shall be removed with ten (10) business days following the termination, conclusion or cancellation of this Agreement and that any such property remaining upon SBBC's facilities after that time shall be deemed to be abandoned, title to such property shall pass to SBBC, and SBBC may use or dispose of such property as SBBC deems fit and appropriate.

3.06 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.07 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in

the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

3.08 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBBC.

3.09 **Public Records.** Pursuant to Section 119.0701, Florida Statutes, any party contracting with SBBC is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that SBBC would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost, to SBBC all public records in that party's possession upon termination of its agreement with SBBC and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored electronically must be provided to SBBC in a format that is compatible with SBBC's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets

3.10 **Student Records.** Notwithstanding any provision to the contrary within this Agreement, any party contracting with SBBC under this Agreement shall fully comply with the requirements of Sections 1002.22 and 1002.221, Florida Statutes; FERPA; and any other state or federal law or regulation regarding the confidentiality of student information and records. Each such party agrees, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, to the extent permitted by law that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes.

3.11 **Compliance with Laws.** Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.12 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.13 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

3.14 **Entirety of Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.15 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.16 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

3.17 **Incorporation by Reference.** Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

3.18 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.19 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.20 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and

that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.21 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.22 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.23 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.24 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.25 **Contract Administration.** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.26 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

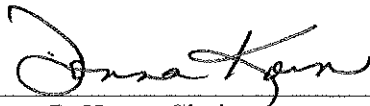
**IN WITNESS WHEREOF**, the Parties hereto have made and executed this Agreement on the date first above written.

**FOR SBBC**

(Corporate Seal)


THE SCHOOL BOARD OF  
BROWARD COUNTY, FLORIDA

ATTEST:

By   
Donna P. Korn, Chair

  
Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

  
Office of the General Counsel



FOR CITY

(Corporate Seal)

CITY OF PLANTATION

ATTEST:

Susan K. Slattery  
Secretary

By: Daniel W. Keefe, INTERIM CHIEF  
Name and Title ADMINISTRATIVE OFFICER

-or-

DANIEL W. KEEFE  
Printed Name

[Signature]  
Witness

[Signature]  
Witness

**The Following Notarization is Required For Every Agreement Without Regard to Whether the CITY Chose to Use a Secretary's Attestation or Two (2) Witnesses.**

STATE OF FLORIDA  
COUNTY OF Broward

The foregoing instrument was acknowledged before me this 12 day of February 2015 by \_\_\_\_\_ of CITY OF PLANTATION on behalf of the corporation/agency. He/She is personally known to me or produced \_\_\_\_\_ as identification and did/did not first take an oath.

My Commission Expires:

[Signature]  
Signature - Notary Public



(SEAL)

Christine Guifarro  
Printed Name of Notary

\_\_\_\_\_  
Notary's Commission No.

## AGREEMENT

THIS AGREEMENT is made and entered into as of this 17<sup>th</sup> day of March, by and between

### THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(hereinafter referred to as "SBBC"),  
a body corporate and political subdivision of the State of Florida,  
whose principal place of business is  
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

### AFTER SCHOOL PROGRAMS, INC.

(hereinafter referred to as "ASP"),  
whose principal place of business is  
1520 South Powerline Road  
Deerfield Beach, Florida 33442

**WHEREAS**, the SBBC owns and operates a fleet of vehicles for the transportation of pupils; and

**WHEREAS**, ASP provides recreational programs dependent upon availability of transportation; and

**WHEREAS**, Florida Statute 1006.261 (1) (c) provides for nonprofit corporations and nonprofit civic associations to use school buses to transport school-age children for their sponsored activities; and

**WHEREAS**, ASP, being eligible under this legislation to use school buses, desires to enter into this Agreement with the SBBC to define the relationship between the two parties and set forth the rights and obligations herein;

**NOW, THEREFORE**, in consideration of the premises and of mutual covenants contained hereafter and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

### ARTICLE 1 - RECITALS

1.01 **Recitals.** The Parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

## ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on June 1, 2015 and conclude on May 31, 2016.

2.02 **Transportation Needs.** Prior to the execution of the Agreement, the two parties have discussed the transportation needs of ASP and the approximate number of school buses that may be made available to ASP; however, nothing herein contained will obligate the SBBC to provide buses to ASP, if it is deemed by the SBBC that such action will reduce or delay transportation of pupils. ASP, through its Contract Administrator, agrees to provide the SBBC with two (2) weeks notice in order to obtain the school vehicles for transportation purposes as described within the Agreement. Said requests for transportation are limited to days that school is not in session, such as employee planning days, summer or holiday breaks and/or weekends. The SBBC agrees to provide the referenced school vehicles to ASP on an emergency notice basis of between forty-eight (48) hours and two (2) weeks notice time prior to needed services. This emergency notice basis must not exceed four (4) times per Agreement year.

2.03 **Payment of Operation Cost by ASP.** ASP agrees to fully reimburse the SBBC for the operating cost of school buses used by ASP during the term of this Agreement. ASP shall pay the SBBC posted transportation rate for a minimum of four (4) hours per day for each regular school bus provided, which sum shall cover use, operational costs, and reimbursement for driver's hours and all other costs and expenses incurred by the SBBC in supplying the regular buses. Should a wheelchair lift equipped bus be required, ASP shall pay the SBBC's posted bus attendant rate, for a minimum of four (4) hours per day for each wheelchair lift equipped bus provided, in addition to the posted transportation rate.

2.04 **Lack of Petroleum Products.** It is further agreed that in the event petroleum products required to operate this Agreement, or part of this Agreement, become unavailable, the obligations of each party hereunder may be terminated by the SBBC upon no less than twenty-four (24) hours notice in writing to ASP. The SBBC shall be the final authority as to the availability of petroleum products.

2.05 **Bus Drivers Assigned by SBBC.** When school vehicles are used by ASP, under no circumstances will the vehicle be driven by anyone other than bus drivers qualified, trained, certified, and assigned by the SBBC. School buses will be operated under the same rules, regulations, policies, and procedures as those relating to school pupil transportation and governed accordingly. Drivers shall at all times be considered employees or agents of the SBBC.

2.06 **Damage to the Vehicles Paid by ASP** ASP agrees to pay for any damage to the school vehicles while such vehicles are under ASP's use which damage is attributable directly to that use, and caused by ASP, its' employees, or its' program

participants. All accidents involving a school vehicle will be reported as provided by procedures now existent or required in the daily operation of the SBBC.

2.07 **Reporting of Incidents Involving Non Pupil Passengers.** ASP agrees to report to the SBBC the nature and extent if any incidents resulting in property damage or personal injury to a passenger while boarding, riding in, or deboarding from such vehicle and indemnify and hold harmless the SBBC from any and all claims arising out of such incidents, to the fullest extent allowed by the Constitution and the laws of the state of Florida, if such injury or damage is caused by any act of omission of an employee of ASP.

2.08 **Method of Reimbursement.** Unless otherwise agreed upon by the parties in writing, the costs borne by the SBBC on behalf of ASP under this Agreement will be reimbursed as invoiced; and in a reimbursement period not to exceed thirty (30) days from presentment or receipt of the referenced invoice to ASP Contract Administrator. Past due invoices will be sent for all invoices not paid within thirty days.

2.09 **Geographic Limitations on the Use of School Vehicles.** ASP will limit its use of school vehicles to and within the confines of the Tri-County Area. Under no circumstances should the vehicle be taken outside of the geographical limits set forth in this paragraph.

2.10 **Passenger Load Limit.** When ASP's use of the school vehicle (s) is made, the passenger capacity transported shall not exceed the rated capacity of the said vehicle(s). Standees shall not be permitted at any time. ASP shall not use school vehicles for any purpose whatsoever outside of the use covered by this Agreement.

2.11 **Cancellation.** ASP reserves the right to cancel any trips it deems necessary with a minimum of twenty-four (24) hours notice prior to the scheduled trip at no charge. Otherwise, cancellations not meeting the minimum notice will result in a four hour charge at the posted transportation rate.

2.12 **Contract Administrator and Contract Representative.** ASP's Contract Administrator for this Agreement is Tera Ivey, Director of After School Programs, or designee. The Contract Representative for the SBBC is the Director of Student Transportation and Fleet Services, 3895 Northwest 10th Avenue, Oakland Park, Florida 33309, or designee.

2.13 **Insurance.** ASP agrees to maintain the following insurance coverage:

Comprehensive General Liability coverage with bodily injury limits of not less than \$1,000,000 per occurrence with combined single limit for bodily injury and property damage. The SBBC shall be named as an additional insured under the General Liability policy.

2.14 **Inspection of ASP'S Records by SBBC.** ASP shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All ASP'S Records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify any and all invoices, billings, payments and/or claims submitted by ASP or any of ASP'S payees pursuant to this Agreement. ASP'S Records subject to examination shall include, without limitation, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. ASP'S Records subject to this section shall include any and all documents pertinent to the evaluation, analysis, verification and reconciliation of any and all expenditures under this Agreement without regard to funding sources.

(a) **ASP'S Records Defined.** For the purposes of this Agreement, the term "ASP'S Records" shall include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement.

(b) **Duration of Right to Inspect.** For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to ASP'S Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to ASP pursuant to this Agreement.

(c) **Notice of Inspection.** SBBC's agent or its authorized representative shall provide ASP reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction.

(d) **Audit Site Conditions.** SBBC's agent or its authorized representative shall have access to ASP'S facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(e) **Failure to Permit Inspection.** Failure by ASP to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this Section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the denial of some or all of any ASP'S claims for payment by SBBC.

(f) Overcharges and Unauthorized Charges. If an audit conducted in accordance with this Section discloses overcharges or unauthorized charges to SBBC by ASP in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by ASP. If the audit discloses billings or charges to which ASP is not contractually entitled, ASP shall pay said sum to SBBC within twenty (20) days of receipt of written demand under otherwise agreed to in writing by both parties.

(g) Inspection of Subcontractor's Records. ASP shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by ASP to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payee's costs from amounts payable by SBBC to ASP pursuant to this Agreement and such excluded costs shall become the liability of ASP.

(h) Inspector General Audits. ASP shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.15 **Notice** When any of the parties desire to give notice to the other, such notice must be in writing, sent by US Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of the paragraph. For the present, the parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools  
The School Board of Broward County, FL  
600 Southeast Third Avenue  
Fort Lauderdale, Florida 33301

With a Copy to: Director of Student Transportation & Fleet Services  
The School Board of Broward County, FL  
3895 NW 10 Avenue  
Fort Lauderdale, Florida 33309

To ASP: After School Programs, Inc.  
Tera Ivy, Director of After School Programs  
1520 South Powerline Road  
Deerfield Beach, FL 33442

2.16 **Background Screening** ASP agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds will successfully complete the

background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of ASP or its personnel providing any services under the conditions described in the previous sentence. ASP shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to ASP and its personnel. The Parties agree that the failure of ASP to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. ASP agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting in ASP's failure to comply with the requirements of this section or Sections 1012.32 and 1012.465, Florida Statutes.

### 2.17 **Indemnification**

This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

A. By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its agent's acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

B. By ASP: ASP agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments costs and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by ASP, its agents, servants or employees; the equipment of ASP, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of ASP or the negligence of ASP's agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by ASP, SBBC or otherwise.

## **ARTICLE 3 – GENERAL CONDITIONS**

3.01 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such

time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

3.03 **Independent Contractor.** The parties to this agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.04 **Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

3.05 **Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof upon thirty (30) days written notice to the other parties of its desire to terminate this Agreement. SBBC shall have no liability for any property left on SBBC's property by any party to this Agreement after the termination of this Agreement. Any party contracting with SBBC under this Agreement agrees that any of its property placed upon SBBC's facilities pursuant to the Agreement shall be removed with ten (10) business days following the termination, conclusion or cancellation of this Agreement and that any such property remaining upon SBBC's facilities after that time shall be deemed to be abandoned, title to such property shall pass to SBBC, and SBBC may use or dispose of such property as SBBC deems fit and appropriate.

3.06 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a



default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.07 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

3.08 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBBC.

3.09 **Public Records.** Pursuant to Section 119.0701, Florida Statutes, any party contracting with SBBC is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that SBBC would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; (d) meet all requirements for retaining public records and transfer, at no cost to SBBC, all public records in that party's possession upon termination of its Agreement with SBBC and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored electronically must be provided to SBBC in a format that is compatible with SBBC's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

3.10 **Student Records.** Notwithstanding any provision to the contrary within this Agreement, any party contracting with SBBC under this Agreement shall fully comply with the requirements of Sections 1002.22 and 1002.221, Florida Statutes; FERPA, and any other state or federal law or regulation regarding the confidentiality of student information and records. Each such party agrees, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes.

3.11 **Compliance with Laws.** Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.12 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.13 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

3.14 **Entirety of Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.15 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.16 **Assignment.** Neither this Agreement or any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

3.17 **Incorporation by Reference.** Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

3.18 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.19 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.20 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.21 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.22 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.23 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.24 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and

allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.25 **Contract Administration.** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.26 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date first above written.


**FOR SBBC**

(Corporate Seal)

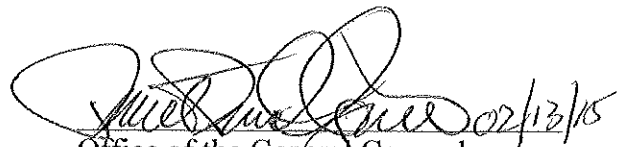
THE SCHOOL BOARD OF  
BROWARD COUNTY, FLORIDA

ATTEST:

By   
Donna P. Korn, Chair

  
Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

 02/13/15  
Office of the General Counsel

**FOR ASP**

(Corporate Seal)

AFTER SCHOOL PROGRAMS INC

ATTEST:

\_\_\_\_\_  
, Secretary

-or-

Ana Rojas Alvarez  
Witness

Patricia L. Wierling  
Witness

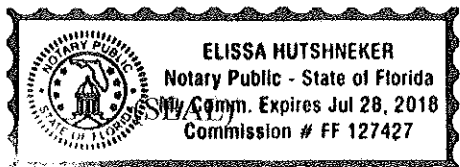
By: Dr. Verda M. Farrow  
Name and Title  
Executive Director  
Verda M. Farrow  
Printed Name

**The Following Notarization is Required For Every Agreement Without Regard to Whether the ASP Chose to Use a Secretary's Attestation or Two (2) Witnesses.**

STATE OF FLORIDA  
COUNTY OF Broward

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of January 2015 by Verda Farrow of ASP of Broward County, Florida, Inc. on behalf of the corporation/agency. He/She is personally known to me or produced as identification and did/did not first take an oath.

My Commission Expires:



[Signature]  
Signature - Notary Public

Elissa Hutshneker  
Printed Name of Notary

FF 127427  
Notary's Commission No.

## AGREEMENT

THIS AGREEMENT is made and entered into as of this 17<sup>th</sup> day of MARCH, by and between

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**  
(hereinafter referred to as "SBBC"),  
a body corporate and political subdivision of the State of Florida,  
whose principal place of business is  
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

**NEW HORIZON COMMUNITY DEVELOPMENT CORPORATION, INC.**  
(hereinafter referred to as "NEW HORIZON DEV. CORP."),  
whose principal place of business is  
1518 NW 17<sup>th</sup> Avenue  
Pompano Beach, Florida 33069

**WHEREAS**, the SBBC owns and operates a fleet of vehicles for the transportation of pupils; and

**WHEREAS**, NEW HORIZON DEV. CORP. provides recreational programs dependent upon availability of transportation; and

**WHEREAS**, Florida Statute 1006.261 (1) (c) provides for nonprofit corporations and nonprofit civic associations to use school buses to transport school-age children for their sponsored activities; and

**WHEREAS**, NEW HORIZON DEV. CORP., being eligible under this legislation to use school buses, desires to enter into this Agreement with the SBBC to define the relationship between the two parties and set forth the rights and obligations herein;

**NOW, THEREFORE**, in consideration of the premises and of mutual covenants contained hereafter and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

### ARTICLE 1 - RECITALS

1.01 **Recitals** The Parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

## **ARTICLE 2 – SPECIAL CONDITIONS**

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on June 1, 2015 and conclude on May 31, 2016.

2.02 **Transportation Needs.** Prior to the execution of the Agreement, the two parties have discussed the transportation needs of NEW HORIZON DEV. CORP. and the approximate number of school buses that may be made available to NEW HORIZON DEV. CORP.; however, nothing herein contained will obligate the SBBC to provide buses to NEW HORIZON DEV. CORP., if it is deemed by the SBBC that such action will reduce or delay transportation of pupils. NEW HORIZON DEV. CORP., through its Contract Administrator, agrees to provide the SBBC with two (2) weeks notice in order to obtain the school vehicles for transportation purposes as described within the Agreement. Said requests for transportation are limited to days that school is not in session, such as employee planning days, summer or holiday breaks and/or weekends. The SBBC agrees to provide the referenced school vehicles to NEW HORIZON DEV. CORP. on an emergency notice basis of between forty-eight (48) hours and two (2) weeks notice time prior to needed services. This emergency notice basis must not exceed four (4) times per Agreement year.

2.03 **Payment of Operation Cost by NEW HORIZON DEV. CORP.** NEW HORIZON DEV. CORP. agrees to fully reimburse the SBBC for the operating cost of school buses used by NEW HORIZON DEV. CORP. during the term of this Agreement. NEW HORIZON DEV. CORP. shall pay the SBBC posted transportation rate for a minimum of four (4) hours per day for each regular school bus provided, which sum shall cover use, operational costs, and reimbursement for driver's hours and all other costs and expenses incurred by the SBBC in supplying the regular buses. Should a wheelchair lift equipped bus be required, NEW HORIZON DEV. CORP. shall pay the SBBC's posted bus attendant rate, for a minimum of four (4) hours per day for each wheelchair lift equipped bus provided, in addition to the posted transportation rate.

2.04 **Lack of Petroleum Products.** It is further agreed that in the event petroleum products required to operate this Agreement, or part of this Agreement, become unavailable, the obligations of each party hereunder may be terminated by the SBBC upon no less than twenty-four (24) hours notice in writing to NEW HORIZON DEV. CORP.. The SBBC shall be the final authority as to the availability of petroleum products.

2.05 **Bus Drivers Assigned by SBBC.** When school vehicles are used by NEW HORIZON DEV. CORP., under no circumstances will the vehicle be driven by anyone other than bus drivers qualified, trained, certified, and assigned by the SBBC. School buses will be operated under the same rules, regulations, policies, and procedures as those relating to school pupil transportation and governed accordingly. Drivers shall at all times be considered employees or agents of the SBBC.

2.06 **Damage to the Vehicles Paid by NEW HORIZON DEV. CORP.** NEW HORIZON DEV. CORP. agrees to pay for any damage to the school vehicles while such vehicles are under NEW HORIZON DEV. CORP.'s use which damage is attributable directly to that use, and caused by NEW HORIZON DEV. CORP., its' employees, or its' program participants. All accidents involving a school vehicle will be reported as provided by procedures now existent or required in the daily operation of the SBBC.

2.07 **Reporting of Incidents Involving Non Pupil Passengers.** NEW HORIZON DEV. CORP. agrees to report to the SBBC the nature and extent if any incidents resulting in property damage or personal injury to a passenger while boarding, riding in, or de-boarding from such vehicle and indemnify and hold harmless the SBBC from any and all claims arising out of such incidents, to the fullest extent allowed by the Constitution and the laws of the state of Florida, if such injury or damage is caused by any act of omission of an employee of NEW HORIZON DEV. CORP..

2.08 **Method of Reimbursement.** Unless otherwise agreed upon by the parties in writing, the costs borne by the SBBC on behalf of NEW HORIZON DEV. CORP. under this Agreement will be reimbursed as invoiced; and in a reimbursement period not to exceed thirty (30) days from presentment or receipt of the referenced invoice to NEW HORIZON DEV. CORP. Contract Administrator. Past due invoices will be sent for all invoices not paid within thirty days.

2.09 **Geographic Limitations on the Use of School Vehicle.** NEW HORIZON DEV. CORP. will limit its use of school vehicles to and within the confines of the Tri-County Area. Under no circumstances should the vehicle be taken outside of the geographical limits set forth in this paragraph.

2.10 **Passenger Load Limit.** When NEW HORIZON DEV. CORP.'s use of the school vehicle (s) is made, the passenger capacity transported shall not exceed the rated capacity of the said vehicle(s). Standees shall not be permitted at any time. NEW HORIZON DEV. CORP. shall not use school vehicles for any purpose whatsoever outside of the use covered by this Agreement.

2.11 **Cancellation.** NEW HORIZON DEV. CORP. reserves the right to cancel any trips it deems necessary with a minimum of twenty-four (24) hours notice prior to the scheduled trip at no charge. Otherwise, cancellations not meeting the minimum notice will result in a four hour charge at the posted transportation rate.

2.12 **Contract Administrator and Contract Representative** NEW HORIZON DEV. CORP.'s Contract Administrator for this Agreement is Bessie Showers, Executive Director, or designee. The Contract Representative for the SBBC is the Director of Student Transportation and Fleet Services, 3895 Northwest 10th Avenue, Oakland Park, Florida 33309, or designee.



2.13 **Insurance** NEW HORIZON DEV. CORP. agrees to maintain the following insurance coverage:

Comprehensive General Liability coverage with bodily injury limits of not less than \$1,000,000 per occurrence with combined single limit for bodily injury and property damage. The SBBC shall be named as an additional insured under the General Liability policy.

2.14 **Inspection of NEW HORIZON DEV. CORP.'S Records by SBBC.** NEW HORIZON DEV. CORP. shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All NEW HORIZON DEV. CORP.'S Records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify any and all invoices, billings, payments and/or claims submitted by NEW HORIZON DEV. CORP. or any of NEW HORIZON DEV. CORP.'S payees pursuant to this Agreement. NEW HORIZON DEV. CORP.'S Records subject to examination shall include, without limitation, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. NEW HORIZON DEV. CORP.'S Records subject to this section shall include any and all documents pertinent to the evaluation, analysis, verification and reconciliation of any and all expenditures under this Agreement without regard to funding sources.

(a) NEW HORIZON DEV. CORP.'S Records Defined. For the purposes of this Agreement, the term "NEW HORIZON DEV. CORP.'S Records" shall include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement.

(b) Duration of Right to Inspect. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to NEW HORIZON DEV. CORP.'S Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to NEW HORIZON DEV. CORP. pursuant to this Agreement.

(c) Notice of Inspection. SBBC's agent or its authorized representative shall provide NEW HORIZON DEV. CORP. reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction.

(d) Audit Site Conditions. SBBC's agent or its authorized representative shall have access to NEW HORIZON DEV. CORP.'S facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(e) Failure to Permit Inspection. Failure by NEW HORIZON DEV. CORP. to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this Section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the denial of some or all of any NEW HORIZON DEV. CORP.'S claims for payment by SBBC.

(f) Overcharges and Unauthorized Charges. If an audit conducted in accordance with this Section discloses overcharges or unauthorized charges to SBBC by NEW HORIZON DEV. CORP. in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by NEW HORIZON DEV. CORP.. If the audit discloses billings or charges to which NEW HORIZON DEV. CORP. is not contractually entitled, NEW HORIZON DEV. CORP. shall pay said sum to SBBC within twenty (20) days of receipt of written demand under otherwise agreed to in writing by both parties.

(g) Inspection of Subcontractor's Records. NEW HORIZON DEV. CORP. shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by NEW HORIZON DEV. CORP. to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payee's costs from amounts payable by SBBC to NEW HORIZON DEV. CORP. pursuant to this Agreement and such excluded costs shall become the liability of NEW HORIZON DEV. CORP..

(h) Inspector General Audits. NEW HORIZON DEV. CORP. shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.15 **Notice** When any of the parties desire to give notice to the other, such notice must be in writing, sent by US Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of the paragraph. For the present, the parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools  
The School Board of Broward County, FL  
600 Southeast Third Avenue  
Fort Lauderdale, Florida 33301

With a Copy to: Director of Student Transportation & Fleet Services  
The School Board of Broward County, FL  
3895 NW 10 Avenue  
Fort Lauderdale, Florida 33309

To NEW HORIZON DEV. CORP  
New Horizon Community Development  
Corporation, Inc.  
Bessie Showers, Executive Director  
1518 NW 17<sup>th</sup> Avenue  
Pompano Beach, FL 33069

2.16 **Background Screening** NEW HORIZON DEV. CORP. agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of NEW HORIZON DEV. CORP. or its personnel providing any services under the conditions described in the previous sentence. NEW HORIZON DEV. CORP. shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to NEW HORIZON DEV. CORP. and its personnel. The Parties agree that the failure of NEW HORIZON DEV. CORP. to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. NEW HORIZON DEV. CORP. agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting in NEW HORIZON DEV. CORP.'s failure to comply with the requirements of this section or Sections 1012.32 and 1012.465, Florida Statutes.

2.17 **Indemnification**

This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

A. By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its agent's acts of

negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

B. By NEW HORIZON DEV. CORP.: NEW HORIZON DEV. CORP. agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments costs and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by NEW HORIZON DEV. CORP., its agents, servants or employees; the equipment of NEW HORIZON DEV. CORP., its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of NEW HORIZON DEV. CORP. or the negligence of NEW HORIZON DEV. CORP.'s agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by NEW HORIZON DEV. CORP., SBBC or otherwise.

### **ARTICLE 3 – GENERAL CONDITIONS**

3.01 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

3.03 **Independent Contractor.** The parties to this agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or

insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.04 **Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

3.05 **Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof upon thirty (30) days written notice to the other parties of its desire to terminate this Agreement. SBBC shall have no liability for any property left on SBBC's property by any party to this Agreement after the termination of this Agreement. Any party contracting with SBBC under this Agreement agrees that any of its property placed upon SBBC's facilities pursuant to the Agreement shall be removed with ten (10) business days following the termination, conclusion or cancellation of this Agreement and that any such property remaining upon SBBC's facilities after that time shall be deemed to be abandoned, title to such property shall pass to SBBC, and SBBC may use or dispose of such property as SBBC deems fit and appropriate.

3.06 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.07 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

3.08 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess

funds shall be refunded to SBBC with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBBC.

3.09 **Public Records**. Pursuant to Section 119.0701, Florida Statutes, any party contracting with SBBC is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that SBBC would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; (d) meet all requirements for retaining public records and transfer, at no cost to SBBC, all public records in that party's possession upon termination of its Agreement with SBBC and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored electronically must be provided to SBBC in a format that is compatible with SBBC's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

3.10 **Student Records**: Notwithstanding any provision to the contrary within this Agreement, any party contracting with SBBC under this Agreement shall fully comply with the requirements of Sections 1002.22 and 1002.221, Florida Statutes; FERPA, and any other state or federal law or regulation regarding the confidentiality of student information and records. Each such party agrees, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes.

3.11 **Compliance with Laws**. Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.12 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.13 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

3.14 **Entirety of Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.15 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.16 **Assignment.** Neither this Agreement or any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

3.17 **Incorporation by Reference.** Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

3.18 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.19 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.20 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and

that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.21 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.22 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.23 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.24 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.25 **Contract Administration:** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.26 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date first above written.

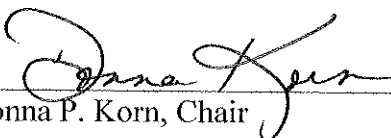



**FOR SBBC**

(Corporate Seal)

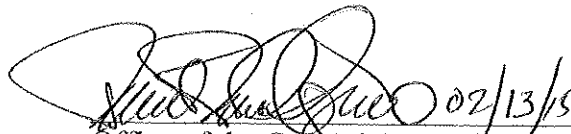
THE SCHOOL BOARD OF  
BROWARD COUNTY, FLORIDA

ATTEST:

By   
Donna P. Korn, Chair

  
Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

 02/13/5  
Office of the General Counsel

**FOR NEW HORIZON DEV. CORP.**

(Corporate Seal)

NEW HORIZON COMMUNITY  
DEVELOPMENT CORPORATION, INC

ATTEST:

\_\_\_\_\_  
, Secretary

By:

Bessie Showers / Executive Dir  
Name and Title

Bessie Showers  
Printed Name

-or-  
Coulson A. [Signature]  
Witness

[Signature]  
Witness

**The Following Notarization is Required For Every Agreement Without Regard to Whether the NEW HORIZON DEV. CORP. Chose to Use a Secretary's Attestation or Two (2) Witnesses.**

STATE OF FLORIDA  
COUNTY OF Broward

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of February, 2015 by Bessie Showers of NEW HORIZON DEV. CORP. of Broward County, Florida, Inc. on behalf of the corporation/agency. He/She is personally known to me or produced \_\_\_\_\_ as identification and did/did not first take an oath.

My Commission Expires:



(SEAL)

CLARENCE M. FULLER  
MY COMMISSION # FF 028167  
EXPIRES: June 21, 2017  
Bonded Thru Budget Notary Services

Clarence M. Fuller  
Signature – Notary Public

Clarence M. Fuller  
Printed Name of Notary

FF 028167  
Notary's Commission No.

**AGREEMENT**

THIS AGREEMENT is made and entered into as of this 17<sup>th</sup> day of

Masch., by and between

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**  
(hereinafter referred to as "SBBC"),  
a body corporate and political subdivision of the State of Florida,  
whose principal place of business is  
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

**YOUNG MEN'S CHRISTIAN ASSOCIATION OF BROWARD COUNTY,  
FLORIDA INC.**  
(hereinafter referred to as "YMCA"),  
whose principal place of business is  
900 SE 3<sup>rd</sup> Avenue  
Fort Lauderdale, Florida 33316

**WHEREAS**, the SBBC owns and operates a fleet of vehicles for the transportation of pupils; and

**WHEREAS**, the YMCA provides recreational programs dependent upon availability of transportation; and

**WHEREAS**, Florida Statute 1006.261 (1) (c) provides for nonprofit corporations and nonprofit civic associations to use school buses to transport school-age children for their sponsored activities; and

**WHEREAS**, the YMCA, being eligible under this legislation to use school buses, desires to enter into this Agreement with the SBBC to define the relationship between the two parties and set forth the rights and obligations herein;

**NOW, THEREFORE**, in consideration of the premises and of mutual covenants contained hereafter and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

**ARTICLE 1 - RECITALS**

1.01 **Recitals.** The Parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

## **ARTICLE 2 – SPECIAL CONDITIONS**

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on June 1, 2015 and conclude on May 31, 2016.

2.02 **Transportation Needs.** Prior to the execution of the Agreement, the two parties have discussed the transportation needs of the YMCA and the approximate number of school buses that may be made available to the YMCA; however, nothing herein contained will obligate the SBBC to provide buses to the YMCA, if it is deemed by the SBBC that such action will reduce or delay transportation of pupils. The YMCA, through its Contract Administrator, agrees to provide the SBBC with two (2) weeks notice in order to obtain the school vehicles for transportation purposes as described within the Agreement. Said requests for transportation are limited to days that school is not in session, such as employee planning days, summer or holiday breaks and/or weekends. The SBBC agrees to provide the referenced school vehicles to the YMCA on an emergency notice basis of between forty-eight (48) hours and two (2) weeks notice time prior to needed services. This emergency notice basis must not exceed four (4) times per Agreement year.

2.03 **Payment of Operation Cost by YMCA.** The YMCA agrees to fully reimburse the SBBC for the operating cost of school buses used by the YMCA during the term of this Agreement. The YMCA shall pay the SBBC posted transportation rate for a minimum of four (4) hours per day for each regular school bus provided, which sum shall cover use, operational costs, and reimbursement for driver's hours and all other costs and expenses incurred by the SBBC in supplying the regular buses. Should a wheelchair lift equipped bus be required, the YMCA shall pay the SBBC's posted bus attendant rate, for a minimum of four (4) hours per day for each wheelchair lift equipped bus provided, in addition to the posted transportation rate.

2.04 **Lack of Petroleum Products.** It is further agreed that in the event petroleum products required to operate this Agreement, or part of this Agreement, become unavailable, the obligations of each party hereunder may be terminated by the SBBC upon no less than twenty-four (24) hours notice in writing to the YMCA. The SBBC shall be the final authority as to the availability of petroleum products.

2.05 **Bus Drivers Assigned by SBBC.** When school vehicles are used by the YMCA, under no circumstances will the vehicle be driven by anyone other than bus drivers qualified, trained, certified, and assigned by the SBBC. School buses will be operated under the same rules, regulations, policies, and procedures as those relating to school pupil transportation and governed accordingly. Drivers shall at all times be considered employees or agents of the SBBC.

2.06 **Damage to the Vehicles Paid by YMCA.** The YMCA agrees to pay for any damage to the school vehicles while such vehicles are under the YMCA's use

which damage is attributable directly to that use, and caused by YMCA, its' employees, or its' program participants. All accidents involving a school vehicle will be reported as provided by procedures now existent or required in the daily operation of the SBBC.

2.07 **Reporting of Incidents Involving Non Pupil Passengers.** YMCA agrees to report to the SBBC the nature and extent if any incidents resulting in property damage or personal injury to a passenger while boarding, riding in, or de-boarding from such vehicle and indemnify and hold harmless the SBBC from any and all claims arising out of such incidents, to the fullest extent allowed by the Constitution and the laws of the state of Florida, if such injury or damage is caused by any act of omission of an employee of the YMCA.

2.08 **Method of Reimbursement.** Unless otherwise agreed upon by the parties in writing, the costs borne by the SBBC on behalf of the YMCA under this Agreement will be reimbursed as invoiced; and in a reimbursement period not to exceed thirty (30) days from presentment or receipt of the referenced invoice to the YMCA Contract Administrator. Past due invoices will be sent for all invoices not paid within thirty days.

2.09 **Geographic Limitations on the Use of School Vehicles.** The YMCA will limit its use of school vehicles to and within the confines of the Tri-County Area. Under no circumstances should the vehicle be taken outside of the geographical limits set forth in this paragraph.

2.10 **Passenger Load Limit.** When the YMCA's use of the school vehicle (s) is made, the passenger capacity transported shall not exceed the rated capacity of the said vehicle(s). Standees shall not be permitted at any time. The YMCA shall not use school vehicles for any purpose whatsoever outside of the use covered by this Agreement.

2.11 **Cancellation.** YMCA reserves the right to cancel any trips it deems necessary with a minimum of twenty-four (24) hours notice prior to the scheduled trip at no charge. Otherwise, cancellations not meeting the minimum notice will result in a four hour charge at the posted transportation rate.

2.12 **Contract Administrator and Contract Representative.** YMCA's Contract Administrator for this Agreement is Kerry-Ann Royes, Director of Operations, or designee. The Contract Representative for the SBBC is the Director of Student Transportation and Fleet Services, 3895 Northwest 10th Avenue, Oakland Park, Florida 33309, or designee.

2.13 **Insurance.** YMCA agrees to maintain the following insurance coverage:

Comprehensive General Liability coverage with bodily injury limits of not less than \$1,000,000 per occurrence with combined single limit for bodily injury and property

damage. The SBBC shall be named as an additional insured under the General Liability policy.

2.14 **Inspection of YMCA'S Records by SBBC.** YMCA shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All YMCA'S Records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify any and all invoices, billings, payments and/or claims submitted by YMCA or any of YMCA'S payees pursuant to this Agreement. YMCA'S Records subject to examination shall include, without limitation, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. YMCA'S Records subject to this section shall include any and all documents pertinent to the evaluation, analysis, verification and reconciliation of any and all expenditures under this Agreement without regard to funding sources.

(a) **YMCA'S Records Defined.** For the purposes of this Agreement, the term "YMCA'S Records" shall include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement.

(b) **Duration of Right to Inspect.** For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to YMCA'S Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to YMCA pursuant to this Agreement.

(c) **Notice of Inspection.** SBBC's agent or its authorized representative shall provide YMCA reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction.

(d) **Audit Site Conditions.** SBBC's agent or its authorized representative shall have access to YMCA'S facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(e) Failure to Permit Inspection. Failure by YMCA to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this Section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the denial of some or all of any YMCA'S claims for payment by SBBC.

(f) Overcharges and Unauthorized Charges. If an audit conducted in accordance with this Section discloses overcharges or unauthorized charges to SBBC by YMCA in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by YMCA. If the audit discloses billings or charges to which YMCA is not contractually entitled, YMCA shall pay said sum to SBBC within twenty (20) days of receipt of written demand under otherwise agreed to in writing by both parties.

(g) Inspection of Subcontractor's Records. YMCA shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by YMCA to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payee's costs from amounts payable by SBBC to YMCA pursuant to this Agreement and such excluded costs shall become the liability of YMCA.

(h) Inspector General Audits. YMCA shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.15 **Notice** When any of the parties desire to give notice to the other, such notice must be in writing, sent by US Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of the paragraph. For the present, the parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools  
The School Board of Broward County, FL  
600 Southeast Third Avenue  
Fort Lauderdale, Florida 33301

With a Copy to: Director of Student Transportation & Fleet Services  
The School Board of Broward County, FL  
3895 NW 10 Avenue  
Fort Lauderdale, Florida 33309

To YMCA: YMCA of Broward County, Florida, Inc.  
Kerry-Ann Royes, Director of Operations  
900 SE 3<sup>rd</sup> Avenue  
Fort Lauderdale, FL 33316

2.16 **Background Screening** YMCA agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of YMCA or its personnel providing any services under the conditions described in the previous sentence. YMCA shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to YMCA and its personnel. The Parties agree that the failure of YMCA to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. YMCA agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting in YMCA's failure to comply with the requirements of this section or Sections 1012.32 and 1012.465, Florida Statutes.

2.17 **Indemnification.** This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

A. By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its agent's acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

B. By YMCA: YMCA agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments costs and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by YMCA, its agents, servants or employees; the equipment of YMCA, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of YMCA or the negligence of YMCA's agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by YMCA, SBBC or otherwise.



### **ARTICLE 3 – GENERAL CONDITIONS**

3.01 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

3.03 **Independent Contractor.** The parties to this agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.04 **Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

3.05 **Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof upon thirty (30) days written notice to the other parties of its desire to terminate this Agreement. SBBC shall have no liability for any property left on SBBC's property by any party to this Agreement after the termination of this Agreement. Any party contracting with SBBC under this Agreement agrees that any of its property placed upon SBBC's facilities pursuant to the Agreement shall be removed with ten (10) business days following the termination, conclusion or cancellation of this Agreement and that any such property remaining upon SBBC's facilities after that time shall be deemed to be abandoned, title to such property shall pass

to SBBC, and SBBC may use or dispose of such property as SBBC deems fit and appropriate.

3.06 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.07 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

3.08 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBBC.

3.09 **Public Records.** Pursuant to Section 119.0701, Florida Statutes, any party contracting with SBBC is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that SBBC would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; (d) meet all requirements for retaining public records and transfer, at no cost to SBBC, all public records in that party's possession upon termination of its Agreement with SBBC and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored electronically must be provided to SBBC in a format that is compatible with SBBC's information technology

systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

3.10 **Student Records.** Notwithstanding any provision to the contrary within this Agreement, any party contracting with SBBC under this Agreement shall fully comply with the requirements of Sections 1002.22 and 1002.221, Florida Statutes; FERPA, and any other state or federal law or regulation regarding the confidentiality of student information and records. Each such party agrees, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes.

3.11 **Compliance with Laws.** Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.12 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.13 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

3.14 **Entirety of Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.15 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.16 **Assignment.** Neither this Agreement or any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

3.17 **Incorporation by Reference.** Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

3.18 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.19 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.20 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.21 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.22 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.23 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented

by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.24 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.25 **Contract Administration.** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.26 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date first above written.

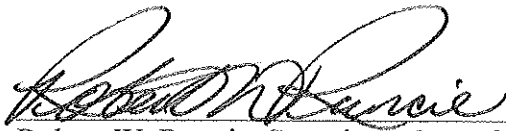
**FOR SBBC**

(Corporate Seal)


THE SCHOOL BOARD OF  
BROWARD COUNTY, FLORIDA

ATTEST:

By   
Donna P. Korn, Chair

  
Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

 02/11/15  
Office of the General Counsel

**FOR YMCA**

(Corporate Seal)

YOUNG MEN'S CHRISTIAN ASSOCIATION  
OF BROWARD COUNTY, FLORIDA, INC.

ATTEST:

\_\_\_\_\_  
, Secretary

-or-

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

By:

*[Signature]*  
Name and Title

Sheryl A. Woods  
Printed Name

**The Following Notarization is Required For Every Agreement Without Regard to Whether the YMCA Chose to Use a Secretary's Attestation or Two (2) Witnesses.**

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this 2nd day of February 2015 by Sheryl A. Woods of YMCA of Broward County, Florida, Inc. on behalf of the corporation/agency. He/She is personally known to me or produced FL-DL as identification and did/did not first take an oath.

My Commission Expires:

*[Signature]*  
Signature - Notary Public

Anne Alexandra Lemoine  
Printed Name of Notary

FF 158542  
Notary's Commission No.

