



AGENDA REQUEST FORM

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

MEETING DATE Jun 15 2016 10:15AM - Regular School Board Meeting

Special Order Request
 Yes No

ITEM No.:
EE-1.

AGENDA ITEM OPEN ITEMS

Time

CATEGORY EE. OFFICE OF STRATEGY & OPERATIONS

DEPARTMENT Transportation

Open Agenda
 Yes No

TITLE:
Transportation Agreements for Cities and Non-Profit Organization Recreation Programs

REQUESTED ACTION:
Approve agreements between The School Board of Broward County, Florida, and the City of Coral Springs; City of Deerfield Beach; City of Lauderdale Lakes; City of Pompano Beach and the non-profit organizations of After School Programs, Inc.; New Horizon Community Development Corporation, Inc.; and the YMCA of South Florida, Inc., to provide school bus transportation for recreational programs for a period from board approval date through June 30, 2017.

SUMMARY EXPLANATION AND BACKGROUND:
The transportation agreements allow the cities and non-profit organizations to utilize District 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. 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 reimbursement rate of \$70 per hour plus \$28 per bus attendant, if needed.

EXHIBITS: (List)
(1) City of Coral Springs Transportation Agreement (2) City of Deerfield Beach Transportation Agreement (3) City of Lauderdale Lakes Transportation Agreement (4) City of Pompano Beach Transportation Agreement (5) After School Programs Transportation Agreement (6) New Horizon Community Development Transportation Agreement (7) YMCA Transportation Agreement

BOARD ACTION:
APPROVED
(For Official School Board Records Office Only)

SOURCE OF ADDITIONAL INFORMATION:
Name: Patricia A. Snell Phone: 754-321-4402
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
6/3/2016, 2:19:59 PM

Approved In Open Board Meeting On: JUN 15 2016
By: *Roalind Orjuel*
School Board Chair

AGREEMENT

June **THIS AGREEMENT is made and entered into as of this 15th day of**
, 2016, 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 CORAL SPRINGS
(hereinafter referred to as "CITY"),
whose principal place of business is
9551 West Sample Road
Coral Springs, Florida 33065

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 upon execution by all parties and conclude on June 30, 2017. (K) 5/9/16

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 Rick Engle, Parks and Recreation 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.** CITY 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 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.

2.15 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, FL 33301

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

To CITY: City of Coral Springs
Leonardo Bermudez, Purchasing Agent II
9551 West Sample Road
Coral Springs, FL 33065

2.16 **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.

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, state and local laws, SBBC policies, 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 **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.

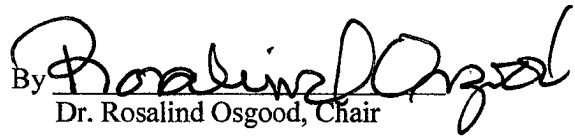
3.27 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this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


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

FOR SBBC



THE SCHOOL BOARD OF
BROWARD COUNTY, FLORIDA

By 
Dr. Rosalind Osgood, Chair


Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:



Digitally signed by Kathelyn Jacques-Adams
DN: cn=Kathelyn Jacques-Adams, o=The School Board of
Broward County, Florida, ou=Office of the General Counsel,
email=kathelyn.jacques-adams@browardschools.com, c=US
Reason: City of Coral Springs - Transportation -
reimbursement 2016-2017
Location: N/A
Date: 2016.04.06 10:11:50 -04'00'

Office of the General Counsel

FOR CITY

(Corporate Seal)

Approved as to form

Sherry Whitacre

Sherry L. Whitacre, Deputy
City Attorney

CITY OF CORAL SPRINGS

ATTEST:

, Secretary

By:

Angelo Salomone

PURCHASING ADMIN.
Name and Title

ANGELO SALOMONE
Printed Name

or-
[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 23 day of March, 2016 by Angelo Salomone of CITY OF CORAL SPRINGS 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:

Mary L. Marinace
Signature - Notary Public

Mary L. Marinace
Printed Name of Notary

(SEAL)



Notary's Commission No.

AGREEMENT

THIS AGREEMENT is made and entered into as of this 15th day of June, 2016, 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 DEERFIELD BEACH
(hereinafter referred to as "CITY"),
whose principal place of business is
150 NE 2nd Ave
Deerfield Beach, Florida 33441-3598

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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2.06 **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 Rick Engle, Parks and Recreation 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.** CITY 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 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.

2.15 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, FL 33301

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

To CITY: City of Deerfield Beach
Marisa Ostanek, Recreation Supervisor II
150 NE 2nd Avenue
Deerfield Beach, FL 33441-3598

2.16 **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.

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, state and local laws, SBBC policies, 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.

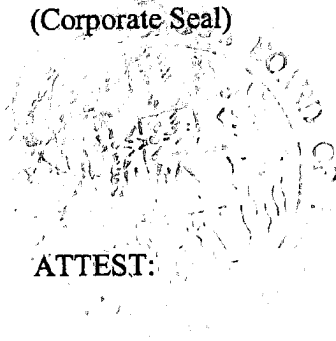
3.26 **Indemnification.** Each party agrees to be fully responsible for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence. This section shall survive the termination of all 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.

3.27 **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.

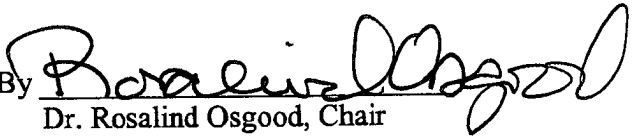
FOR SBBC

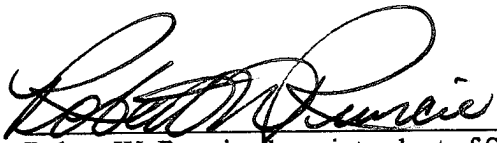
(Corporate Seal)



ATTEST:

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

By 
Dr. Rosalind Osgood, Chair


Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:



Digitally signed by Kathelyn Jacques-Adams
DN: cn=Kathelyn Jacques-Adams, o=The School
Board of Broward County, Florida, ou=Office of the
General Counsel, email=kathelyn.jacques-
adams@browardschools.com, c=US
Reason: City of Deerfield Beach - Transportation -
Section 1006.261(1)(c), Florida Statutes
Date: 2016.04.27 16:58:37 -04'00'

Office of the General Counsel

FOR CITY

(Corporate Seal)

CITY OF DEERFIELD BEACH

ATTEST:

[Signature]
Secretary
-or-

By: *Burgess Hansen*
Name and Title
Burgess Hansen
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 30th day of March, 2016, by Burgess Hansen of CITY OF DEERFIELD BEACH 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.

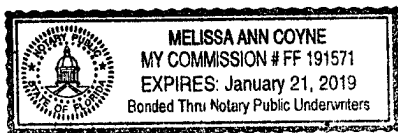
My Commission Expires:

[Signature]
Signature – Notary Public

Melissa Coyne
Printed Name of Notary

FF191571
Notary's Commission No.

(SEAL)



AGREEMENT

THIS AGREEMENT is made and entered into as of this 15th day of June, 2016, 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 36th 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 upon execution by all parties and conclude on June 30, 2017.

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 **Insurance.** The CITY 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 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.

2.15 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, FL 33301

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

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

2.16 **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.

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, state and local laws, SBBC policies, 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.

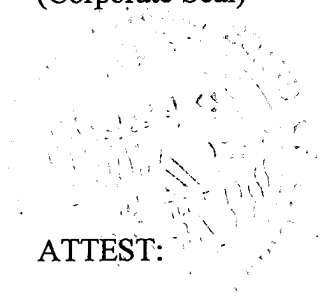
3.26 **Indemnification.** Each party agrees to be fully responsible for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence. This section shall survive the termination of all 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.

3.27 **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 Rosalind Osgood
Dr. Rosalind Osgood, Chair

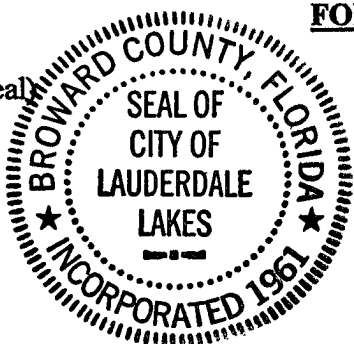
Robert W. Runcie
Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

Patricia M. Squires-Adams 4-25-11
Office of the General Counsel

FOR CITY

(Corporate Seal)



ATTEST:

Sharon Housler
, Secretary

-or-

CITY OF LAUDERDALE LAKES

By: [Signature] City Manager

Name and Title

Kelvin L. Baker, Sr., ICMA-CM
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 7th day of April, 2016 by Kelvin L. Baker, Sr. of the 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.

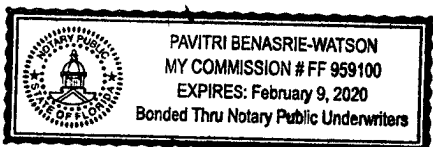
My Commission Expires:

[Signature]
Signature - Notary Public

Pavtri Benasrie-Watson
Printed Name of Notary

FF # 959100
Notary's Commission No.

(SEAL)



Og. 7

AGREEMENT

THIS AGREEMENT is made and entered into as of this 15th day of June, 2016, 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 POMPANO BEACH
(hereinafter referred to as "CITY"),
whose principal place of business is
1801 NE 6th Street
Pompano Beach, Florida 33060

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 upon execution by all parties and conclude on June 30, 2017.

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 is Mark Beaudreau, Recreation Programs Administrator, 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.** CITY 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 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.

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(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.

2.15 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, FL 33301

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

To CITY: City of Pompano Beach
Mark Beaudreau, Recreation Program Admin.
1801 NE 6th Street
Pompano, FL 33060

2.16 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.

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.

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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, state and local laws, SBBC policies, 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 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.

3.27 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.

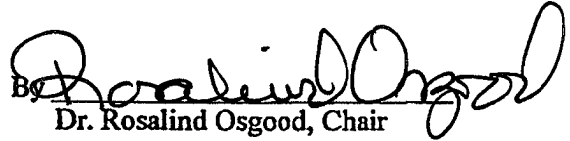
IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date first above written.

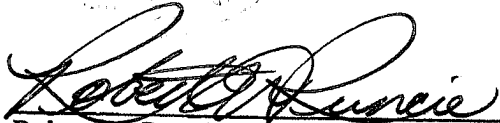
FOR SBBC

(Corporate Seal)

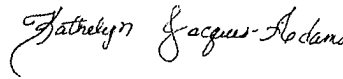


**THE SCHOOL BOARD OF
BROWARD COUNTY, FLORIDA**

By 
Dr. Rosalind Osgood, Chair


Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:



Digitally signed by Kathelyn Jacques-Adams
DN: cn=Kathelyn Jacques-Adams, o=The School
District of Broward County, Florida, ou=The Office of
the General Counsel, email=kathelyn.jacques-
adams@browardschools.com, c=US
Date: 2016.05.31 18:21:18 -04'00'

Office of the General Counsel

"CITY":

Witnesses:

CITY OF POMPANO BEACH

[Signature]
[Signature]

By: [Signature]
LAMAR FISHER, MAYOR

By: [Signature]
DENNIS W. BEACH, CITY MANAGER

Attest:

[Signature]
ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved As To Form:

[Signature]
MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

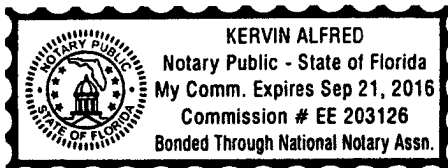
The foregoing instrument was acknowledged before me this 24th day of May, 2016 by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

[Signature]
NOTARY PUBLIC, STATE OF FLORIDA

Kervin Alfred
(Name of Acknowledger Typed, Printed or Stamped)

Commission Number



AGREEMENT

THIS AGREEMENT is made and entered into as of this 15th day of June, 2016, 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
3301 College Ave
Fort Lauderdale, Florida 33314

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 upon execution by all parties and conclude on June 30, 2017. 

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 the 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 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) hour's 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 Afterschool 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, FL 33301

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

To ASP: After School Programs, Inc.
Tera Ivey, 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.

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, state and local laws, SBBC policies, 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. **Liability.** 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 employees' 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.

3.27 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

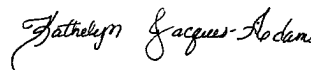



Robert W. Runcie, Superintendent of Schools

THE SCHOOL BOARD OF
BROWARD COUNTY, FLORIDA

By 
Dr. Rosalind Osgood, Chair

Approved as to Form and Legal Content:



Digitally signed by Kathelyn Jacques-Adams
DN: cn=Kathelyn Jacques-Adams, o=The School Board of Broward County, Florida, ou=Office of the General Counsel, email=kathelyn.jacques-adams@browardschools.com, c=US
Reason: After School Programs Inc. - Transportation - Section 1006.261 (1)(c), Florida Statutes
Date: 2016.04.27 16:49:32 -0400

Office of the General Counsel

FOR ASP

(Corporate Seal)

AFTER SCHOOL
PROGRAMS INC.

ATTEST:

, Secretary

By: [Signature] Director of
Grant Administration
Name and Title
Elissa Hershner
Printed Name

-or-

[Signature]
Witness
[Signature]
Witness

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.

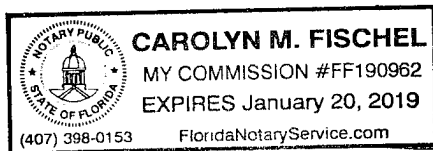
STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this ____ day of _____, 2016 by _____ of After School Programs 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
Carolyn M. Fischel
Printed Name of Notary

(SEAL)



Notary's Commission No.

AGREEMENT

THIS AGREEMENT is made and entered into as of this 15th day of June, 2016, 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 17th 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 upon execution by all parties and conclude on June 30, 2017. *AS*

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 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 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 Vehicles.** 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 17th 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.

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, state and local laws, SBBC policies, 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.

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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.

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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 **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.

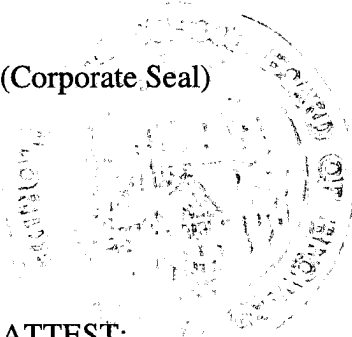
B. By NEW HORIZON DEV. CORP.: NEW HORIZON DEV. CORP. agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments costs and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court 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.

3.28 **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 Rosalind Osgood
Dr. Rosalind Osgood, Chair

Robert W. Runcie
Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

Cathleen Secyres-Adams 4-25-16
Office of the General Counsel

FOR NEW HORIZON DEV. CORP.

(Corporate Seal)

NEW HORIZON COMMUNITY
DEVELOPMENT CORPORATION, INC

ATTEST:

, Secretary

-or-

Seah S. Mohr

Witness

[Signature]

Witness

By:

Bessie Showers, Director

Name and Title

Bessie Showers

Printed Name

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 1st day of April, 2016 by Bessie Showers of New Horizon Community Development, 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: June 21 2017

Clarence M. Fuller

Signature – Notary Public

Clarence M. Fuller

Printed Name of Notary

FF 028167

Notary's Commission No.

(SEAL)



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

AGREEMENT

THIS AGREEMENT is made and entered into as of this 15th day of June, 2016, 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 SOUTH FLORIDA, INC.
(hereinafter referred to as "YMCA"),
whose principal place of business is
900 SE 3rd Avenue
Fort Lauderdale, Florida 33316

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

WHEREAS, 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, 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 upon execution by all parties and conclude on June 30, 2017.

JP 8-26-5/24/16

2.02 **Transportation Needs.** Prior to the execution of the Agreement, the two parties have discussed the transportation needs of YMCA and the approximate number of school buses that may be made available to 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. 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 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.** YMCA agrees to fully reimburse the SBBC for the operating cost of school buses used by YMCA during the term of this Agreement. 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, 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 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 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.** YMCA agrees to pay for any damage to the school vehicles while such vehicles are under 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 YMCA.

2.08 **Method of Reimbursement.** Unless otherwise agreed upon by the parties in writing, the costs borne by the SBBC on behalf of 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 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.** 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 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. 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) hour's 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, FL 33301

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

To YMCA: YMCA Of South Florida, Inc.
Kerry-Ann Royes, Director of Operations
900 SE 3rd 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.

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, state and local laws, SBBC policies, 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. **Liability.** 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 employees' 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.

3.27 **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.

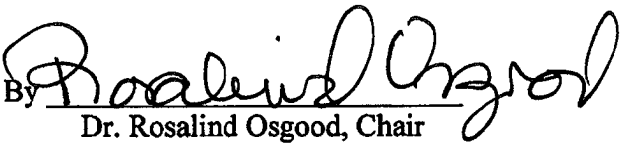
IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date first above written.



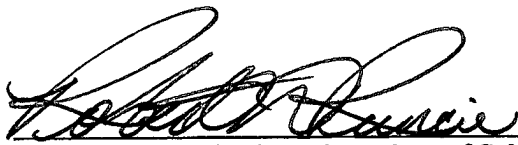
(Corporate Seal)

FOR SBBC

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By 
Dr. Rosalind Osgood, Chair

ATTEST:


Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:



Digitally signed by Kathelyn Jacques-Adams
DN: cn=Kathelyn Jacques-Adams, o=The School Board of
Broward County, Florida, ou=Office of the General Counsel,
email=kathelyn.jacques-adams@browardschools.com, c=US
Reason: Young Men's Christian Association of South Florida,
Inc. - Transportation - Section 1006.261(1)(c), Florida Statutes
Date: 2016.04.27 17:04:33 -04'00'

Office of the General Counsel

FOR YMCA

(Corporate Seal)

YOUNG MEN'S CHRISTIAN
ASSOCIATION OF SOUTH
FLORIDA, INC.

ATTEST:

, Secretary

By: John Puleio, V.P. of Finance
Name and Title

-or-

John Puleio
Printed Name

Kim G. [Signature]
Witness

A. Alexandra Lemoine
Witness

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 BROWARD

The foregoing instrument was acknowledged before me this 30th day of April, 2016 by John Puleio on behalf of the Young Men's Christian Association of South Florida, Inc. He/She is personally known to me or produced _____ as identification and did/did not first take an oath.

My Commission Expires: 11-30-2018



[Signature]
Signature - Notary Public

Okara Gardner-Eugene
Printed Name of Notary

FF 168309
Notary's Commission No.