

**CONCESSION AGREEMENT BETWEEN THE CITY OF CORAL SPRINGS AND THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA FOR FOOD AND BEVERAGE SERVICE AT THE SPORTSPLEX ATHLETIC FIELDS**

**THIS AGREEMENT**, made and entered into the \_\_\_\_ day of \_\_\_\_\_, 2020, by and between:

**CITY OF CORAL SPRINGS, FLORIDA**

a municipal corporation  
9500 West Sample Road  
Coral Springs, Florida 33065  
(hereinafter referred to as "CITY")

and

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

a body corporate and political subdivision of the State of Florida  
600 Southeast 3<sup>rd</sup> Avenue  
Fort Lauderdale, Florida 33301  
(hereinafter referred to as "CONCESSIONAIRE")

**WHEREAS**, CITY owns and operates the Sportsplex Athletic Field, hereinafter referred to as "Sportsplex," for the recreation and entertainment of patrons; and

**WHEREAS**, CITY is desirous of entering into a term concession agreement for food and beverage service to be managed by Coral Glades High School staff; now, therefore

**IN CONSIDERATION** of the covenants and conditions herein expressed and of the faithful performance of all such covenants and conditions, CITY and CONCESSIONAIRE do mutually agree as follows:

**SECTION 1. RECITALS**

The foregoing recitals are true and correct and are hereby incorporated into this Agreement.

**SECTION 2. CONCESSION AREAS**

2.1 CITY hereby grants to CONCESSIONAIRE and CONCESSIONAIRE hereby accepts from CITY, the exclusive use of the athletic field's concession area.

2.2 CONCESSIONAIRE is responsible to maintain the inside of the stand. The exterior of the building will be maintained by CITY.

2.3 CITY will provide electric and water. Electric is existing, any additional electric must be approved by CITY and paid for by CONCESSIONAIRE.

**SECTION 3.           TERM**

This Agreement shall become effective upon approval by CITY's Purchasing Manager and shall terminate on December 31, 2021 unless terminated earlier pursuant to the provisions of this Agreement.

**SECTION 4.           USE OF PREMISES**

4.1    CONCESSIONAIRE shall use the premises for the operation of food and beverage service at the Sportsplex. The privileges granted herein expressly exclude the sale of tobacco products, souvenirs and novelties.

4.2    CONCESSIONAIRE is responsible to assure that they have personnel with all the necessary Health Department Certifications for operating the stand.

4.3    CONCESSIONAIRE must provide CITY with the proper insurance for operating the stand.

4.4    CITY will provide the facility which includes triple sinks, hand sink, shelves, and counters. All other equipment must be provided by CONCESSIONAIRE.

4.5    Hours and days of operation will be agreed upon by CONCESSIONAIRE and the Park and Recreation Director. CONCESSIONAIRE shall not change or modify such use without the prior written consent of Purchasing Manager.

4.6    CONCESSIONAIRE shall conduct the authorized food and beverage service concession within the specified areas in order to provide food and beverage service to patrons, visitors, and attendees of the Sportsplex.

4.7    CONCESSIONAIRE shall not change or modify such use without the prior written consent of the Purchasing Manager.

**SECTION 5.           EXCLUSIVITY**

The rights and activities granted to CONCESSIONAIRE pursuant to this Agreement are exclusive only to the Sportsplex Athletic Fields. Nothing contained in this Agreement shall preclude CITY from charging other fees to patrons of Sportsplex for other amenities or concessions.

**SECTION 6.           FEES**

6.1    CITY and CONCESSIONAIRE agree that there is no monthly rental payment due to CITY during the term of this Agreement.

6.2 CONCESSIONAIRE shall pay to CITY, without billing on a monthly basis, the following percentages of financial statements:

- CONCESSIONAIRE will pay CITY Twenty percent (20%) of net revenue from the concession stand payable to CITY monthly
- CONCESSIONAIRE must provide a monthly financial statement showing expenses and revenue generated from the concession stand

6.3 CONCESSIONAIRE shall pay all fees required by this Agreement to the City of Coral Springs, 2501 Coral Springs Drive, Coral Springs, Florida 33065, Attn: Director of Parks and Recreation. Checks shall be made payable to the “City of Coral Springs.”

## **SECTION 7. SALES TAX**

The payment of state of Florida sales, consumer use or other similar taxes on concession goods is the responsibility of CONCESSIONAIRE and such tax shall be included in the price of the goods.

## **SECTION 8. ACCOUNTING AND FISCAL CONTROLS/REPORTS AND RECORDS**

8.1 CONCESSIONAIRE shall maintain during the term of this Agreement all books of account, reports, and records customarily used in this type of operation and such records as are necessary to document its activities pursuant to this Agreement and all monies collected hereunder, not limited to gross receipts. The form of all such records, cash registers, tapes, books, ledgers, journals, sales slips, and invoices, installed or used for recording the operations of CONCESSIONAIRE under this Agreement shall be kept to determine the financial status of CONCESSIONAIRE in accordance with generally accepted accounting principles. Subsequent recommendations for changes, additions, or deletions shall be contingent upon written approval of the CITY’s Finance Director. CITY reserves the right to reasonably modify reports and records requirements from CONCESSIONAIRE.

8.2 CONCESSIONAIRE shall, at its own expense, submit to the Contract Administrator within ninety (90) days following the end of the contract term, an end of the year financial report, which includes all of the revenue and expenses for the concession stand.

8.3 CONCESSIONAIRE shall be responsible for establishing internal control procedures for cash management and inventory. The internal control procedures shall be subject to review by CITY’s internal auditor. CONCESSIONAIRE shall allow the auditors of CITY, following reasonable notice to CONCESSIONAIRE, to inspect all or any part of the compilation procedures for the aforesaid monthly financial statements. Said inspection shall be at reasonable times during regular business hours and is at the sole discretion of CITY. Records shall be available at all times Monday through Friday inclusive, except legal holidays, between the hours of 9:00 a.m. and 5:00 p.m. at Coral Glades High School located at 2700 Sportsplex Drive, Coral

Springs, Florida 33065. It is the principal objective of the parties hereto to permit CITY to verify the gross receipts of CONCESSIONAIRE as described in this Agreement.

8.4 All records of CONCESSIONAIRE necessary to verify any report set forth herein shall be available to the Contract Administrator and CITY's auditors at CONCESSIONAIRE's principal office for a period of three (3) years after the end of each year of the Agreement or any extensions thereof, or a lesser period of time if provided for by Florida general law or any rules and/or regulations applicable to public records retention.

## **SECTION 9. FACILITY MANAGER**

9.1 CONCESSIONAIRE shall hire and assign, at its own expense, a qualified experienced manager for its operations at the Sportsplex. The CITY and CONCESSIONAIRE agree that the manager shall be the Athletic Director, Coral Glades High School or designee. Said manager or manager's authorized agent must be at least eighteen (18) years of age and will be physically available during reasonable operating hours. The qualifications of said manager shall be submitted to the Contract Administrator upon request, and subject to the reasonable approval of same by the Contract Administrator. During the hours when the manager is not on duty or available, the qualified manager's authorized agent shall be on duty designated by CONCESSIONAIRE or the manager at the Sportsplex. The manager and the qualified manager's authorized agent shall be authorized representatives of CONCESSIONAIRE and be entitled to responsibly act in all matters relating to the day-to-day operation of the Sportsplex hereunder. CONCESSIONAIRE will investigate the background of those persons it wishes to employ, to the best of their ability.

9.2 CONCESSIONAIRE alone is responsible to properly inform all of its staff of the times, locations, allowable goods and all other provisions and requirements under this Agreement for the operation of the concession. CONCESSIONAIRE shall be solely responsible to cause the performance of such provisions and requirements and will be held liable for breach of the same.

9.3 CONCESSIONAIRE shall have adequate supervisory, accounting and other necessary staff to successfully manage and operate the concession. CONCESSIONAIRE shall cooperate fully and completely with CITY, its agents, employees and officers.

9.4 CONCESSIONAIRE hereby represents to CITY, with full knowledge that CITY is relying upon these representations when entering into this Agreement, that CONCESSIONAIRE has the professional expertise, experience and manpower to perform the services to be provided.

9.5 CONCESSIONAIRE has obtained or will obtain the required City of Coral Springs business tax receipt if merchandise is to be sold inside of the Concession Stand, Broward County Health Department Certificate, as well as any other necessary licensing and certification which may be applicable in connection with the operation and management of the concession area at the Sportsplex.

## **SECTION 10. PUBLIC CONTACT OF CONCESSIONAIRE'S AND CITY'S EMPLOYEES**

CONCESSIONAIRE's and CITY's employees, agents, representatives, independent contractors, subcontractors, volunteers, partners, or others involved in the maintenance or operation of the Sportsplex in contact with the public shall perform their duties in an efficient and courteous manner. Failure of any of these persons to do so shall be grounds for his or her removal from duties in the Sportsplex by the responsible party's direct action, or via the Contract Administrator's or CONCESSIONAIRE's reasonable demand of the other as the responsible party if after the reasonable objection of a party, the party receiving the objection fails to take the necessary steps to correct the cause of such objection.

## **SECTION 11. OPERATING SCHEDULE**

11.1 Subject to Section 4.05, the food and beverage service provided by CONCESSIONAIRE hours of operation will be determined by the Director of Parks and Recreation. The Contract Administrator reserves the right to approve any proposed changes by CONCESSIONAIRE to the schedule. The Contract Administrator shall review any proposed changes to the schedule within ten (10) calendar days of its submittal by CONCESSIONAIRE. The reasons for any non-approval shall be set forth in writing no later than ten (10) working days after submittal of such request.

11.2 The Contract Administrator may, upon notice to CONCESSIONAIRE, temporarily require a change in the daily hours or the number of days per week of operation, if, in the reasonable discretion of the Contract Administrator, such a change is desirable and reasonable in light of a substantial public health concern.

11.3 CONCESSIONAIRE recognizes that CITY will be conducting or permitting special events, from time to time, at the Sportsplex. These events may include CITY sponsored events, events that are produced by CITY with another entity and events that are produced by another entity only, with CITY's permission. CONCESSIONAIRE agrees to cooperate with the CITY, in a reasonable manner, which will not have a major impact on CONCESSIONAIRE. CITY will provide not less than thirty (30) calendar days written notice as to the occurrence of an event of major impact as described in this subparagraph.

## **SECTION 12. QUALITY OF CONCESSIONAIRE'S SERVICES**

12.1 CONCESSIONAIRE shall conduct its operations in a business-like manner in accordance with this Agreement and so as to not unreasonably interfere with the public's use of other areas of the Sportsplex.

12.2 Each party shall control the conduct, demeanor, performance and appearance of its officers, members, employees, agents, volunteers, independent contractors, subcontractors, representatives, customers, and patrons and upon reasonable objection of the other party concerning the conduct, demeanor, performance or appearance of any such person, the party to whom such objection is made shall immediately take all necessary steps in the discretion of either party to correct the cause of such objection. The objecting party reserves the right to reasonably request that the other party remove any such person in the event that the steps to

correct such objection are unsuccessful, the granting of which shall not be unreasonably withheld by CONCESSIONAIRE or CITY.

12.3 CONCESSIONAIRE shall furnish good, prompt, and efficient service adequate to meet all reasonable demands, therefore. The Contract Administrator may periodically evaluate CONCESSIONAIRE's performance under this Agreement. As a result of these performance evaluations, the Contract Administrator may reasonably request CONCESSIONAIRE to modify its operations so as to furnish good, prompt and efficient service.

12.4 CONCESSIONAIRE shall not conduct any business or activity on-site not specifically authorized by this Agreement, unless approved in writing by the Contract Administrator.

### **SECTION 13. EQUIPMENT AND SERVICE**

13.1 CITY shall be responsible for maintaining the exterior of the Building. CONCESSIONAIRE shall be responsible for maintaining inside of the stand as well as the daily collection and disposal of garbage and trash generated by the sale of food and beverages.

13.2 CONCESSIONAIRE shall provide required devices or registers for recording original sales as approved in advance by the Contract Administrator.

13.3 CONCESSIONAIRE will provide the food and beverage equipment necessary to operate the concession stand except as otherwise provided. CITY and CONCESSIONAIRE acknowledge that the concession area includes the following fixed property: triple sinks, hand sink, shelves, and counters.

### **SECTION 14. MAINTENANCE AND REPAIRS**

14.1 CONCESSIONAIRES taking possession of the concession areas shall be conclusive evidence of CONCESSIONAIRE's acceptance thereof in good, sanitary order, condition and repair and with no defects of any sort. CONCESSIONAIRE shall, at CONCESSIONAIRE's sole cost and expense, throughout the term of this Agreement, keep the concession areas in good condition and repair including maintenance, replacement and repairs, which may be necessary, in CITY's discretion, to the interior of the concession areas, to keep same in the condition delivered to CONCESSIONAIRE on the commencement date hereof, ordinary wear and tear excepted. CONCESSIONAIRE shall promptly make, at CONCESSIONAIRE's sole cost and expense, all repairs in or to the concession areas property to which CONCESSIONAIRE is responsible.

14.2 CONCESSIONAIRE shall be responsible for the maintenance and upkeep of the concession areas, including but not limited to equipment and fixtures.

14.3 CITY shall maintain, at its sole expense, the maintenance, repair and/or replacement of all currently existing plumbing, pipes, electrical wiring and conduits, heating and air conditioning systems, as well as the maintenance of the existing roof in leak free condition.

14.4 CITY shall provide sufficient written notice to CONCESSIONAIRE of its intent to make repairs such that the making of said repairs does not constitute an inconvenience to CONCESSIONAIRE. CITY, however, shall have no liability to CONCESSIONAIRE, nor shall CONCESSIONAIRE's covenants and obligations hereunder be reduced or abated in any manner whatsoever by reason of any inconvenience, annoyance, interruption, or injury to business arising from CITY's making repairs or changes which CITY is required to or permitted to make by this Agreement or required by law, to make in any portion of the Sportsplex, including concession areas. CITY agrees to use its best efforts to not interrupt or interfere with CONCESSIONAIRE's business in the event repairs or changes are to be made on the Sportsplex property.

14.5 Damages. CONCESSIONAIRE shall repair all damage to the concession areas caused by CONCESSIONAIRE, its employees, agents, customers, invitees, visitors, or independent contractors contracting with CONCESSIONAIRE.

14.6 CITY shall not be liable for any damage or injury which may be sustained by any party or persons at the concession areas subject to the terms, conditions, and provisions of Section 19 hereinafter set forth.

#### **SECTION 15. RENEWAL OPTION**

The Parties may elect to renew this Agreement for two (2) additional two (2) year periods prior to its expiration, and if the Parties mutually elect to do so, the terms and conditions applicable to the renewal term shall be the same as those stated elsewhere in this Agreement. To this end, CONCESSIONAIRE shall provide CITY with written notice of its intent to exercise this Renewal Option at least one hundred and eighty (180) days prior to the end of the term of the Agreement. Such renewal shall be subject to mutual agreement of the Parties.

#### **SECTION 16. DEFAULT AND REMEDIES**

The occurrence of any one or more of the following events shall constitute a default and a breach of this Agreement by CONCESSIONAIRE.

(a) The vacating or abandonment of any portion of the concession areas by CONCESSIONAIRE for a period of more than ten (10) business days, except to the extent that the Sportsplex may be closed.

(b) The failure by CONCESSIONAIRE to make payment of any amount due hereunder, when due, except for an act of God, where such failure shall continue for a period of ten (10) calendar days after the same is due.

(c) The failure by CONCESSIONAIRE to observe or perform any of the terms, covenants, or conditions of this Agreement to be observed or performed by CONCESSIONAIRE where such failure shall continue for a period of ten (10) calendar days after written notice thereby by CITY to CONCESSIONAIRE, provided, however, that if the nature of CONCESSIONAIRE's default is such that more than ten (10) calendar days are reasonably

required for its cure, then CONCESSIONAIRE shall not be deemed to be in default if CONCESSIONAIRE commences such cure within ten (10) calendar days and thereafter diligently prosecutes such cure to completion.

(d) The concession areas shall not be assigned for any other person/entity to operate other than expressly permitted under this Agreement.

(e) The assignment, transfer, mortgage, subletting, or other encumbrance of this Agreement by CONCESSIONAIRE or any other party in a manner not expressly permitted by this Agreement.

## **SECTION 17. REMEDIES**

In the event of a breach of any of the terms or conditions of this Agreement, it is specifically acknowledged and agreed that either party shall, in addition to all other remedies which may be available in law or equity, have the right to enforce this Agreement by specific performance, injunctive relief, prohibition or mandamus to compel the other party to abide by the terms of this Agreement.

## **SECTION 18. TERMINATION**

18.1 Upon thirty (30) calendar days written notice delivered by certified mail, return receipt requested, to CONCESSIONAIRE, CITY may, without cause and without prejudice to any other right or remedy, terminate the Agreement for CITY's convenience whenever CITY determines that such termination is in the best interest of CITY. Where the Agreement is terminated for the convenience of CITY the notice of termination to CONCESSIONAIRE must state that the Agreement is being terminated for the convenience of CITY under the termination clause and the extent of termination. Upon receipt of the Notice of Termination for convenience, CONCESSIONAIRE shall promptly discontinue all work at the time and to the extent indicated on the Notice of Termination, terminate all outstanding subcontractors and purchase orders to the extent that they relate to the terminated portion of the Agreement and refrain from placing further orders and subcontracts except as they may be necessary, to complete any continued portions of the work.

18.2 In the event CONCESSIONAIRE shall default in or violate any of the terms, obligations, restrictions or conditions of this Agreement, CITY shall give CONCESSIONAIRE written notice by certified mail of the default and that such default shall be corrected or actions taken to correct such default shall be commenced within ten (10) calendar days thereof. In the event CONCESSIONAIRE has failed to correct the condition(s) of the default or the default is not remedied to the satisfaction and approval of CITY, CITY shall have all legal remedies available to it, including, but not limited to, termination of this Agreement in which case CONCESSIONAIRE shall be liable for all re-procurement costs and any and all damages permitted by law arising from the default and breach of this Agreement.

18.3 Upon fourteen (14) calendar days written notice delivered by certified mail, return receipt requested, to CITY, CONCESSIONAIRE may, without cause and without prejudice to any other



right or remedy, terminate this Agreement for CONCESSIONAIRE's convenience whenever CONCESSIONAIRE determines that such termination is in the best interest of CONCESSIONAIRE.

## **SECTION 19.       INSURANCE**

19.1 CONCESSIONAIRE shall secure and maintain, at its own expense, and keep in effect during the full term of this Agreement, a policy or policies of insurance, which must include the following coverages and minimum limits of liability:

(1) Worker's Compensation Insurance for statutory obligations imposed by Worker's Compensation or Occupational Disease Laws, including, where applicable, the United States Longshoremen's and Harbor Worker's Act, the Federal Employers' Liability Act and the Jones Act. Employer's Liability Insurance shall be provided with a minimum of two hundred thousand and xx/100 dollars (\$200,000.00) per accident. CONCESSIONAIRE agrees to be responsible for the employment, conduct and control of its employees and for any injury sustained by such employees in the course of their employment.

(2) Commercial Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by CONCESSIONAIRE in the performance of the obligations of this Agreement with the following minimum limits of liability with no restrictive endorsements:

\$1,000,000.00 Combined Single Limit, per occurrence, Bodily Injury & Property Damage

(3) Comprehensive General Liability (occurrence form) with the following minimum limits of liability with no restrictive endorsements:

\$1,000,000.00 Combined Single Limit, per occurrence, Bodily Injury & Property Damage. Coverage shall specifically include the following with minimum limits not less than those required for Bodily Injury Liability and Property Damage Liability:

- (a) Premises and Operations.
- (b) Independent Contractors.
- (c) Product and Completed Operations Liability.
- (d) Broad Form Property Damage.
- (e) Broad Form Contractual Coverage applicable to the Agreement and specifically insuring the indemnification and hold harmless agreement contained in this Agreement.
- (f) Owner's or CONCESSIONAIRE's Protective Liability.

**19.2 UPON CONTRACT EXECUTION, CONCESSIONAIRE SHALL SUBMIT TO CITY COPIES OF ITS CERTIFICATE(S) OF INSURANCE EVIDENCING THE REQUIRED COVERAGES AND SPECIFICALLY PROVIDING THAT CITY OF CORAL SPRINGS IS AN ADDITIONAL NAMED INSURED OR ADDITIONAL INSURED WITH RESPECT TO THE REQUIRED COVERAGES AND THE OPERATIONS OF CONCESSIONAIRES UNDER THE AGREEMENT.** Insurance companies selected must be acceptable to CITY. All of the policies of insurance so required to

be purchased and maintained shall contain a provision or endorsement that the coverage afforded shall not be canceled, materially changed or renewal refused until at least thirty (30) calendar days written notice has been given to CITY by certified mail.

19.3 These insurance requirements shall not relieve or limit the liability of CONCESSIONAIRE. CITY does not in any way represent that the types and amounts of insurance required hereunder are sufficient or adequate to protect CONCESSIONAIRE's interests or liabilities but are merely minimum requirements established by CITY's Risk Management Coordinator. CITY reserves the right to require any other insurance coverages that CITY deems necessary depending upon the risk of loss and exposure to liability.

19.4 The required insurance coverage shall be issued by an insurance company authorized and licensed to do business in the State of Florida, with the minimum rating of B+ to A+, in accordance with the latest edition of A.M. Best's Insurance Guide. In the event that CONCESSIONAIRE is a self-insured governmental entity, CONCESSIONAIRE may provide a letter from CONCESSIONAIRE'S Risk Manager to CITY certifying compliance with the insurance coverages required herein.

19.5 CONCESSIONAIRE shall require each of its subcontractors of any tier to maintain the insurance required herein (except as respects limits of coverage for employers and public liability insurance which may not be less than One Million (\$1,000,000) Dollars for each category), and CONCESSIONAIRE shall provide verification thereof to CITY upon request of CITY.

19.6 All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against CITY with the express intention of the parties being that the required insurance coverage protects both parties as the primary coverage for any and all losses covered by the above described insurance.

19.7 CONCESSIONAIRE shall ensure that any company issuing insurance to cover the requirements contained in this Agreement agrees that they shall have no recourse against CITY for payment or assessments in any form on any policy of insurance.

19.8 The clauses "Other Insurance Provisions" and "Insured Duties in the Event of an Occurrence, Claim or Suit" as it appears in any policy of insurance in which CITY is named as an additional named insured shall not apply to CITY. CITY shall provide written notice of occurrence within fifteen (15) working days of CITY's actual notice of such an event.

19.9 CONCESSIONAIRE shall not commence performance of its obligations under this Agreement until after it has obtained all of the minimum insurance herein described and the same has been approved.

19.10 Violation of the terms of this Section and its subparts shall constitute a breach of the Agreement and CITY, at its sole discretion, may cancel the Agreement and all rights, title and interest of CONCESSIONAIRE shall thereupon cease and terminate.

**SECTION 20.            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.

**SECTION 21.            GOVERNING LAW; VENUE**

21.1 The validity, construction and effect of this Agreement shall be governed by the laws of the State of Florida.

21.2 Any claim, objection or dispute arising out of the terms of this Agreement shall be litigated in the Seventeenth Judicial Circuit in and for Broward County, Florida.

**SECTION 22.            COMPLIANCE WITH LAWS**

CONCESSIONAIRE shall comply with all statutes, laws, ordinances, rules, regulations and lawful orders of the United States of America, State of Florida, and the City of Coral Springs and of any other public authority, which may be applicable to the use of the facilities by CONCESSIONAIRE.

**SECTION 23.            ATTORNEY'S FEES AND COSTS**

In the event that either party is required to file legal action against the other party to enforce any terms of this Agreement, including the CITY's efforts to collect any amounts due under this Agreement, the prevailing party shall be entitled to its costs of collection, attorney's fees and costs, and interest at the maximum rate allowable by law.

**SECTION 24.            RECORDS AND AUDIT**

24.1 CITY reserves the right to audit the records of CONCESSIONAIRE relating to this Agreement any time during the performance and term of the Agreement and for a period of three (3) years after completion and acceptance by CITY. If required by CITY, CONCESSIONAIRE shall agree to submit to an audit by an independent certified public accountant selected by CITY. CONCESSIONAIRE shall allow CITY to inspect, examine and review the records of CONCESSIONAIRE at any and all times during normal business hours during the term of this Agreement.

**24.2 IF CONCESSIONAIRE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONCESSIONAIRE'S DUTY TO PROVIDE PUBLIC RECORDS**

**RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF CORAL SPRINGS, DEBRA THOMAS, CMC, CITY CLERK, 9500 WEST SAMPLE ROAD, CORAL SPRINGS, FLORIDA 33065, [DTHOMAS@CORALSPRINGS.ORG](mailto:DTHOMAS@CORALSPRINGS.ORG), TELEPHONE NUMBER (954) 344-1067.**

CONCESSIONAIRE understands, acknowledges and agrees that CONCESSIONAIRE shall, pursuant to Section 119.0701, Florida Statutes, as amended from time to time, do the following:

- (1) Keep and maintain public records required by CITY to perform the service.
- (2) Upon request from CITY'S custodian of public records, provide CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law or CITY policy.
- (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if CONCESSIONAIRE does not transfer the records to CITY.
- (4) Upon completion of the contract, transfer, at no cost, to CITY all public records in possession of CONCESSIONAIRE or keep and maintain public records required by CITY to perform the service. If CONCESSIONAIRE transfers all public records to CITY upon completion of the contract, CONCESSIONAIRE shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONCESSIONAIRE keeps and maintains public records upon completion of the contract, CONCESSIONAIRE shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to CITY, upon request from CITY'S custodian of public records, in a format that is compatible with the information technology systems of CITY.

#### REQUEST FOR NONCOMPLIANCE

- (a) A request to inspect or copy public records relating to a CITY'S contract for services must be made directly to CITY. If CITY does not possess the requested records, CITY shall immediately notify CONCESSIONAIRE of the request, and CONCESSIONAIRE must provide the records to CITY or allow the records to be inspected or copied within a reasonable amount of time.
- (b) If CONCESSIONAIRE does not comply with CITY'S request for records, CITY shall enforce the contract provisions in accordance with the contract.
- (c) Any CONCESSIONAIRE who fails to provide the public records to CITY within a reasonable time may be subject to penalties under Section 119.10.

#### CIVIL ACTION

(a) If a civil action is filed against CONCESSIONAIRE to compel production of public records relating to a CITY'S contract for services, the court shall assess an award against CONCESSIONAIRE the reasonable costs of enforcement, including reasonable attorney fees, if:

(1) The court determines that CONCESSIONAIRE unlawfully refused to comply with the public records request within a reasonable time; and

(2) At least eight (8) business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that CONCESSIONAIRE has not complied with the request, to CITY and to CONCESSIONAIRE.

(b) A notice complies with subparagraph (a)2. if it is sent to CITY'S custodian of public records and to CONCESSIONAIRE at CONCESSIONAIRE'S address listed on its contract with CITY or to CONCESSIONAIRE'S registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

(c) Any CONCESSIONAIRE who complies with a public records request within eight (8) business days after the notice is sent is not liable for the reasonable costs of enforcement.

#### **SECTION 25. SEVERABILITY**

Should any part, term or provision of this Agreement be found invalid by a court of competent jurisdiction to be illegal or in conflict with any law of the state, the validity of the remaining portions or provisions shall not be affected thereby.

#### **SECTION 26. ENTIRE AGREEMENT; NO ORAL MODIFICATION**

This Agreement constitutes the entire and integrated agreement between the parties with regard to the matters set forth herein and supersedes all prior negotiations, representations or agreements whether written or oral. Modification to this Agreement can only be made in a written instrument executed by both parties. Reference to the Agreement shall be deemed to include any duly executed modification, change or supplement. The failure of a party to seek redress for violation of or to insist on strict performance of any of the covenants of this Agreement shall not be construed as a waiver or relinquishment for the future of any covenant, term, condition or election but the same shall continue and remain in full force and effect.

#### **SECTION 27. NO REPRESENTATIONS**

The respective officers, agents and/or employees of both CITY and CONCESSIONAIRE have not made any representations or promises except as expressly set forth in this Agreement.

#### **SECTION 28. NONDISCRIMINATION**

CONCESSIONAIRE does hereby for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, covenant and agree that no person on the grounds of race, color, religion, national origin, sex, age, or handicap shall be excluded from participation in, be denied the benefits of or be otherwise subjected to discrimination in the use of said concession area or in said CONCESSIONAIRE's programs and policies or special events.

**SECTION 29.            RADON GAS**

Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding Radon and Radon testing may be obtained from your county health unit.

**SECTION 30.            CONTRACT ADMINISTRATOR AND CONCESSIONAIRE'S DESIGNATED REPRESENTATIVE**

The Contract Administrator for CITY for this Agreement shall be appointed by the Director of Parks and Recreation. CONCESSIONAIRE's designated representative for this Agreement is Coral Glades High School Principal or designee. In administration of this Agreement, as contrasted with matters of policy, all parties may rely upon the instructions or determinations made by the respective Contract Administrator and designated representative. CONCESSIONAIRE may, from time to time, in its absolute discretion, change its designated representative upon written notice to CITY.

**SECTION 31.            SCRUTINIZED COMPANIES**

CONCESSIONAIRE understands that pursuant to Section 287.135, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with CITY if CONCESSIONAIRE is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, as amended, or is engaged in a boycott of Israel. Additionally, CONCESSIONAIRE understands that if the consideration for this Agreement exceeds one million dollars at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, and CONCESSIONAIRE is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.73, Florida Statutes, as amended, or is engaged in business operations in Syria, that CONCESSIONAIRE is ineligible to, and may not bid on, submit a proposal for, or enter into or renew a contract with CITY.

By entering into this Agreement, CONCESSIONAIRE certifies that CONCESSIONAIRE and its principals and/or owners are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or is engaged in business operations with Syria.

In the event that CONCESSIONAIRE is placed on the Scrutinized Companies that Boycott Israel List, engaged in a boycott of Israel, Scrutinized Companies with Activities in the Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or is engaged in business operations with Syria, CITY may immediately terminate this Agreement without any liability to CONCESSIONAIRE notwithstanding any other provision in this Agreement to the contrary.

**SECTION 32.           NOTICES**

All notices or other communications required by this Agreement shall be in writing and deemed delivered upon mailing by registered or certified mail, return receipt requested, hand-delivery, overnight courier, facsimile or email to the following persons and addresses:

CITY:                   Lluis Gorgoy, Purchasing Manager  
City of Coral Springs  
9500 West Sample Road  
Coral Springs, Florida 33065  
Tel.: (954) 344-1102  
Email: lgorgoy@coralsprings.org

COPY TO:             Director of Parks and Recreation  
City of Coral Springs  
2501 Coral Ridge Drive  
Coral Springs, Florida 33065

CONCESSIONAIRE:   The School Board of Broward County, Florida  
Director, Facility Planning & Real Estate Department  
600 Southeast 3<sup>rd</sup> Avenue  
Fort Lauderdale, Florida 33301

COPY TO:             Dr. Mark J. Kaplan, Principal  
Coral Glades High School  
2700 Sportsplex Drive  
Coral Springs, Florida 33065

**SECTION 33.           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.

**SECTION 34.                    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 Agreement.

**SECTION 35.                    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.

**SECTION 36.                    BINDING EFFECT**

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

**SECTION 37.                    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.

**SECTION 38.                    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 this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

**SECTION 39.                    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.

**SECTION 40.        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.

**SECTION 41.        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.

**SECTION 42.        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, epidemics, pandemics, government regulations, and the issuance or extension of existing government orders of the United States, the State of Florida, or local county and municipal governing bodies, 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.

**SECTION 43.        AGREEMENT 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.

**SECTION 44.        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.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGES TO FOLLOW]

**IN WITNESS WHEREOF, CITY OF CORAL SPRINGS and THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA** have caused these present to be executed in their respective names by the proper officials the day and year first above written.

APPROVED AS TO FORM:

**CITY OF CORAL SPRINGS, FLORIDA**

\_\_\_\_\_  
SHERRY WHITACRE, Deputy City Attorney

\_\_\_\_\_  
LLUIS GORGOY, Purchasing Manager

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SIGNATURE PAGE TO FOLLOW]

(Corporate Seal)

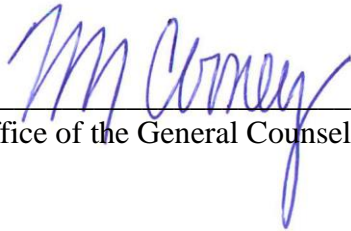
**THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA**

ATTEST:

By \_\_\_\_\_  
Donna P. Korn, Chair

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

Approved as to Form and Legal Content:

  
\_\_\_\_\_  
Office of the General Counsel