

AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, _____, 2020 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

BOYS & GIRLS CLUBS OF BROWARD COUNTY, INC.
(hereinafter referred to as "BGCBC"),
whose principal place of business is
877 NW 61 Street
Ft. Lauderdale, Florida 33309.

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

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

WHEREAS, Section 1006.261(1)(c), Florida Statutes, provides for nonprofit corporations to use school buses to transport school-age children for activities sponsored by the nonprofit; and

WHEREAS, BGCBC, being eligible under this legislation to use school buses, desires to enter into this Agreement with SBBC to define the relationship between the Parties and set forth the rights and obligations herein.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein 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 the execution of all parties and shall conclude on May 31, 2022.

2.02 **Transportation Needs.** Prior to the execution of this Agreement, the Parties have discussed the transportation needs of BGCBC and the approximate number of school buses that may be made available to BGCBC; however, nothing contained herein will obligate SBBC to provide buses to BGCBC, if it is deemed by SBBC that such action will reduce or delay transportation of pupils. BGCBC, through its Contract Administrator, agrees to provide SBBC with two (2) weeks written notice of its need and desire for SBBC vehicles in order to obtain the school vehicles for transportation purposes as described within this Agreement. Said requests for transportation are limited to days that public schools are not in session, including but not limited to, employee planning days, summer or holiday breaks, or weekends. For emergency reasons only, as determined by BGCBC, SBBC agrees to provide its school vehicles to BGCBC, upon 48 hours written notice to SBBC, and subject to availability. Emergency notice scheduling shall not exceed four (4) times per Agreement year.

2.03 **Payment of Operation Cost by BGCBC.** BGCBC agrees to fully reimburse SBBC for the operating costs of school buses used by BGCBC during the term of this Agreement. BGCBC shall pay SBBC's posted transportation rate for a minimum of four (4) hours per day for each regular school bus provided, which sum shall cover the use, operational costs, and reimbursement for the driver's hours, and all other costs and expenses incurred by SBBC in supplying the regular buses. Should a wheelchair lift equipped bus be required, BGCBC shall pay 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.** In the event petroleum products required for SBBC to provide school buses under this Agreement, or part of this Agreement, become unavailable, the obligations of each party hereunder may be terminated by SBBC upon no less than twenty-four (24) hours notice in writing to BGCBC. SBBC shall be the final authority as to the availability of petroleum products.

2.05 **Bus Drivers Assigned by SBBC.** When school buses are used by BGCBC, under no circumstances will the vehicle be driven by anyone other than bus drivers qualified, trained, certified, and assigned by 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 SBBC.

2.06 **Damage to the Vehicles Paid by BGCBC.** BGCBC agrees to pay for any damage to the school vehicles while such vehicles are being used by BGCBC, and which damage is attributable directly to that use. All accidents involving a school vehicle while in BGCBC's use will be reported by BGCBC to SBBC as provided in SBBC's written procedures provided to BGCBC or as required in the daily operation of SBBC.

2.07 **Reporting of Incidents Involving Non-Pupil Passengers.** BGCBC agrees to report to SBBC the nature and extent of any incidents resulting in property damage or personal injury to any non-pupil passenger while boarding, riding in, or deboarding from any such school bus while being used by BGCBC and indemnify and hold harmless SBBC from any and all claims arising out of such incidents, to the fullest extent allowed by law, if such injury or damage is caused by any act or omission of an employee or agent of BGCBC.

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

2.09 **Geographic Limitations on the Use of School Vehicles.** BGCBC will limit its use of the school buses to and within the confines of the Tri-County Area (i.e. Palm Beach County, Broward County, and Miami-Dade County). Under no circumstances should the school buses be taken outside of the geographical limits set forth in this paragraph.

2.10 **Passenger Load Limit.** During BGCBC's use of the school vehicle(s), the passenger capacity transported shall not exceed the rated capacity of such vehicle(s). No person shall be permitted to stand in any school bus at any time while such vehicle is moving. BGCBC shall not use the school vehicles for any purpose whatsoever outside of the use covered by this Agreement.

2.11 **Cancellation.** BGCBC reserves the right to cancel any scheduled use of the school buses that it deems necessary, at no charge, provided a minimum of twenty-four (24) hours written notice is provided to SBBC prior to the scheduled use. Any cancellations which do not comply with the minimum notice requirements will result in a four (4) hour charge at the posted transportation rate.

2.12 **Contract Administrator and Contract Representative.** BGCBC's Contract Administrator for this Agreement is the BGCBC CEO/President. The Contract Representative for SBBC is the Director of Student Transportation and Fleet Services, 3895 Northwest 10th Avenue, Oakland Park, Florida 33309, or designee.

2.13 **Inspection of BGCBC's Records by SBBC.** BGCBC shall establish and maintain books, records and documents (including electronic storage media) related to this Agreement. All of BGCBC'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. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to BGCBC's Records from the effective date of this Agreement, for the duration of the term of the 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 BGCBC to SBBC pursuant to this Agreement. SBBC's agent or its authorized representative

shall provide BGCBC with reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction. SBBC's agent or its authorized representative shall have access to BGCBC's facilities and to any and all records related to the Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section. BGCBC shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.14 Notice. When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. 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 this 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, Florida 600 Southeast Third Avenue Fort Lauderdale, Florida 33301
With a Copy to:	Director of Student Transportation & Fleet Services The School Board of County, FL 3895 NW 10th Avenue Fort Lauderdale, Florida 33309
To BGCBC:	President/CEO Boys & Girls Clubs of Broward, Inc 877 NW 61 Street Ft. Lauderdale, FL 33309

2.15 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 BGCBC: BGCBC 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 BGCBC its agents, servants or employees; the equipment of BGCBC, its agents, servants or employees while such equipment is on premises

owned or controlled by SBBC; or the negligence of BGCBC or the negligence of BGCBC'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 BGCBC, SBBC or otherwise.

2.16 Insurance Requirements. BGCBC shall comply with the following insurance requirements throughout the term of this Agreement:

(a) **General Liability.** BGCBC shall maintain General Liability insurance during the term of this Agreement with limits not less than \$1,000,000 per occurrence for Bodily Injury/Property Damage; \$1,000,000 General Aggregate; and limits not less than \$1,000,000 for Products/Completed Operations Aggregate.

(b) **Professional Liability/Errors & Omissions.** BGCBC shall maintain Professional Liability/Errors & Omissions insurance during the term of this Agreement with a limit of not less than \$1,000,000 per occurrence covering services provided under this agreement.

(c) **Auto Liability.** BGCBC shall maintain Owned, Non-Owned and Hired Auto Liability insurance with Bodily Injury and Property Damage limits of not less than \$1,000,000 Combined Single Limit.

(d) **Acceptability of Insurance Carriers.** The insurance policies required under this Agreement shall be issued by companies qualified to do business in the State of Florida and having a rating of at least A- VI by AM Best or Aa3 by Moody's Investor Service.

(e) **Verification of Coverage.** Proof of the required insurance must be furnished by BGCBC to SBBC's Risk Management Department by Certificate of Insurance within fifteen (15) days of the date of this Agreement. To streamline this process, SBBC has partnered with EXIGIS Risk Management Services to collect and verify insurance documentation. All certificates (and any required documents) must be received and approved by SBBC's Risk Management Department before any work commences to permit BGCBC to remedy any deficiencies. BGCBC must verify its account information and provide contact details for its Insurance Agent via the link provided to it by email.

(f) **Required Conditions.** Liability policies must include the following terms on the Certificate of Insurance:

- 1) The School Board of Broward County, Florida, its members, officers, employees and agents are added as additional insured.
- 2) All liability policies are primary of all other valid and collectable coverage maintained by The School Board of Broward County, Florida.
- 3) Certificate Holder: The School Board of Broward County, Florida, c/o EXIGIS Risk Management Services, P.O. Box 4668-ECM, New York, New York 10163-4668.

(f) **Cancellation of Insurance.** BGCBC is prohibited from providing services under this Agreement with SBBC without the minimum required insurance coverage and must notify SBBC within two (2) business days if required insurance is cancelled.

(g) SBBC reserves the right to review, reject or accept any required policies of insurance, including limits, coverage or endorsements, herein throughout the term of this Agreement.

2.17 **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.

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 Agreement.

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 **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.

3.05 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. In the event of such termination, SBBC shall be entitled to a pro rata refund of any pre-paid amounts for any services scheduled to be delivered after the effective date of such termination. 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 this Agreement shall be removed within 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 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.

3.07 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.

3.08 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 exclusively to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida or to the jurisdiction of the United States District Court for the Southern District of Florida. Each party agrees and admits that the state courts of the Seventeenth Judicial Circuit of Broward County, Florida or the United States District Court for the Southern District of Florida shall have jurisdiction over it for any dispute arising under this Agreement.

3.09 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.

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

3.11 **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.

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

3.13 **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.

3.14 **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.

3.15 **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.

3.16 **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.

3.17 **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.

3.18 **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.

3.19 **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.

3.20 **Counterparts and Multiple Originals.** This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

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

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

FOR SBBC:

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

ATTEST

By _____
Donna P. Korn, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

Office of the General Counsel



FOR BGCBC:

(Corporate Seal)

BOYS & GIRLS CLUBS OF BROWARD, INC.

ATTEST:

By Brian Quail
Brian Quail, President/CEO

_____, Secretary

-or-

Amber N. Williams
Witness

[Signature]
Witness

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 3RD day of JANUARY, 2020 by BRIAN QUAIL of

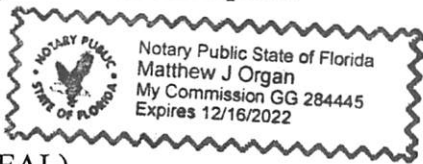
Name of Person

BOYS + GIRLS CLUBS OF BROWARD COUNTY, on behalf of the corporation/agency.

Name of Corporation or Agency

He/She is personally known to me or produced N/A as identification and did/did not first take an oath. Type of Identification

My Commission Expires:



(SEAL)

[Signature]
Signature – Notary Public

MATTHEW ORGAN
Printed Name of Notary

GG 284445
Notary's Commission No.