

## **EASEMENT AGREEMENT**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, 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 OAKLAND PARK**

(hereinafter referred to as “CITY”),  
whose principal place of business is  
3650 NE 12<sup>th</sup> Avenue, Oakland Park, FL 33334.

**WHEREAS**, SBBC is the owner of certain real property located at the Northeast quadrant of the intersection of NW 10<sup>th</sup> Avenue and NW 38<sup>th</sup> Street (hereinafter, the “Property”); and

**WHEREAS**, the CITY has requested a Right-Of-Way Easement (“Easement”) from the SBBC to install new asphalt paving and curbing at the Property; and

**WHEREAS**, the proposed new paving and curbing will benefit vehicular traffic servicing both the SBBC and the community; and

**WHEREAS**, SBBC agrees to grant the Easement to CITY upon the terms 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 **Ownership**. CITY acknowledges that SBBC is the owner of the Property, as more particularly depicted in **Exhibit “A.”**

2.02 **Grant of Easement**. SBBC hereby grants unto CITY a temporary construction easement for the access to and installation of an asphalt roadway, pavement, and curbing on the southwest corner of 3810 NW 10<sup>th</sup> Avenue (which is known as Twin Lakes Warehouse and

Transportation) (“Improvements”), and a perpetual easement for the maintenance of the Improvements on a portion of the Property, as more particularly described in **Exhibit “B,”** which is attached and incorporated hereto (“Easement Area”), in accordance with the terms of this Agreement. The easement allows CITY to install, access, and maintain the Improvements to allow SBBC buses to safely navigate the intersection of NW 10<sup>th</sup> Avenue and NW 38<sup>th</sup> Street.

2.03 **Ingress and Egress.** This Agreement includes the right of ingress and egress over the Property and Easement Area for the purposes outlined in this Agreement.

2.04 **SBBC’s Use.** SBBC retains the right to engage in any activities on, over, across or below the Easement Area and shall, for its own purposes, utilize the Property in any manner that does not unreasonably interfere with the Easement Area.

2.05 **CITY’s Use of Easement Area.**

a. This Agreement allows CITY, its authorized agents, representatives, or employees to install, access, and maintain the Improvements, on, over, across, and through the Easement Area, which includes access to the Easement Area for installation and regular maintenance by CITY.

b. CITY shall, at its sole expense, properly and appropriately maintain and repair the Improvements within the Easement Area, as necessary. Any and all costs and expenses associated with the construction and operation of this the Easement Area, to include, but not be limited to, liability insurance, maintenance, repair, refurbishment, replacement, and the like, shall be the sole responsibility of CITY.

2.06 **Security:** CITY, its authorized agents, representatives, or employees shall notify the Director, Physical Plant Operations or designee upon arrival, and in advance of accessing the Easement Area.

2.07 **No Obstructions of Property.** The Property shall at no time be obstructed by any object that would prohibit access, ingress or egress, or in any manner, interfere with the operations of the Property other than for the purpose of this Agreement.

2.08 **Environmentally Hazardous Material.** CITY hereby acknowledges that SBBC prohibits the storage or leakage of Environmentally Hazardous material on SBBC’s properties at any and all times. CITY agrees not to store or leak any Environmentally Hazardous materials on the Property, and understands that violation of this stipulation will result in SBBC’s immediate termination of this Agreement and require the CITY, at its sole expense, to fully and completely restore and return the Property to the same condition prior to the approval of this Easement.

2.09 **Inspection of CITY’s Records by SBBC.** CITY shall establish and maintain books, records and documents (including electronic storage media) related to this Agreement. All of 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 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 CITY'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 SBBC to CITY pursuant to this Agreement. SBBC's agent or its authorized representative shall provide CITY 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 the CITY'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. 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.

2.10 **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: Executive Director, Capital Programs, Office of  
Facilities & Construction  
The School Board of Broward County, Florida  
600 SE 3rd Avenue, 10th Floor  
Fort Lauderdale, Florida 33301

Director of Facility Planning & Real Estate  
The School Board of Broward County, Florida  
600 SE 3rd Avenue, 8th Floor  
Fort Lauderdale, Florida 33301

To CITY: City Manager  
City of Oakland Park  
3650 N.E. 12 Avenue  
Oakland Park, FL 33334

With a Copy to: Director, Public Works Department  
City of Oakland Park  
3650 N.E. 12 Avenue  
Oakland Park, FL 33334

2.11 **Background Screening.** (Not used).

2.12 **Public Records.** Both parties are required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Easement; (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 the other party, all public records in that party's possession upon termination of this Easement 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 the other party in a format that is compatible with the other party's information technology systems. Each party shall maintain its own respective records and documents associated with this Easement 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 Easement and all attachments thereto are public records and do not constitute trade secrets.

**IF EITHER PARTY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PARTIES' DUTIES TO PROVIDE PUBLIC RECORDS RELATING TO THIS EASEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT**

**RENEE SHROUT**  
[RENEES@OAKLANDPARKFL.GOV](mailto:RENEES@OAKLANDPARKFL.GOV)  
**954-630-4300**  
**3650 NE 12 Avenue**  
**Oakland Park, FL 33334**

**or**

**CUSTODIAN OF PUBLIC RECORDS**  
[RECORDREQUESTS@BROWARDSCHOOLS.COM](mailto:RECORDREQUESTS@BROWARDSCHOOLS.COM)  
**754-321-1900**  
**RISK MANAGEMENT DEPARTMENT,**  
**PUBLIC RECORDS DIVISION**  
**600 SOUTHEAST THIRD AVENUE**  
**FORT LAUDERDALE, FLORIDA 33301**

2.13 **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.

2.14 **Insurance Requirements.** Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees, and agents thereof. Nothing herein shall be construed as a waiver of sovereign immunity enjoyed by any party hereto, as provided in Section 768.28, Florida Statutes, as amended from time to time or any other law providing limitations on claims. Each party acknowledges without waiving its right of sovereign immunity as provided by Section 768.28, Florida Statutes that each party is self-insured for general liability under state law with coverage limits of \$200,000 per person and \$300,000 per occurrence, or such monetary waiver limits that may change and be set forth by the Florida Legislature. Self-insurance and/or insurance requirements shall not relieve or limit the liability of either party, except to the extent provided by Section 768.28, Florida Statutes. Both parties reserve the right to require other insurance coverage that both parties deem mutually necessary depending upon the risk of loss and exposure to liability, subject to each party's Council or Board. CITY 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, services or work furnished by CITY, its agents, servants or employees; the equipment of CITY, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of CITY or the negligence of CITY'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 Easement Area, and injury or death of any person whether employed by CITY, SBBC or otherwise.

2.15 **Restore:** CITY covenants and agrees that if any portion of the Property and Easement Area is disturbed, damaged, or destroyed by CITY, at any time, CITY shall, at its sole expense, promptly restore the disturbed, damaged, or destroyed portion of the Property to its original condition to allow for SBBC's use.

2.16 **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.

2.17 **Annual Appropriation.** (Not used).

2.18 **Excess Funds.** (Not used).

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

### 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 **Abandonment:** If, prior to completion of the installation of the Improvements, CITY abandons or does not otherwise use the Easement Area or any portion thereof for the purposes outlined herein for one hundred eighty (180) consecutive days, then this Easement Agreement shall automatically terminate, and SBBC shall, at the CITY's sole expense, record a written instrument acknowledging such termination in the Public Records of Broward County, Florida. Within fourteen (14) calendar days of the recording of the termination of the Easement

Agreement in the public records, CITY shall, at its sole expense, remove any and all incomplete asphalt pavement, curbing and appurtenances or parts thereof from the Easement Area and restore the Easement Area and any affected portion of the Property to its original condition to allow for SBBC's use.

3.06 **Termination**. This Agreement shall be perpetual in duration unless terminated for convenience by a written instrument executed by both parties or respective, successors or assigns, or terminated for cause upon thirty (30) days written notice by the non-breaching party to the other party.

3.07 **Recording of Easement**: Within fourteen (14) calendar days of SBBC approval of this Easement Agreement, the CITY shall, at its own expense, record the fully executed Easement Agreement in the Public Records of Broward County, Florida, and within ten (10) days following recordation, CITY shall provide to SBBC a copy of the recorded Easement Agreement which contains the Official Records Book and Page numbers in which the Easement Agreement is recorded.

3.08 **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.

3.09 **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.

3.10 **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.

3.11 **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.

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

3.13 **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.

3.14 **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.

3.15 **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.

3.16 **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.

3.17 **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.

3.18 **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.

3.19 **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.

3.20 **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.

3.21 **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.

3.22 **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.

3.23 **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

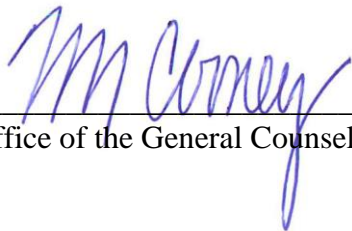
By: \_\_\_\_\_

Donna P. Korn, Chair

ATTEST

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

Approved as to Form and Legal Content:

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

**FOR CITY:**

(Corporate Seal)

City of Oakland Park

ATTEST:

By \_\_\_\_\_  
Matthew Sparks, Mayor

\_\_\_\_\_  
Renee M. Shrout, City Clerk

-or-

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

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

STATE OF FLORIDA        )  
  )  
COUNTY OF BROWARD    )

The foregoing instrument was acknowledged before me, by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2020, by **Matthew Sparks**, Mayor of **Oakland Park** on behalf of the City.

He/she is personally known to me or produced as Identification and did/did not first take an oath.

My Commission Expires:

\_\_\_\_\_  
Signature – Notary Public

(SEAL)

\_\_\_\_\_  
Printed Name of Notary

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