

AGREEMENT

THIS AGREEMENT is made and entered into by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

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

and

CITY OF POMPANO BEACH, FLORIDA

(hereinafter referred to as “CITY”),
whose principal place of business is
1801 NE 6th Street
Pompano Beach, Florida 33060, (collectively referred to as the “Parties”)

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

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

WHEREAS, Section 1006.261(1)(a), Florida Statutes, provides for governmental agencies to use school buses a for public purpose; and

WHEREAS, CITY, 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 mutual covenants contained hereafter and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 - RECITALS

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

ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** The term of this Agreement commences upon the date of the last signature below (“Effective Date”) and concludes on May 31, 2027, unless terminated earlier pursuant to section 3.05 of this Agreement.

2.02 **Transportation Needs.** Prior to the execution of this Agreement, the Parties have discussed the transportation needs of CITY and the approximate number of school buses that may be made available to CITY; however, nothing contained herein will obligate SBBC to provide buses to CITY, if it is deemed by SBBC that such action will reduce or delay transportation of pupils. CITY, through its Contract Administrator, agrees to provide SBBC with two (2) weeks written notice 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 CITY, SBBC agrees to provide the referenced school vehicles to CITY provided written notice is provided by CITY to SBBC no less than 48-hours prior to CITY needing such services, and subject to availability. Emergency notice scheduling shall not exceed four (4) times per Agreement year.

2.03 **Payment of Operation Cost by CITY.** CITY agrees to fully reimburse SBBC for the operating costs of school buses used by CITY during the term of this Agreement. CITY 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, CITY 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 CITY. 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 CITY, 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 CITY.** CITY agrees to pay for any damage to the school vehicles while such vehicles are being used by CITY, and which damage is attributable directly to that use. All accidents involving a school vehicle while in CITY’s use will be reported by CITY to SBBC as provided in SBBC’s written procedures provided to CITY or as required in the daily operation of SBBC.

2.07 **Reporting of Incidents Involving Non-Pupil Passengers.** CITY 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 CITY and indemnify and hold harmless the SBBC from any and all claims arising out of such incidents, to the fullest extent allowed by the Constitution and the laws of the state of Florida, if such injury or damage is caused by any act of omission of an employee or agent of CITY.

2.08 **Method of Reimbursement.** Unless otherwise agreed upon by the Parties in writing, the costs borne by SBBC on behalf of CITY under this Agreement shall be reimbursed as invoiced within thirty (30) days from presentment to, or receipt of, the referenced invoice by CITY'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.** CITY 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 CITY'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. CITY shall not use the school vehicles for any purpose whatsoever outside of the use covered by this Agreement.

2.11 **Cancellation.** CITY 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.** CITY's Contract Administrator for this Agreement is Recreation Programs Administrator or designee. The Contract Representative for SBBC is the Executive Director of Student Transportation and Fleet Services, 3895 Northwest 10th Avenue, Oakland Park, Florida 33309, or designee.

2.13 **Insurance.** CITY is an entity subject to Section 768.28, Florida Statutes, and CITY shall furnish SBBC with written verification of liability protection in accordance with state law prior to final execution of this Agreement.

CITY, at its sole discretion, may maintain Specific Excess General Liability in the amount of \$1,000,000 combined single limit per occurrence, solely for any liability resulting from entry of a claims-bill pursuant to Section 768.28(5) Florida Statutes, or liability imposed pursuant to Federal Law.

2.14 **Notice.** When any party to this Agreement desires 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, and the place for giving notice shall remain the same until it is changed by written notice to the other party in compliance with the provisions of the Section. For the present, the Parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools
The School Board of Broward County, FL
600 Southeast 3rd Avenue
Fort Lauderdale, Florida 33301

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

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

2.15 **Background Screening.** CITY agrees to comply with all requirements of Sections 1012.32, 1012.465, 1012.467 and 1012.468, Florida Statutes, and all of its personnel who (a) are to be permitted access to school grounds when students are present, (b) will have direct contact with students, or (c) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. Personnel who are subject to background screening include all of CITY's non-exempt employees, representatives, agents, and sub-contractors performing duties under this Agreement who meet any of the three (3) descriptions listed above. This background screening will be conducted by SBBC in advance of CITY or its personnel providing any services under this Agreement. CITY shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement (FDLE) to maintain the fingerprints provided with respect to CITY and its personnel. The parties agree that the failure of CITY to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate the Agreement immediately for cause with no opportunity required to permit CITY to cure such default and no further responsibilities or duties to perform under this Agreement. To the extent permitted by law, CITY agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from CITY's failure to comply with the requirements of this section or with Sections 1012.32, 1012.465, 1012.467 and 1012.468, Florida Statutes. Nothing herein shall be construed as a waiver by SBBC or CITY of sovereign immunity or of any rights or limits to liability existing under Section 768.28, Florida Statutes. SBBC

issued identification badges must be worn at all times when on SBBC property or when performing services for SBBC and must be worn where they are visible and easily readable.

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 survives the termination of all performance or obligations under this Agreement and is 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 under this Agreement in or upon any third person or entity. No party to this Agreement intends to directly or substantially benefit a third party by this Agreement. There are no third party beneficiaries to this Agreement and no third party is entitled to assert a claim against any party based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

3.03 **Independent Contractor.** The Parties are acting in the capacity of independent contractor and not as an officer, employee, or agent of the other. Neither party nor its respective agents, employees, subcontractors, or assignees shall represent to others that it has the authority to bind the other party without the other party's written consent. No right to SBBC's retirement, leave benefits, or any other benefits of SBBC's employees exists as a result of CITY's performance of any of its duties or responsibilities under this Agreement. SBBC is not responsible for any Social Security benefits, withholding taxes, contributions made to any 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, if either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) calendar days' written notice to cure the default. However, if said default cannot be cured within said thirty (30) calendar day period and the defaulting party is diligently attempting in good faith to cure same, the time period will 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) calendar days' notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy is cumulative and 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 precludes 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 terminated with or without cause by either party during the term hereof upon thirty (30) calendar days' written notice

to the other parties of its desire to terminate this Agreement. In the event of such termination, SBBC is 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. In the event that CITY terminates this Agreement pursuant to this paragraph, CITY will be responsible to pay all outstanding costs owed for services provided upon such termination. SBBC has 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, that title to such property shall pass to SBBC, and that 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 of SBBC's obligations under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and are 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 disputes, 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 has 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 is predicated upon any prior representations or agreements, whether oral or written.

3.10 **Binding Effect.** This Agreement is binding upon and inures 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 assignment of interests under 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.** If 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 does not affect the remaining portions of this Agreement and the same 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.

3.14 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel 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 is 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 is not 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 is only effective as to the specific instance for which it is obtained and is not a continuing or future waiver.

3.17 **Force Majeure.** Neither party is 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.

3.18 **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 survive the termination of this Agreement.

3.19 **Agreement Administration.** SBBC has delegated authority to the Superintendent of Schools or her/his 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 is 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 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 Effective Date.

FOR SBBC

(Corporate Seal)

THE SCHOOL BOARD OF
BROWARD COUNTY, FLORIDA

ATTEST:

By _____
Laurie Rich Levinson, Chair

Date: _____

Dr. Vickie Cartwright,
Superintendent of Schools

Approved as to Form and Legal Content:

Office of the General Counsel

FOR CITY

CITY OF POMPANO BEACH

By: _____

REX HARDIN, MAYOR

By: _____

GREGORY P. HARRISON, CITY

MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Dated: _____

APPROVED AS TO FORM:

MARK E. BERMAN, CITY ATTORNEY