

AGREEMENT

THIS AGREEMENT is made and entered into as of this _____ day of _____, 2017, 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

100 W. Atlantic Boulevard

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.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence upon execution by both parties and conclude on May 31, 2022.

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. In the event of an at fault third party, CITY has the right to subrogation. 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 debarking 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 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 Inspection of CITY's Records by SBBC. CITY shall establish and maintain books, records, and documents (including, electronic storage media, (collectively "CITY's Records" as defined in (a) below), sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All CITY's Records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation, or reproduction, during normal working hours, by SBBC's agent or its authorized representative, to permit SBBC to evaluate, analyze, and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze, and verify any and all invoices, billings, payments or claims submitted by CITY or any of CITY's payees pursuant to this Agreement. CITY's Records subject to examination under this Section shall include, without limitation, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement, and include any and all documents pertinent to the evaluation, analysis, verification, and reconciliation of any and all expenditures under this Agreement without regard to funding sources.

(a) **CITY's Records Defined.** For the purposes of this Agreement, the term "CITY's Records" shall include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other supporting documents that would substantiate, reconcile, or refute any charges and/or expenditures related to this Agreement.

(b) **Duration of Right to Inspect.** For the purpose of such audits, inspections, examinations, evaluations, or reproductions, SBBC's agent or authorized representative shall have access to CITY's Records from the effective date of this Agreement through the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to CITY pursuant to this Agreement, as applicable.

(c) **Notice of Inspection.** SBBC's agent or its authorized representative shall provide CITY reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation, or reproduction.

(d) **Audit Site Conditions.** SBBC's agent or its authorized representative shall have access to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in CITY's facilities where such records are maintained in order for SBBC to exercise its rights permitted under this Section.

(e) **Failure to Permit Inspection.** Failure by CITY to permit audit, inspection, examination, evaluation, or reproduction as permitted under this Section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the denial of some or all of any CITY's claims for payment by SBBC, as applicable.

(f) Overcharges and Unauthorized Charges. If applicable, in the event an audit is conducted in accordance with this Section which discloses overcharges or unauthorized charges to SBBC by CITY in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by CITY. If the audit discloses billings or charges to which CITY is not contractually entitled, CITY shall pay said sum to SBBC within twenty (20) days of receipt of written demand under otherwise agreed to in writing by both parties.

(g) Inspection of Payee's Records. CITY shall require any and all subcontractors, insurance agents, and material suppliers (hereafter referred to as "Payees") providing services or goods under this Agreement to comply with the requirements of this Section by including such requirements in any written subcontract. Failure by CITY to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and, if applicable, shall be grounds for the exclusion of some or all of any Payee's costs from amounts payable by SBBC to CITY pursuant to this Agreement, and such excluded costs shall become the liability of CITY.

(h) Inspector General Audits. CITY shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or any other state or federal officials.

2.15 **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: 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

2.16 **Background Screening** CITY agrees to comply with all applicable requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete

the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of CITY or its personnel providing any services under the conditions described in the previous sentence. 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 to maintain the fingerprints provided with respect to CITY and its personnel. 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 immediately with 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 the applicable requirements under Sections 1012.32 and 1012.465, 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.

ARTICLE 3 – GENERAL CONDITIONS

3.01 **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. 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 shall be 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.

3.02 **Independent Contractor.** The Parties shall at all times act 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 shall exist as a result of CITY's performance of any of its duties or responsibilities under this Agreement. SBBC shall not be 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.

3.03 **Equal Opportunity Provision.** No person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the performance of the Parties' respective duties, responsibilities, and obligations under this Agreement.

3.04 **Termination.** This Agreement may be canceled with or without cause by either party during the term of this Agreement, upon thirty (30) days written notice to the other party of its desire to terminate this Agreement.

3.05 **Default.** 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 thirty (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 any default that is not cured to the satisfaction of the non-defaulting party during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days written 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.

3.6 **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.

3.7 **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.

3.8 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

3.9 **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, 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, if applicable.

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

3.13 **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.

3.14 **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.

3.15 **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 the mutual intent of the Parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one party than the other.

3.16 **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, or others delegated authority or otherwise authorized to execute same on their behalf.

3.17 **Waiver.** Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and 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.

3.18 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement, or obligation under this Agreement if such performance is prevented by a fire, hurricane, earthquake, explosion, war, sabotage, accident, flood, act of God, strike, or other labor disputes, riots 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 by any party be deemed an event of Force Majeure.

3.19 **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.

3.20 **Contract Administration.** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.21 **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 expiration or earlier 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.

3.22 **Indemnification.** The Parties are state agencies or political subdivisions of the State of Florida subject to Section 768.28, Florida Statutes, and shall be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law. This Section shall survive the expiration or earlier termination of each party's respective 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.

3.23 **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.

3.24 **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.

ARTICLE 4 – PUBLIC RECORDS

4.01 Public Records.

A. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law, as amended. Specifically, the Contractor shall:

1. Keep and maintain public records required by the City in order to perform the service.

2. Upon request from the City's custodian of public records, provide the City with a copy of 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.

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 the Contractor does not transfer the records to the City.

4. Upon completion of the contract, transfer, at no cost to the City, all public records in possession of the Contractor, or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records in a format that is compatible with the information technology systems of the City.

B. Failure of the Contractor to provide the above described public records to the City within a reasonable time may subject Contractor to penalties under 119.10, Florida Statutes, as amended.

PUBLIC RECORDS CUSTODIAN

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CITY CLERK
100 W. Atlantic Blvd., Suite 253
Pompano Beach, Florida 33060
(954) 786-4611
RecordsCustodian@copbfl.com**

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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 _____
Abby M. Freedman, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

Office of the General Counsel

"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
GREGORY P. HARRISON, CITY MANAGER

Attest:

ASCELETA HAMMOND
CITY CLERK

(SEAL)

Approved As To Form:

MARK E. BERMAN
CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instruments were acknowledged before me this _____ day of _____, 2017 by **LAMAR FISHER** as Mayor, **GREGORY P. HARRISON** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

MEB:jrm
5/17/17
L:agr/recr/2017-658