

**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

**BROWARD COUNTY, FLORIDA**  
(hereinafter referred to as "COUNTY"),  
a political subdivision of the State of Florida  
whose principal place of business is  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301,  
collectively referred to herein as the "Parties."

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

**WHEREAS**, the COUNTY provides recreational programs and community service needs dependent upon availability of transportation; and

**WHEREAS**, Florida Statute Section 1006.261 (1) (c) provides for nonprofit corporations and nonprofit civic associations to use school buses to transport school-age children for their sponsored activities; and

**WHEREAS**, the COUNTY, being eligible under this legislation to use school buses, desires to enter into this Agreement with the 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 on June 1, 2014 and conclude on May 31, 2017.

2.02 **Transportation Needs.** Prior to the execution of this Agreement, the Parties have discussed the transportation needs of the COUNTY and the approximate number of school buses that may be made available to the COUNTY; however, nothing herein contained will obligate the SBBC to provide buses to the COUNTY, if it is deemed by the SBBC that such action will reduce or delay transportation of pupils. The COUNTY, through its Contract Administrator, shall provide the SBBC with two (2) weeks' written notice in order to obtain the school buses for transportation purposes as described within the Agreement. Said requests for transportation are limited to days that school is not in session including, but not limited to employee planning days, summer or holiday breaks or weekends. The SBBC shall provide the referenced school buses to the COUNTY on an emergency notice basis of between forty-eight (48) hours and two (2) weeks' notice time prior to needed services. This emergency notice basis must not exceed four (4) times per Agreement year.

2.03 **Payment of Operation Cost by COUNTY.** The COUNTY shall fully reimburse the SBBC for the operating cost of school buses used by the COUNTY during the term of this Agreement. The operational cost shall consist of the transportation rate, and where and when applied, the bus attendant rate, described in this Section 2.03. The COUNTY shall pay the SBBC posted transportation rate for a minimum of three (3) hours per day for each regular school bus provided, which sum shall cover use, operational costs, and reimbursement for driver's hours, and all other costs and expenses incurred by the SBBC in supplying the regular buses. Should a wheelchair lift equipped bus be required, the COUNTY shall pay the SBBC's posted bus attendant rate, for a minimum of three (3) 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 any purpose under this Agreement, become unavailable, the obligations of each party hereunder may be terminated by the SBBC upon no less than twenty-four (24) hours notice in writing to the COUNTY. The 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 the COUNTY, under no circumstances will the bus be driven by anyone other than bus drivers qualified, trained, certified, and assigned by the 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 the SBBC.

2.06 **Damage to the Buses Paid by COUNTY.** The COUNTY shall pay for any damage to the school buses while such buses are under the COUNTY's use which damage is attributable directly to that use, and caused by the COUNTY, its employees, or its program participants. All accidents involving a school bus will be reported as provided by procedures now existent or required in the daily operation of the SBBC.

2.07 **Reporting of Incidents Involving Non Pupil Passengers.** The COUNTY shall report to the SBBC the nature and extent if any incidents resulting in property damage or personal injury to a passenger while boarding, riding in, or deboarding from such bus, and shall be liable for 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 of the COUNTY.

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

2.09 **Geographic Limitations on the Use of School Buses.** The COUNTY will limit its use of school buses to and within the confines of Broward, Miami-Dade and Palm Beach counties. Under no circumstances should the buses be taken outside of the geographical limits set forth in this Section.

2.10 **Passenger Load Limit.** When the COUNTY's request to use school buses is made, the passenger capacity transported shall not exceed the rated capacity of the said bus(es). Standees shall not be permitted at any time. The COUNTY shall not use school buses for any purpose whatsoever not covered under this Agreement.

2.11 **Cancellation.** The COUNTY reserves the right to cancel any trips it deems necessary with at least twenty-four (24) hours written notice prior to the scheduled trip at no charge. Otherwise, a trip canceled within the twenty-four (24) hour time frame will result in a \$200.00 cancellation fee.

2.12 **Contract Administrator and Contract Representative.** The COUNTY's Contract Administrator for this Agreement is the Broward County Parks and

Recreation Division Director, or the Director's designee. The Contract Representative for the SBBC is the Director of Student Transportation and Fleet Services, 3895 Northwest 10th Avenue, Oakland Park, Florida 33309, or the Director's designee.

**2.13 Inspection of the COUNTY's Records by the SBBC.** The COUNTY shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All of the COUNTY's Records as defined in paragraph (a) below, 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 the SBBC's agent or its authorized representative to permit the 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 and/or claims submitted by the COUNTY or any of the COUNTY's payees pursuant to this Agreement. The COUNTY's Records subject to examination 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. The COUNTY's Records subject to this Section shall 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) **COUNTY's Records Defined.** For the purposes of this Agreement, the term "COUNTY'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 and/or reproductions, the SBBC's agent or authorized representative shall have access to the COUNTY's Records from the effective date of this Agreement through the duration of 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 the SBBC to the COUNTY pursuant to this Agreement.

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

(d) **Audit Site Conditions.** The SBBC's agent or its authorized representative shall have access to the COUNTY's facilities and to any and all of the COUNTY's Records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this Section.

(e) Overcharges and Unauthorized Charges. If an audit conducted in accordance with this Section discloses billings or charges to which the COUNTY is not contractually entitled, the COUNTY shall pay said sum to the SBBC within twenty (20) days of receipt of written demand unless otherwise agreed to in writing by the Parties.

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

(g) Inspector General Audits. The COUNTY 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 either party desires to give notice to the other, such notice must be in writing, sent by US 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 Section. For the present, the Parties designate the following as the respective places for giving notice:

To the 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 Broward County, Florida  
3895 NW 10th Avenue  
Fort Lauderdale, Florida 33309

To the COUNTY: Director  
Broward County Parks and Recreation Division  
950 NW 38<sup>th</sup> Street  
Fort Lauderdale, Florida 33309

2.15 Background Screening. The COUNTY shall comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are 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 the SBBC in advance of the COUNTY or its personnel providing any services under the conditions described in the previous sentence. The COUNTY 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 the COUNTY and its personnel. The failure of the COUNTY to perform any of the duties described in this Section shall constitute a material breach of this Agreement entitling the SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement.

2.16 **Liability.** 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.

### **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. Neither party 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 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 contract.

3.03 **Independent Contractor.** Each party to this Agreement shall at all times be acting in the capacity of an independent contractor and not as an officer, employee or agent of the other party. Neither party, nor 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 by the other party. No right to the SBBC retirement, leave benefits or any other benefits of the SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. The 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 **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 party's respective duties, responsibilities and obligations under this Agreement.

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

3.06 **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 (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 written notice to the defaulting party. 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.

3.07 **Annual Appropriation.** The performance and obligations of the SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If the SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by the SBBC at the end of the period for which funds have been allocated. The SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to the SBBC in the event this provision is exercised, and the SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this Section.

3.08 **Compliance with Laws.** Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.09 **Place of Performance.** All obligations of the 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 to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

3.11 **Entirety of Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein. 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.

3.12 **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 the SBBC.

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

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 effect 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.** 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, 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 regarding indemnification obligations, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements shall survive the termination of this 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 date first above written.

**FOR the SBBC**

(Corporate Seal)

THE SCHOOL BOARD OF  
BROWARD COUNTY, FLORIDA

ATTEST:

By \_\_\_\_\_  
Patricia Good, Chair

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

Approved as to Form and Legal Content:

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

**FOR the COUNTY**

ATTEST:

BROWARD COUNTY, by and through  
its Board of County Commissioners\_\_\_\_\_  
Broward County Administrator, as  
Ex-officio Clerk of the Broward County  
Board of County CommissionersBy \_\_\_\_\_  
Mayor

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Approved as to form by  
Joni Armstrong Coffey  
Broward County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-7641By Patrice M. Eichen 4/14/14  
Patrice M. Eichen (Date)  
Assistant County AttorneyAngela J. Wallace 4-11-14  
Angela J. Wallace (Date)  
Deputy County Attorney