

TEMPORARY ACCESS AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 20____, by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(hereinafter referred to as "Grantor"),

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 FORT LAUDERDALE

(hereinafter referred to as "Grantee"),

whose principal place of business is

100 N. Andrews Avenue

Fort Lauderdale, Florida 33301

WHEREAS, Grantor owns certain real property located at 3100 Riverland Road Fort Lauderdale, also known as New River Middle School in Broward County, Florida; and

WHEREAS, Grantee wishes to have temporary, non-exclusive access, ingress and egress over, across and through said real property for any and all purposes deemed by Grantee to be necessary, convenient, or incident to, or in connection with storage of work material for the demolition and abandonment of sewage pump station C-3, located at New River Middle School. The work includes, but is not limited to: abandon water and electrical services, remove and dispose of all mechanical and electrical equipment (pipes, pump, valves, hoses, lights, electrical wiring and conduits, control panel), demolish above-ground masonry enclosure, excavate, saw-cut and demolish concrete wet-well structure below ground, backfill with clean fill, and all site restoration. Site restoration includes curb and gutter, handicap ramp, asphalt pavement, pavement markings, asphalt walk path, chain-link fence and sod; and

WHEREAS, Grantor is willing to permit such access for a period of 12 months upon the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 - RECITALS

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

ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Temporary Access Agreement (Agreement), the term of this Agreement shall commence on August 8, 2017 and conclude on or before August 8, 2018.

2.02 **Property Description.** For the purposes of this Agreement, the term “Property” shall refer to that certain real property owned by Grantor, known as New River Middle School Site, and as shown on **Exhibit “A”** hereto and made a part hereof.

2.03 **Right of Entry and Days of Operation.** For good and valuable consideration, the receipt of which is hereby acknowledged, Grantor hereby grants to Grantee, its employees, contractors and assigns, temporary, non-exclusive access, ingress and egress over, across and through the Property for any and all purposes deemed by Grantee to be necessary, convenient, or incident to, or in connection with storage of work material for nearby construction project for the demolition and abandonment of sewage pump station C-3, hereto shown as **Exhibit “B”**. Grantor hereby acknowledges and agrees that the use of backhoes, bulldozers, cranes, other earth moving and related equipment and/or vehicles (collectively, the “Equipment”) may be necessary to accomplish the above described purpose of this Agreement, and Grantor agrees that the right of entry granted herein includes the right of Grantee, its employees, contractors and assigns to bring the Equipment onto the Property. Grantee shall not access the Property for any purposes other than those stated above. Grantee hereby further agrees that all work performed at the Property shall be done over the weekend days (Saturday and Sunday), or holidays, nighttime, or non-school week-days, to avoid any disruption of the regularly scheduled school days. Grantee, also agrees that all equipment used shall be properly stored in a manner away from public walking paths and highly traveled areas.

2.04 **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 school other than for the purpose of this Agreement.

2.05 **Comprehensive General Liability Insurance.** Grantee is self-insured for general liability and automobile liability under state law with coverage limits of \$200,000 per person and \$300,000 per occurrence, in accordance with Florida Statutes § 768.28, or as such monetary waiver limits that may change and be set forth by the state legislature.

2.06 **Workers’ Compensation Insurance.** Grantee is self-insured in accordance with Chapter 440, Florida Statutes and all applicable federal laws.

2.07 **Extensions of Term.** Grantee further agrees to complete its activities for which it requires temporary access to the Property within 12 months from the date of execution of this Agreement by both parties. Any extensions of this Agreement shall be granted only with the written consent of Grantor.

2.08 **Ownership of Equipment.** Grantor hereby acknowledges that the Equipment shall remain the property of the Grantee and shall be removed from the Property by Grantee on

or before the termination of this Temporary Access Agreement. Any portion of the Property including, without limitation, fences or gates and irrigation equipment or landscaping, which may be damaged as a result of activities conducted by Grantee pursuant to this Agreement, will be promptly returned to substantially the same condition that it was in on the date hereof.

2.09 **Environmentally Hazardous Material.** Grantee hereby acknowledges that Grantor prohibits the storage of Environmentally Hazardous material on Grantor's property at any and all times. Grantee agrees not to store any Environmentally Hazardous materials on Grantor's property and understands that violation of this stipulation will result in Grantor's immediate termination of this Agreement and Grantee will restore and return the property to the same condition that it was in on the date hereof.

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 Grantor: Superintendent of Schools
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

With a Copy to: Chief of Facilities & Construction
The School Board of Broward County, Florida
600 SE 3rd Avenue, 10th Floor
Ft. Lauderdale, Florida 33301

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

To Grantee: City Manager
City of Fort Lauderdale
100 N. Andrews Avenue
Fort Lauderdale, Florida 33301

With a Copy to: City Attorney
City of Fort Lauderdale
100 N. Andrews Avenue
Fort Lauderdale, Florida 33301

2.11 **Restore.** Grantee covenants and agrees that if any portion of the Property is disturbed, damaged, or destroyed by Grantee, at any time, Grantee shall, at its sole expense, and

as soon as reasonably possible, restore the disturbed, damaged, or destroyed portion of the Property to its original condition to allow for Grantor's use.

2.12 **Indemnification**. To the extent permissible by law, 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. 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 contract.

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 Grantor's retirement, leave benefits or any other benefits of Grantor's employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. Grantor shall not be responsible for social security, withholding taxes, and contributions to unemployment compensation funds or insurance for the Grantee or the Grantee's officers, employees, agents, subcontractors or assignees.

3.04 **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.

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.** 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.

3.07 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. Grantee shall keep and maintain public records required by Grantor to perform services required under this agreement. Upon request from Grantor's custodian of public records, Grantee shall provide Grantor with a copy of any requested public records or to allow the requested public 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. Grantee shall ensure that public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if Grantee does not transfer the public records to Grantor. Upon completion of the Agreement, Grantee shall transfer, at no cost, to Grantor all public records in possession of Grantee or keep and maintain public records required by Grantor to perform the services required under the Agreement. If Grantee transfer all public records to Grantor upon completion of the Agreement, Grantee shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Grantee keeps and maintains public records upon completion of the Agreement, Grantee shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Grantor, upon request from Grantor's custodian of public records, in a format that is compatible with Grantor's information technology systems.

IF A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATION TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT REQUELL BELL, 754-321-1900, REQUELLBELL@BROWARDSCHOOLS.COM, 600 SE 3RD AVENUE FORT LAUDERDALE, FL 33301.

3.08 **Compliance with Laws.** Grantee agrees that this Agreement is contingent upon and subject to Grantee obtaining all applicable permits and complying with all applicable permits, regulations, ordinances, rules and laws of the State of Florida or the United States or of any political subdivision or agency of either.

3.09 **Place of Performance.** All obligations of Grantor 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 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 or 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 Grantor.

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

3.15 **Section 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.

3.16 **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.

3.17 **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.

3.18 **Amendments.** This Agreement may not be modified or rescinded in any respect, in whole or in part, except solely by the authorization of the Grantor, and then only by written instrument, duly executed, acknowledged, and recorded in the Public Records of Broward County, Florida at Grantee's expense.

3.19 **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.

3.20 **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.

3.21 **Survival.** All representations and warranties made herein, indemnification obligations, shall survive the termination of this Agreement.

3.22 Contract Administration. Grantor has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Lease 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.

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FOR GRANTOR

(Corporate Seal)

The School Board of Broward County, Florida

By: _____
Abby M. Freedman, Chair

ATTEST

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

Office of the General Counsel

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by _____ of _____, on behalf of the corporation/agency.
Insert Name of Person
Insert Name of Corporation or Agency

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

My Commission Expires: _____

Signature – Notary Public

(SEAL)

Printed Name of Notary

Notary's Commission No.

FOR GRANTEE

(Corporate Seal)

ATTEST:

City Clerk

By: _____
Lee R. Feldman, City Manager

Approved as to legal form and sufficiency:

City Attorney

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

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of
_____, 20__ by _____ of
Insert Name of Person
_____, on behalf of the corporation/agency.
Insert Name of Corporation or Agency

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

My Commission Expires: _____

Signature – Notary Public

(SEAL)

Printed Name of Notary

Notary's Commission No.



New River Middle School Aerial View



Imagery ©2017 Google, Map data ©2017 Google 200 ft



New River Middle School
City of Fort Lauderdale Pump Station



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