

**SUNRISE MIDDLE SCHOOL  
POOL LICENSE AGREEMENT**

THIS LICENSE 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 "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

**THE CITY OF FORT LAUDERDALE, FLORIDA**

(hereinafter referred to as "City"),  
a municipal corporation of the State of Florida,  
whose principal place of business is  
100 North Andrews Avenue, Florida 33301

**WHEREAS**, on November 15, 1991, the SBBC approved the construction of a new swimming pool facility at Sunrise Middle School; and

**WHEREAS**, the City committed grant monies in the amount of \$200,000 to the SBBC towards funding of the Sunrise Middle School pool; and

**WHEREAS**, on November 10, 1998, the City and the SBBC entered into a twenty (20) year Agreement for the shared use of the pool. The effective date of that Agreement was the date on which the pool facilities received a Certificate of Final Completion, January 11, 1999; and

**WHEREAS**, the pool serves all the residents of the area and fills a great need in the community; and

**WHEREAS**, the SBBC and the City desire to enter into this new Sunrise Middle School License Agreement ("License") for a twenty (20) year term.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and agreements, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1 - RECITALS**

1.01 **Recitals.** The foregoing recitals are correct and are incorporated into this License Agreement.

## **ARTICLE 2 – SPECIAL CONDITIONS**

2.01 **Term of License Agreement.** Unless terminated earlier pursuant to Section 3.03 the term of this License Agreement shall commence on January 12, 2019 and end on January 11, 2039.

2.02 **Permitted Use of the Pool and Hours of Operation.** The SBBC does hereby license to the City, the Sunrise Middle School pool ("pool"), granting unto the City "shared use" of the pool on the terms and conditions hereinafter set forth in this License Agreement. The following provisions shall govern the shared use of the pool:

2.02.1 During the SBBC regular school year, the SBBC shall have use of the pool during the hours school is in session including after school activities and after child care programs. Such hours shall be Monday through Friday, from 7:00 a.m. to 6:30 p.m. and the City is granted rights to have use of the pool, Monday through Friday from 6:30 p.m. to 8:00 p.m. and on SBBC recognized school holidays, and weekends from 7:00 a.m. to 8:00 p.m., unless the SBBC requires use of the pool during the cited hours. In the event of conflict between pool events sponsored by the SBBC (e.g., school swim meets, water polo, etc.) and the City's use rights under this License, during the cited hours, SBBC's usage shall take precedence over the City's use rights during the conflicting date(s) and hours(s).

2.02.2 The City is granted rights to use the pool during the SBBC recognized Summer months and dates, Monday through S u n d a y , from 7:00 a.m. to 8:00 p.m., exclusive of the SBBC usage if any, during the cited Summer hours. In the event the SBBC desires to use the pool for academic or athletic programs during the cited Summer hours, SBBC shall notify City. In the event of conflicts between pool events sponsored by the SBBC and the City's rights under this License during the cited Summer Hours, the SBBC's usage shall take precedence over the City's shared use rights during the conflicting date(s) and hour(s).

2.02.3 Additional times for the City's use of the pool may be arranged if the School is not using the pool and if approved in advance and in writing by the Sunrise Middle School principal.

2.02.4 During the periods of the City's use set forth herein, the City shall be entitled to utilize the pool and all appurtenant facilities, including all emergency equipment; provided, however, the City's use of shower facilities shall be limited to those exterior showers located on the pool deck.

2.02.5 Prior to March 1<sup>st</sup> of each year, the City shall submit a list consisting of the dates and times the City intends to utilize the pool throughout the year consistent with the provisions of this License Agreement. Should the City request changes to the dates and times after March 1<sup>st</sup>, it must first obtain approval by the SBBC.

2.03 **Pool Maintenance.** The maintenance responsibilities of the parties with respect to the pool use shall be as follows:

2.03.1 The SBBC shall be responsible for the maintenance and custodial services regarding the pool, except as stated herein.

2.03.2 The City shall be responsible for 50% of the chemical cost towards maintenance of the pool, and 50% of the electrical costs related to utility cost incurred. The SBBC

shall invoice the City annually for reimbursement of these costs and upon receipt, the City agrees to pay amount due within thirty (30) days.

2.03.3 The City shall be responsible for abiding by all health and safety regulations of Broward County and the State of Florida.

2.03.4 During the City's use of the pool, the City shall employ a supervisor to supervise and oversee the use of the pool. During the Summer months cited herein, and consistent with the provisions of Section 2.02.2, the City will be responsible in providing custodial services for the pool facility.

2.03.5 During the City's use of the pool, all pool rules established by the SBBC shall be obeyed by the City, its instructors, employees agents, and students.

2.03.6 During the City's use of the pool, the City shall provide the appropriate number of certified lifeguards who shall be in charge and supervise the users of the pool.

2.03.7 City covenants and agrees that if any portion of the pool is disturbed, damaged, or destroyed by the City or its invitees, at any time, the City shall, at its sole expense, promptly restore the disturbed, damaged, or destroyed portion of the pool to its original condition to allow for SBBC's use.

2.04 **Required Insurance Coverages.** Upon execution of this Recreation License Agreement, each party shall submit to the other, copies of its certificate(s) of insurance or letter of self-insurance evidencing the required coverage.

2.04.1 Each party acknowledges without waiving its right of sovereign immunity as provided by Section 768.28, Florida Statutes, that each party is insured or self-insured for general liability under state law with coverage limits of \$200,000 per person and \$300,000 per occurrence, or such monetary wavier limits that may change and be set forth by the legislature.

2.04.2 Each party shall procure and maintain at its own expense and keep in effect during the full term of the Agreement, a policy or policies of insurance or self-insurance under a Risk Management Program in accordance with Florida Statutes, Section 768.28 for General Liability, Auto Liability, and Workers' Compensation, including Employer's Liability (with benefits in accordance with Chapter 440 Florida Statutes) coverage.

2.04.3 Self-insurance and/or insurance requirements shall not relieve or limit the liability of either party, except to the extent provided by, Section 768.28, Florida Statutes. Both parties reserve the right to require other insurance coverage that both parties deem mutually necessary depending upon the risk of loss and exposure to liability, subject to each party's Commission or Board approval, if necessary.

2.04.4 Violations of the terms of this section and its subparts shall constitute a material breach of the Agreement and the non-breaching party may, at its sole discretion, cancel the Agreement and all rights, title and interest shall thereupon cease and terminate.

2.04.5 No activities under this Agreement shall commence until the required letter of self-insurance and/or certificates of insurance have been received and approved by the Risk Managers of each party.

**2.05 Parking Area.** The City and the City's guest shall have the right to use the parking areas located at Sunrise Middle School during the hours described in Section 2.02 of this License Agreement to park vehicles. The parking areas herein shall be as depicted in **Exhibit A**. For purposes of this License Agreement, a vehicle shall be defined as a car, pick-up truck, SUV and/or motorcycle. The City acknowledges that use of the parking areas cannot be guaranteed at times other than the operation hours identified in Section 2.02 of the License Agreement. The City shall keep and maintain the parking areas free and clear of debris during the City's use. City covenants and agrees that if any portion of the Parking Area is disturbed, damaged, or destroyed by the City or its invitees, at any time, the City shall, at its sole expense, promptly restore the disturbed, damaged, or destroyed portion of the Parking Area to its original condition to allow for SBBC's use.

**2.06 Security.** Upon the effectiveness of this License Agreement, and prior to when the City will be granted access to utilize the pool facility, the City shall install fencing and gate(s) (if necessary as solely determined by SBBC) which secures the pool facility area (see **Exhibit A**), and which also prevents users of the pool facility and the public from gaining access from the pool facility into the school grounds. The City shall lock and secure the gates after each and every use of the pool facility. All costs associated with the installation of the fencing and gate(s) shall be at the City's expense. Additionally, the City shall be solely responsible for any security necessary for any events and/or activities that the City permits at the pool facility when under the control of the City. If it is determined that any security or safety issues occurred during the time the pool facility was under the City's control, the City will be liable and indemnify the SBBC consistent with Section 2.10, and any other applicable provisions in this License Agreement. All costs associated with security, as referenced under this Section, shall be at the sole expense of the City.

**2.07 Improvements.** The location of any and all Improvements requested by City, to be placed on the School's grounds, shall first be approved in writing by the SBBC, it being intended that the SBBC shall have absolute control over the location of any Improvements before they are placed on the School's ground. However, such approval by the SBBC shall not be unreasonably withheld.

2.07.1 The authority to grant approval regarding Improvements requested by City in this License Agreement is hereby delegated by the SBBC to the SBBC's Chief Facilities Officer and Chief Building Official. Subject to the provisions of the foregoing paragraph, the parties further agree that the City will prepare and submit plans to the SBBC's Chief Facilities Officer and Chief Building Official for review and approval. Any plans must meet State of Florida Building Code Requirements, Florida Fire Protection Code, and State Requirements for Educational facilities as applicable, and any other requirements imposed by applicable law. The SBBC's Chief Facilities Officer and Chief Building Official shall have ninety (90) days from the date of receipt to review and comment. All design documents shall be approved by the SBBC's Chief Facilities Officer and Chief Building Official prior to submission to the Florida Department of Education, if applicable.

2.07.2 The City shall be solely responsible for all contractual obligations to the contractor hired by City to construct the Improvements.

2.07.3 Before the commencement of the Improvements, the City shall require the engaged contractor to furnish a surety payment and performance bonds that guarantee the completion of the Improvements and the performance of the work necessary to complete the Improvements; as well as, full payment of all suppliers, material men, laborers or subcontractors employed to provide services to complete the Improvements. The contractor shall be required by

contract to deliver a copy of the surety bond to the City. Such bonds shall remain in effect for one (1) year after completion of the Improvements. The contractor will cause the correction of any defective or faulty work or materials that appear after the completion of the Improvements within the warranty period of such work performed.

2.07.4 Any Improvements placed on the School's ground without the prior written approval of the SBBC as to location shall immediately be removed or relocated within ninety (90) days of written demand by the SBBC, unless the parties agree that the Improvements should remain whereby this License Agreement will be amended, in writing to reflect the use and responsibility of the Improvements.

2.07.5 Consistent with provisions in this License Agreement, all permitted Improvements made by the City, if not removed and space restored to its original condition, shall become the property of the SBBC. The City agrees that the SBBC shall not compensate the City for such Improvements.

2.08 **Sub-Licensing.** The City shall not sublicense or issue any permits which grants authorization to a third party to utilize the pool facility unless it obtains prior written approval from SBBC and unless it meets all District licensing requirements, which includes, but is not limited to the cost of sublicensing the pool facility. The City must submit a written request to SBBC requesting authorization to sub-license to a third party which shall include an attached copy of the proposed agreement, the cost of sublicensing the pool facility and any related documents with the written request. Failure to obtain the written approval from the SBBC shall, at the option of the SBBC, constitute a default hereunder. If authorization to sub-license the pool facility to a third party is granted by the SBBC to City, all proceeds or revenues due from the sublicensing or permitting of the pool facility shall be divided between the SBBC and the City as stated in this section. For any and all proceeds or revenues that are due to the City from sublicensing or permitting of the pool facility, the SBBC shall receive fifty percent (50%) of all proceeds or revenues due to the City and the City shall receive fifty percent (50%) of all proceeds or revenues due in accordance with the agreement between the City and the sublicensee. The City shall remit to the SBBC any and all amounts due to SBBC from sublicensing or permitting the pool facility by no later than January 31 following the year that the pool facility is sublicensed. No later than December 31<sup>st</sup>, in the final year of the term of this License, the City shall remit to SBBC any and all amounts due to the SBBC due to the City from sublicensing or permitting the usage of the pool facility.

2.09 **Notice.** When any of the parties desire 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 the paragraph. For the present, the parties designate the following as the respective places for giving notice:

To SBBC:

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

With a Copy to:

Director, Facility Planning and Real Estate  
The School Board of Broward County, Florida

600 Southeast Third Avenue  
Fort Lauderdale, Florida 33301

To City:

City Manager  
100 North Andrews Avenue  
Fort Lauderdale, FL 33301

With a Copy to:

Director, Parks & Recreation  
City of Fort Lauderdale  
701 S. Andrews Avenue Fort Lauderdale, FL 33316

**2.10 Indemnification.** Each party agrees to be fully responsible for its own 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. Nothing herein is intended to nor shall be construed as a waiver by SBBC or the City of sovereign immunity or of any rights or limits to liability existing under Section 768.28, Florida Statutes.

**2.11 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 License Agreement.

**2.12 Public Records.** Any party contracting with SBBC is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that SBBC would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost to SBBC, all public records in that party's possession upon termination of its Agreement with SBBC and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored electronically must be provided to SBBC in a format that is compatible with SBBC's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

### **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 License Agreement and shall be fully binding until such time as any proceeding brought on account of this License 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 License Agreement. None of the parties intend to directly or substantially benefit a third party by this License 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 License 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 License Agreement.

**3.03 Termination.** This License Agreement may be canceled by either party, with or without cause, during the term thereof upon sixty (60) days written notice to the other party of its desire to terminate this License Agreement.

**3.04 Authority.** Each person signing this License Agreement on behalf of either party individually warrants that he or she has full legal power to execute this License 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 License Agreement.

**3.05 Default.** The parties agree that, in the event that either party is in default of its obligations under this License 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 License 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 3.03.

**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 License Agreement.

**3.07 Place of Performance.** All obligations of SBBC under the terms of this License Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

**3.08 Governing Law and Venue.** This License 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 License Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted exclusively to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida or to the jurisdiction of the United States District Court for the Southern District of Florida. Each party agrees and admits that the state courts of the Seventeenth Judicial Circuit of Broward County, Florida or the United States District Court for the Southern District of Florida shall have jurisdiction over it for any dispute arising under this License 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 License 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.

3.10 **Binding Effect.** This License 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 License 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 License Agreement including, without limitation, the partial assignment of any right to receive payments from the SBBC.

3.12 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this License 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 License Agreement, nor in any way affect this License Agreement and shall not be construed to create a conflict with the provisions of this License Agreement.

3.13 **Severability.** If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, such unconstitutional or invalid part shall be considered eliminated, so as not to effect the validity of the remainder of the License Agreement which will remain in full force and effect.

3.14 **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 License 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 shall be effective unless contained in a written document prepared with the same or similar formality as this License 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 License Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this License Agreement shall not be deemed a waiver of such provision or modification of this License 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.

3.17 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this License 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.

3.18 **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 shall survive the termination of this License Agreement.



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

3.20 **Counterparts and Multiple Originals.** This License 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 License Agreement.

3.21 **Authority.** Each person signing this License Agreement on behalf of either party individually warrants that he or she has full legal power to execute this License 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 License Agreement.

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOW]

**FOR THE CITY**

WITNESSES:

CITY OF FORT LAUDERDALE,  
a municipal corporation of the State of Florida.

\_\_\_\_\_

By \_\_\_\_\_  
DEAN J. TRANTALIS, Mayor

\_\_\_\_\_  
Print Name

\_\_\_\_\_

By \_\_\_\_\_  
LEE R. FELDMAN, City Manager

\_\_\_\_\_  
Print Name

(SEAL)

ATTEST:

\_\_\_\_\_  
JEFFREY A. MODARELLI, City Clerk

Approved as to form:  
ALAIN E. BOILEAU, City Attorney

\_\_\_\_\_  
KIMBERLY CUNNINGHAM MOSLEY  
Assistant City Attorney

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOW]

**FOR THE SBBC**

(Corporate Seal)

**THE SCHOOL SBBC OF BROWARD  
COUNTY, FLORIDA**

ATTEST:

By: \_\_\_\_\_  
Heather P. Brinkworth, Chair

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

Date: \_\_\_\_\_

Approved as to form:

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

**[THIS SPACE INTENTIONALLY LEFT BLANK]**



This Exhibit is confidential and has been partially redacted pursuant to Section 119.071 and 281.301, Florida Statutes. The unredacted Exhibit will be provided to the parties to this Agreement.

LEGEND

SUNRISE MIDDLE SCHOOL

PARKING AREA