

## **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, FLORIDA**

(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 located adjacent to the New River Middle School perimeter fence/gate(s) for any and all purposes deemed by Grantee to be necessary, convenient, or incident to, or in connection with work 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 upon the execution of both parties and conclude on or before December 31, 2019. The term of the Agreement may only be extended by written approval of the Grantor.

2.02 **Property Description.** For the purposes of this Agreement, the term “Property” shall refer to that certain real property owned by the Grantor and located on the outside of the perimeter fence/gate(s) of the 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 A**. 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 weekdays, 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. Grantee, shall provide a timeline for the project, and communicate weekly with the school principal and District staff regarding the project status.

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 Section 768.28, Florida Statutes, 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 **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.

2.08 **Environmentally Hazardous Material.** Grantee hereby acknowledges that Grantor prohibits the storage or leakage of Environmentally Hazardous material on Grantor's property at any and all times. Grantee agrees not to store or leak 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.

2.09 **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

With a Copy to: School Principal  
New River Middle School  
3100 Riverland Road  
Fort Lauderdale, FL 33312  
754-323-3600  
Melinda.wessinger@browardschools.com

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

2.10 **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.

2.11 **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.

2.12 **Background Screening.** Grantee agrees to comply with all 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, or (2) will have direct contact with students, 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 Grantor in advance of Grantee or its personnel providing any services under the conditions described in the previous sentence. Grantee 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 Grantee and its personnel. The Parties agree that the failure of Grantee to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling Grantor to terminate immediately with no further responsibilities or duties to perform under this Agreement. Grantee agrees to indemnify and hold harmless Grantor, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting in Grantee's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

2.13 **Security.** Upon the effectiveness of this Agreement, and prior to when the Grantee will be granted access to utilize the Property, the Grantee shall install fencing and gate(s) (if necessary) which secures the Property area, and which also prevents users of the Property and the public from gaining access from the Property into the school grounds. Also, the Grantee shall lock and secure the gates after each and every use of the Property. All cost associated with the installation of the fencing and gate(s) shall be at the Grantee's expense. Additionally, the Grantee shall be solely responsible for any security necessary for any events and/or activities that the Grantee permits at the Property when under the control of the Grantee. If it is determined that any safety issues occurred during the time the Property is under the Grantee's control, the Grantee will be liable and indemnify the Grantor consistent with Section 2.11, and any other applicable

provisions in this Agreement. All cost associate with security shall be at the sole expense of the Grantee.

### **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. Grantor shall have no liability for any property left on Grantor's property by any party to this Agreement after the termination of this Agreement. Any party contracting with Grantor under this Agreement agrees that any of its property placed upon Grantor's facilities pursuant to this Agreement shall be removed within ten (10) business days following the termination, conclusion or cancellation of this Agreement and that any such property remaining upon Grantor's facilities after that time shall be deemed to be abandoned, title to such property shall pass to Grantor, and Grantor may use or dispose of such property as Grantor deems fit and appropriate.

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, 754-321-1900, [RECORDREQUESTS@BROWARDSCHOOLS.COM](mailto:RECORDREQUESTS@BROWARDSCHOOLS.COM), 600 SE 3<sup>RD</sup> 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.** **Exhibit A** 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 affect 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: \_\_\_\_\_  
Heather P. Brinkworth, Chair

ATTEST

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

Approved as to Form and Legal Content:

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

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**FOR GRANTEE**

(Corporate Seal)

City of Fort Lauderdale, Florida

ATTEST:

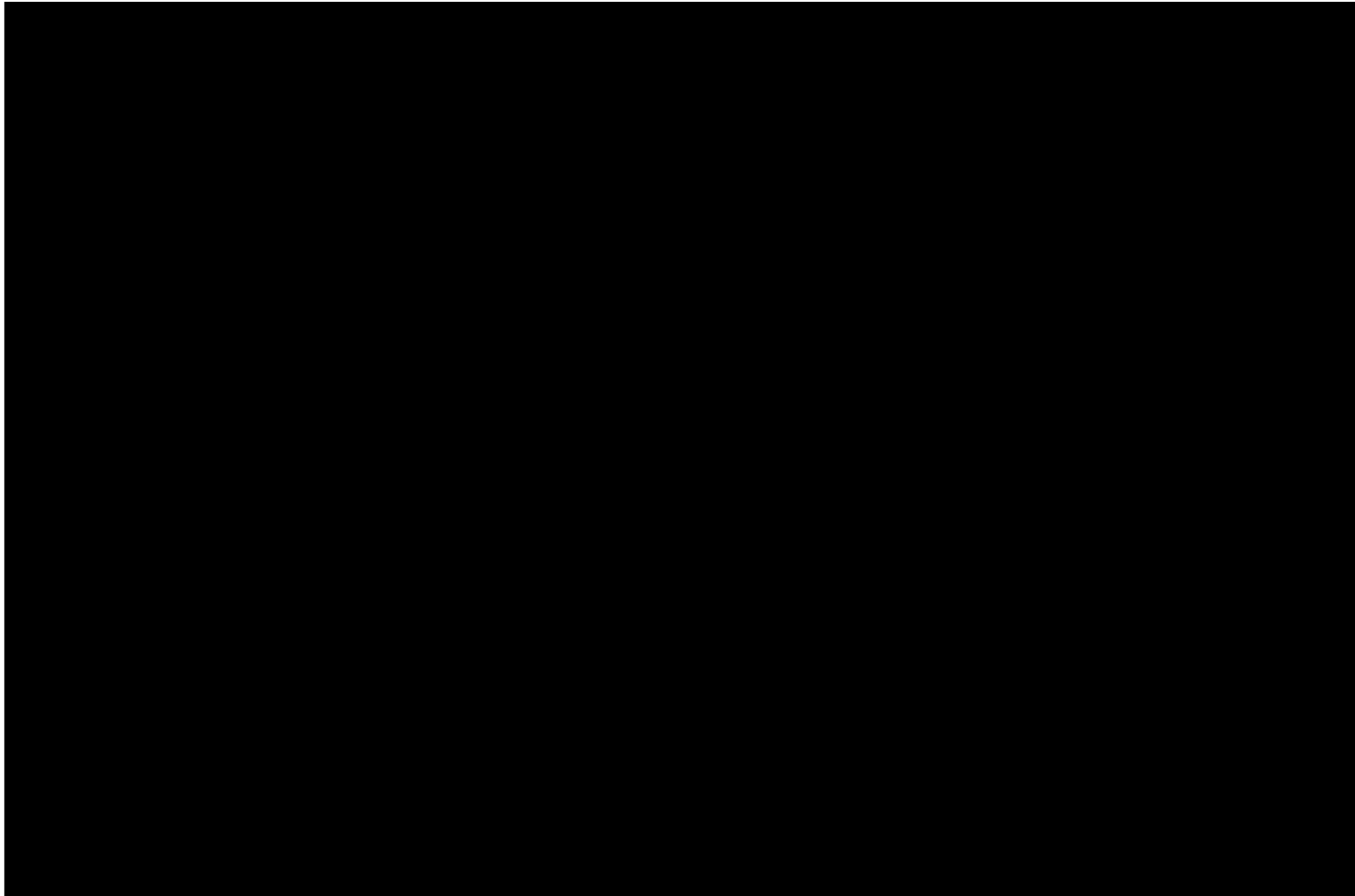
\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Christopher Lagerbloom, City Manager

Approved as to legal form and sufficiency:

\_\_\_\_\_  
City Attorney

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