

## **NON-EXCLUSIVE LEASE AGREEMENT**

THIS NON-EXCLUSIVE LEASE AGREEMENT ("**Agreement**"), made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, a body corporate and politic existing under the laws of the State of Florida (the "**BOARD**"), and the CITY OF CORAL GABLES, a political subdivision of the State of Florida ("**CITY**"). The BOARD and CITY are sometimes referred to in this Agreement individually as "**Party**" and collectively as the "**Parties**".

### WITNESSETH

WHEREAS, the CITY operates a fleet of Trolley buses ("**Trolleys**") to relieve local traffic congestion, alleviate parking requirements, and connect downtown Coral Gables to surrounding areas through the Metrorail system; and

WHEREAS, the CITY is seeking a location to store and maintain the Trolleys for a limited period of time; and

WHEREAS, the BOARD owns and has under its jurisdiction certain real property, located in Miami-Dade County, Florida, at 7001 SW 4 Street (hereinafter referred to as the "**Site**"); and

WHEREAS, the CITY has approached the BOARD with a request to utilize a portion of the Site, on a non-exclusive basis and for a limited period of time, to store and maintain the Trolleys; and

WHEREAS, the BOARD and CITY are desirous of entering into this Agreement to provide for the non-exclusive use of a portion of the Site by the CITY, under terms and conditions outlined in this Agreement; and

WHEREAS, the City of Coral Gables by the adoption of Resolution No. \_\_\_\_\_, at its meeting of \_\_\_\_\_, 20\_\_, approved this Agreement; and

WHEREAS, The School Board of Miami-Dade County, Florida has authorized this Agreement in accordance with Board Action No. \_\_\_\_\_, at its meeting of \_\_\_\_\_, 20\_\_.

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), of the duties, restrictions and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the BOARD and CITY agree as follows:

### I.

### **RECITALS**

The above recitals are true and correct and are incorporated herein by reference.

II.

**DEMISED PREMISES**

Effective with the Commencement Date of this Agreement (as defined in Article III below), the City shall have non-exclusive use of the portion of the Site, situated in Miami-Dade County, Florida, within Folio #01-4002-012-0010, and consisting of approximately \_\_\_\_ square feet of office/storage/maintenance facilities and approximately \_\_\_\_ square feet of paved parking area, as more particularly described in **Exhibit "A"** attached hereto and made a part hereof (hereinafter called the "**Demised Premises**"). In addition, CITY shall have the unrestricted right of ingress and egress across a mutually agreed to portion of the Site to gain access to the Demised Premises from the SW 4 Street entrance. No other buildings or portions of the Site may be accessed by CITY or any of its employees, invitees or guests.

III.

**TERM**

This Agreement shall be effective upon the date on which the last of the Parties initials or executes this Agreement (the "**Effective Date**"), which shall also be the date that the CITY may initiate maintenance and renovation activities within the Demised Premises, as detailed in Article VI of this Agreement. The term of this Agreement shall be for a period of one (1) year, commencing on the latter date of May 14, 2015 or the date the City takes possession of the property for use and occupancy (the "**Commencement Date**"). The Parties shall confirm the Commencement Date in writing, which document shall be attached hereto and made a part hereof, as **Exhibit "B"**.

IV.

**CONSIDERATION**

As consideration for use and occupancy of the Demised Premises throughout the term of this Agreement, and any renewal thereof, the CITY agrees to enter into a separate agreement with the BOARD to provide funding for the replacement of seating within the Coral Gables Senior High School auditorium, with said auditorium to be made available to the CITY for community meetings and other CITY events and functions. The estimated cost of the seat replacement is approximately \$200,000.00. Terms and conditions of the agreement for replacement of the auditorium seats and joint use of the facility shall be as mutually agreed to by the Parties.

## V.

### USE OF DEMISED PREMISES

The Demised Premises shall be used solely by the CITY for the storage and maintenance of Trolleys and for no other purpose. The CITY covenants and agrees to accept the Demised Premises in its "as-is", "where-is" condition and basis with all faults as of the Effective Date of this Agreement, subject to all easements, covenants or other encumbrances of record. The BOARD makes no representations or warranties of any type or nature whatsoever, either expressed or implied, as to the usefulness, physical condition or appropriateness of the Demised Premises for the CITY'S operations or any specific use. The CITY, by executing this Agreement, agrees and acknowledges that the BOARD has made no representations whatsoever regarding the Demised Premises or balance of the Site. The CITY represents that it is relying and will continue to rely solely on its own investigations of the Demised Premises in its decision to occupy or use it, and the CITY further acknowledges and agrees that the BOARD shall not indemnify the CITY in any way with respect to condition of the Demised Premises. The provisions of this paragraph shall survive the expiration or the early termination or cancellation of this Agreement.

If, subsequent to the Effective Date of this Agreement, but prior to the Commencement Date, a determination is made by the CITY that the Demised Premises is not viable for its intended purposes, the CITY shall so notify the BOARD in writing, and, subject to the provisions of Article XX, this Agreement shall terminate as of the date of said notification, and be of no further force and effect.

Effective with the Commencement Date, the CITY shall have use of the Demised Premises at all times. However, should the BOARD require use of some or all of the paved parking area for a special event or function or any other reason, the BOARD shall request said use through the CITY'S designated representative, with a minimum of seventy-two (72) hours advance notice ("**BOARD'S Interim Use**"). Approval of said requests shall not be unreasonably withheld, provided such use does not conflict with the CITY'S operations or previous obligations.

Notwithstanding the above, the BOARD reserves the right, in its sole discretion, to modify the exact location and layout of the paved parking area allocated to the CITY as a part of the Demised Premises. Such modification will be done with a minimum of seventy-two (72) hours advance notice and in consultation with the CITY representative, to minimize any impact on the CITY'S Trolley operations. The BOARD and CITY shall coordinate as necessary to assure the CITY'S use of the Demised Premises does not impact or restrict the BOARD'S use

of the Site, and that the balance of the Site will remain functional for BOARD operations. The CITY shall secure and lock all perimeter and parking lot gates impacted by its use of the Demised Premises at the completion of its use on a daily basis, if required and directed by the BOARD'S Site Administrator.

In addition to any financial requirements included as a part of Articles VII and IX of this Agreement, the CITY agrees to pay the BOARD for any costs of any type or nature borne by the BOARD, beyond those normally associated with the BOARD'S operations at the Site, as a result of the CITY'S use and occupancy of the Demised Premises (e.g. excess utility costs, staff overtime costs, etc.).

The use of the Demised Premises for carnivals, fairs, exhibits, mechanical rides, midways, or the same or similar kinds of activities is expressly prohibited. The sale or consumption of alcoholic beverages on the Demised Premises is expressly prohibited. Neither Party shall commit nor permit any violations of applicable laws, rules and regulations of the BOARD, CITY, Miami-Dade County, State, or Federal government upon the Site.

Other than as specifically required for the storage, parking and maintenance of Trolleys under this Agreement, the CITY agrees that the Demised Premises shall not be used for storage of maintenance materials, or for the storage or long-term parking of vehicles, and shall remove all unauthorized vehicles stationed thereon.

The CITY shall provide proper supervision of the Demised Premises and keep it safe and secure during its use.

## **VI.**

### **IMPROVEMENTS TO THE DEMISED PREMISES**

Subsequent to the Effective Date of this Agreement, the CITY may construct improvements on the Demised Premises as required to facilitate its use of the Demised Premises (hereinafter referred to as the "**Work**"), all at the CITY'S sole cost and expense, subject to the prior written approval of the BOARD or its designee. The CITY agrees that no construction, major repairs, alterations or improvements on the Demised Premises may be undertaken unless the plans are first submitted to and approved by the BOARD, or designee, which the BOARD may approve or disapprove at its sole authority and discretion, but to not be unreasonably withheld. For any Work requiring a building permit, plans must be signed and sealed by a duly licensed design professional and be of sufficient detail to secure any and all permits necessary to commence the Work. The plans shall be prepared in accordance with all

applicable laws, rules, regulations, statutes and codes, including, without limitation, the BOARD'S design criteria, specifications and safety codes, the State Requirements for Educational Facilities and the Florida Building Code, in effect at the time the plans are submitted to the BOARD. All work shall be performed in a good and workmanlike manner by contractors who are licensed, insured and fully bonded, and the CITY shall provide evidence of same to the BOARD prior to commencement of any Work. The CITY'S contractors must be pre-qualified by the BOARD before commencing any work or construction activities on the Demised Premises or elsewhere on the Site. The BOARD'S Building department shall be the entity responsible for determining the necessity for a building permit, reviewing and approving all construction documents, issuing permits for construction and providing final acceptance of the Work. The Work shall commence only after issuance of proper permits, in conformance with the requirements of the BOARD'S Building department or other appropriate jurisdictional governmental entity, and shall at all times be in compliance with all applicable laws, rules and regulations, including, without limitation, the Florida Building Code, the Americans with Disabilities Act, the Jessica Lunsford Act, the State Regulations for Educational Facilities, and the BOARD'S criteria and standards, as the same may be amended from time to time. All permits shall be properly closed by the CITY upon completion of the Work, and evidence of same, satisfactory to the BOARD, shall be provided without demand. All work shall be limited to those areas designated in the plans.

The CITY shall cause any contractors doing work on the Site to indemnify, defend and hold harmless the BOARD, its employees and representatives from any and all liability, damages and claims. In addition, the CITY shall require its contractors to provide proof of insurance coverage in the types and amounts of coverage as may be reasonably required by the BOARD, including but not limited to Commercial General Liability Insurance, Automobile Liability Insurance, Worker's Compensation Insurance and Property Coverage, or as may be amended from time to time, and naming The School Board of Miami-Dade County, Florida, its members, officers and employees, as additional insured on the Commercial General Liability Insurance.

The CITY covenants and agrees that it shall indemnify, hold harmless and defend the BOARD from and against any and all claims, liens, suits, actions or causes of action arising out of or in connection with any construction costs and expenses for improvements made by the CITY on the Site.

Other than as stipulated below, all improvements or facilities installed, operated and

maintained by the CITY on the Demised Premises pursuant to this Agreement shall become the property of the BOARD, without compensation due to the CITY, at such time as the BOARD accepts installation of same as being final and in compliance with all appropriate regulations. At the termination, cancellation or expiration of this Agreement, and in compliance with the provisions of Article XX, the CITY may remove from the Demised Premises all tools, free-standing equipment, supplies and miscellaneous materials not otherwise anchored or attached to or within the Demised Premises.

The CITY shall retain responsibility for Maintenance, Utilities and for Damage or Destruction, under Articles VII, IX, and XXVIII of this Agreement, as well as any required custodial services with respect to the newly constructed improvements.

## **VII.**

### **MAINTENANCE**

In addition to any financial requirements included as a part of Articles V and IX of this Agreement, the CITY, at the CITY'S expense, shall be responsible for all maintenance, repair and upkeep of the Demised Premises, as is necessary to keep the same in a good, safe, clean and code compliant condition at all times, including, without limitation: (a) light bulb/ballast replacement, (b) maintenance and repair of any and all components of the Heating Ventilation and Air Conditioning systems, including cleaning/replacement of filters (c) maintenance and repair of plumbing and electrical systems serving the Demised Premises, (d) maintenance and repair of all hydraulic or electric vehicle lift systems brought to or installed within the Demised Premises by the CITY, (e) routine maintenance and repair of all buildings and improvements, including, without limitation, interior and exterior doors and windows, ceilings, painted surfaces, walking surfaces, parking areas, vehicle service areas, restrooms, etc., and (e) general maintenance and cleaning of the Demised Premises, including the paved parking area, including trash and litter pick-up and removal generated as a result of the CITY'S use.

The BOARD, at the BOARD'S expense, shall be responsible for structural elements of the building, including the roof, and for the general cleaning of the paved parking area, including pick-up and removal of trash and litter generated by the BOARD during the BOARD'S Interim Use, if any, as provided for in Article V.

Notwithstanding the above, the BOARD reserves the right to promulgate and enforce reasonable rules and regulations regarding responsibility for maintenance of the Demised Premises.

## **VIII.**

## **INSURANCE**

The CITY shall, on or before the Commencement Date, provide the BOARD with confirmation of the CITY'S self-insurance program or, in the alternative, proof of insurance in the types and amounts of coverage as may be reasonably required by the BOARD, including but not limited to Commercial General Liability Insurance, Automobile Liability Insurance, Worker's Compensation Insurance and Property Coverage, or as may be amended from time to time, and naming The School Board of Miami-Dade County, Florida, its employees and agents, as additional insured on the Commercial General Liability Insurance. Proof of coverage shall be provided to the BOARD on an original certificate of insurance endorsed to reflect a minimum thirty (30) day advanced notice of cancellation. The certificate of insurance shall be delivered to the BOARD on or before the Commencement Date of this Agreement, and shall remain in full force and effect during the term of this Agreement, and the CITY shall furnish the BOARD evidence of renewals of such insurance policy no less than thirty (30) days prior to the expiration of the then current policy.

## **IX.**

### **UTILITIES AND OTHER SERVICES**

The CITY shall be responsible for payment of any and all utilities relating to the use and operation of the Demised Premises, including without limitation, electricity, water, sewer, trash collection, solid waste disposal and storm water. Since the Site is shared, the CITY'S proportionate share shall be determined by multiplying a fraction, the numerator of which is CITY'S leasable floor area (office/storage/maintenance facility) and the denominator of which is the total leasable area of the Site, by the actual cost of shared utilities for the twelve (12) month period immediately preceding the Effective Date ("CITY'S Proportionate Share of Utilities"). Beginning on the Commencement Date, and each month thereafter during the initial one-year term, the CITY shall pay to the BOARD an amount equal to one-twelfth of the CITY'S Proportionate Share of Utilities, unless otherwise adjusted as provided for in Article VI. Prior to the start of an option period, if any, a similar review will be completed by the BOARD of the actual cost of shared utilities for the twelve (12) month period immediately preceding the option period, and the CITY'S Proportionate Share of Utilities will be adjusted accordingly for the subject option period.

## **X.**

### **INDEMNIFICATION AND HOLD HARMLESS**



The CITY does hereby agree to indemnify and hold harmless the BOARD, to the extent of the monetary limitations included within Florida Statutes, Section 768.28, subject to the provisions in this act whereby the CITY shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$200,000, or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the CITY arising out of the same incident or occurrence, exceeds the sum of \$300,000 from any and all personal injury or property damage claims, liabilities, losses and causes of action which may arise as a result of the negligence of the CITY. However, nothing herein shall be deemed to indemnify the BOARD from any liability or claim arising out of the negligent performance or failure of performance of the BOARD or as a result of the negligence of any unrelated third party.

The BOARD does hereby agree to indemnify and hold harmless the CITY, to the extent of the monetary limitations included within Florida Statutes, Section 768.28, subject to the provisions in this act whereby the BOARD shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$200,000, or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the BOARD arising out of the same incident or occurrence, exceeds the sum of \$300,000 from any and all personal injury or property damage claims, liabilities, losses and causes of action which may arise as a result of the negligence of the BOARD. However, nothing herein shall be deemed to indemnify the CITY from any liability or claim arising out of the negligent performance or failure of performance of the CITY or as a result of the negligence of any unrelated third party.

In addition, the CITY agrees, at its own expense, and upon written request by the BOARD, to defend any suit, action or demand brought against the BOARD on any claim or demand arising out of, resulting from or incidental to performance under this Agreement.

The provisions of this Article shall survive the expiration or early termination or cancellation of this Agreement. Nothing in this Agreement is intended to operate as a waiver of either Party's sovereign immunity.

## **XI.**

### **NO LIABILITY FOR PERSONAL PROPERTY**

The Parties agree to insure or self-insure their interests in personal property to the extent each Party deems necessary or appropriate and hereby waive all rights to recovery for loss or damage of such property by any cause whatsoever. The Parties hereby waive all rights



of subrogation under any policy or policies they may carry on property placed or moved on the Demised Premises or balance of the Site.

## **XII.**

### **LIABILITY FOR DAMAGE OR INJURY**

Subject to the limitations included within Section 768.28, Florida Statutes, the BOARD shall not be liable for any damage or injury which may be sustained by the CITY or any persons on or about the Demised Premises or balance of the Site, other than damage or injury resulting from the negligent performance or failure of performance on the part of the BOARD, its agents, representatives or employees, or failure of the BOARD to perform its covenants under this Agreement. The BOARD shall not be responsible or liable for any loss of business, consequential damages or any other damages arising from acts of God.

Subject to the limitations included within Section 768.28, Florida Statutes, the CITY shall not be liable for any damage or injury which may be sustained by the BOARD or any persons on or about the Demised Premises or balance of the Site during the BOARD'S period of use, other than damage or injury resulting from the negligent performance or failure of performance on the part of the CITY, its agents, representatives or employees, or failure of the CITY to perform its covenants under this Agreement. The CITY shall not be responsible or liable for any loss of business, consequential damages or any other damages arising from acts of God.

## **XIII.**

### **ASSIGNMENT AND SUBLETTING**

The CITY shall not, at any time during the term of this Agreement, sublet in part or whole the Demised Premises, or assign, transfer, mortgage, pledge, hypothecate or otherwise dispose of its interest in this Agreement or any portion or part thereof, or allow any other individual or entity to operate or manage the Demised Premises, or permit the Demised Premises to be occupied by other persons, firms, corporations, or governmental units, without the BOARD'S prior written consent, which may be withheld at the BOARD'S sole discretion. Any unauthorized assignment, sublet or otherwise, shall constitute a default under this Agreement, and may result, at the BOARD'S sole option, in the automatic termination of this Agreement for cause, irrespective of Article XVI of this Agreement.

## **XIV.**

### **OPTION TO RENEW**

If not in default in performance of the obligations set forth in this Agreement, the CITY shall have the right and option to renew this Agreement, under the same terms and conditions set forth

herein, for two (2) additional terms of one (1) year each from the expiration of the original term or any renewal thereof, with the mutual agreement of the BOARD, and provided the CITY gives written notice to the BOARD at least sixty (60) days prior to the expiration of the then current term. Approval of such renewal requests shall not be unreasonably withheld.

**XV.**

**CANCELLATION**

In addition to the provisions of Articles V, XVI and XXVIII, the BOARD and CITY shall have the right to cancel this Agreement without cause or penalty, by giving the other Party written notice at least thirty (30) days prior to the effective date of said cancellation.

**XVI.**

**DEFAULT**

The BOARD shall notify the CITY in writing regarding CITY'S failure to perform or to comply with the terms and condition of this Agreement. If the CITY fails to cure the default within thirty (30) days after receiving written notice or does not provide the BOARD with a written response indicating the status of the CITY'S curing of the default and providing a mutually agreeable schedule to cure all defaults, said approval not to be unreasonably withheld, within thirty (30) days after receiving written notice, the BOARD shall have the right to immediately terminate this Agreement, without penalty, upon ten (10) days additional written notice to the CITY.

The CITY shall notify the BOARD in writing regarding the BOARD'S failure to perform or to comply with the terms and conditions of this Agreement. If the BOARD fails to cure the default within thirty (30) days after receiving written notice or does not provide the CITY with a written response indicating the status of the BOARD'S curing of the default and providing a mutually agreeable schedule to cure all defaults, said approval not to be unreasonably withheld, within thirty (30) days after receiving written notice, the CITY shall have the right to immediately terminate this Agreement, without penalty, upon ten (10) days additional written notice to the BOARD.

**XVII.**

**PEACEFUL POSSESSION**

Subject to the terms, conditions and covenants of this Agreement, the Parties agree that each Party shall and may peaceably have, hold and enjoy the Demised Premises and balance of the Site, without hindrance or interference by the other Party.

**XVIII.**

**RIGHT OF ENTRY**

Other than in the event of an emergency and subject to the provisions of Article XXX, after

first providing reasonable notice to the CITY, the BOARD, or any of its agents, representatives or employees, shall have the right to enter the Demised Premises to examine same or to make such repairs, additions or alterations as may be deemed necessary for the safety, comfort or preservation of the Demised Premises, provided such activities do not unreasonably interfere with the CITY'S use of the Demised Premises.

**XIX.**

**TAXES AND REGULATORY COMPLIANCE**

The CITY shall be responsible for payment of any taxes, fees or other assessments, if any, including but not limited to sales tax, which may be imposed on the Demised Premises or balance of the Site as a result of the use and occupancy of the Demised Premises by the CITY. If at any time during the term of this Agreement, there is a requirement by any jurisdictional entity for infrastructure improvements or other regulatory compliance due to the CITY'S use or occupancy of the Demised Premises, the CITY acknowledges and agrees that it shall be responsible for compliance with all applicable requirements, at the CITY'S sole cost and expense.

**XX.**

**SURRENDER OF PREMISES**

Except as otherwise provided in this Agreement, the CITY agrees, at the expiration, termination or cancellation of this Agreement or any extension thereof, to promptly and peacefully surrender and deliver possession of the Demised Premises to the BOARD in good order and repair and in as good or better condition as existed on the Commencement Date of this Agreement, ordinary wear and tear, or damage by fire, windstorm or other Acts of God, excepted. The CITY shall be required to promptly remove all of the CITY'S personal property and other items belonging to the CITY from the Demised Premises or balance of the Site. In addition, upon the expiration, cancellation or termination of this Agreement, the CITY agrees, at the BOARD'S sole option, to remove any improvements or facilities constructed by the CITY on the Demised Premises or balance of the Site and to restore such area to the same or better condition as existed before the Commencement Date of this Agreement. In the event the BOARD elects to retain said improvements constructed by the CITY, the CITY agrees to convey title to the improvements to the BOARD, without compensation due to the CITY. The CITY shall promptly return all keys and other items belonging to the BOARD and shall coordinate with the BOARD to ensure a proper and timely surrender of the Demised Premises. Any of the CITY'S

personal property not removed within thirty (30) days after expiration, termination or cancellation of this Agreement shall be considered abandoned.

**XXI.**

#### **AMENDMENTS**

The BOARD and the CITY, by mutual agreement, shall have the right, but not the obligation, to amend this Agreement. Such amendments shall be effective only when signed by the BOARD and the CITY and shall be incorporated as part of this Agreement.

**XXII.**

#### **NON-DISCRIMINATION**

The Parties agree that there will be no discrimination against any person based upon race, color, sex, religious creed, ancestry, national origin, mental or physical handicap, or as otherwise provided by law, in the use of the Demised Premises. It is expressly understood that upon a determination by a court of competent jurisdiction that discrimination in the use of the Demised Premises by a Party hereto has occurred, such event shall be treated as a Default hereunder.

**XXIII.**

#### **LEGAL FEES AND COURT COSTS**

In the event of any litigation between the Parties under this Agreement, each Party shall be responsible for its own attorney's fees and court costs through trials and appellate levels. The provisions of this paragraph shall survive the expiration or early termination or cancellation of this Agreement.

**XXIV.**

#### **CONSTRUCTION OF AGREEMENT**

This Agreement shall be construed and enforced according to the laws of the State of Florida and the venue for any disputes shall be Miami-Dade County, Florida.

**XXV.**

#### **SEVERABILITY**

In the event any paragraph, clause or sentence of this Agreement or any future amendment thereto is declared invalid by a court of competent jurisdiction, such paragraph, clause or sentence shall be stricken from the subject Agreement and the balance of the Agreement shall not be affected by any deletion, provided to do so would not render interpretation of the Agreement provisions ambiguous or a nullity.

**XXVI.**

## **WAIVER**

No waiver of any provision shall be deemed to have been made unless such waiver is in writing and signed by the BOARD or the CITY. The failure of any Party to insist upon strict performance of any of the covenants, provisions or conditions of this Agreement shall not be construed as waiving or relinquishing any such covenants, provisions or conditions, but the same shall continue and remain in full force and effect.

## **XXVII.**

### **NOTICE AND GENERAL CONDITIONS**

A. All notices or communications under this Agreement by either Party to the other shall be sufficiently given or delivered if dispatched by (1) certified U.S. mail, postage pre-paid, return receipt requested, (2) hand delivery, (3) Federal Express or other comparable overnight mail service, (4) telephone facsimile transmission with transmission receipt, or (5) electronic mail to the following addresses, or as the same may be changed in writing from time to time:

In the case of notice or communication to BOARD:

The School Board of Miami-Dade County, Florida  
c/o Superintendent of Schools  
School Board Administration Building  
1450 N.E. Second Avenue, Room 912  
Miami, Florida 33132  
Fax: 305-995-1488

With a copy to:

Miami-Dade County Public Schools  
Planning, Design and Sustainability  
Attention: Deputy Chief Facilities and Eco-Sustainability Officer  
1450 N.E. Second Avenue, Room 525  
Miami, Florida 33132  
Fax: 305-995-4760  
E-mail: [arjio@dadeschools.net](mailto:arjio@dadeschools.net)

With a copy to:

The School Board of Miami-Dade County, Florida  
School Board Attorney's Office  
1450 NE 2<sup>nd</sup> Avenue, #400  
Miami, FL 33132  
Attn: School Board Attorney  
Fax: 305-995-1412  
E-mail: [Walter.Harvey@dadeschools.net](mailto:Walter.Harvey@dadeschools.net)

In the case of notice or communication to the CITY:

City of Coral Gables  
Attention: City Manager and City Attorney  
405 Biltmore Way\_\_\_\_\_  
Coral Gables, FL 33134\_\_\_\_\_  
E-mail: cswanson@coralgables.com and cleen@coralgables.com

B. Title and paragraph headings are for convenient reference and are not intended to confer any rights or obligations upon the Parties to this Agreement.

C. For purposes of this Agreement, the Superintendent of Schools or his/her designee shall be the party designated by the BOARD to grant or deny any and all approvals required under this Agreement, including, without limitation, establishing or modifying the areas or periods of use by the CITY, placing the CITY in default, and reviewing and approving all matters relating to the CITY'S construction of improvements within the Demised Premises, if any. The Superintendent of Schools or his/her designee shall also be the party designated by the BOARD to grant or deny any approvals required by this Agreement for the renewal, cancellation and/or termination of this Agreement as provided herein.

D. Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 PM (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. "Day" as used in this Agreement shall be defined as calendar day, unless otherwise provided. Counsel for the BOARD and counsel for the CITY may deliver Notice on behalf of the BOARD and the CITY, respectively. Any party or other person to whom Notices are to be sent or copied may notify the other parties of any change in name or address to which Notices shall be sent by providing the same pursuant to this provision.

#### **XXVIII.**

#### **DAMAGE AND DESTRUCTION**

Other than damage or destruction caused by the BOARD, in the event the Demised Premises should be destroyed or so damaged by fire, windstorm or other casualty to the extent the Demised Premises is rendered untenable or unfit for the purposes intended, the CITY may, at the CITY'S sole option, either cancel this Agreement by giving written notice to the BOARD, or repair or replace the damaged/destroyed facilities, at the CITY'S expense. If the CITY opts to repair or replace the damaged/destroyed facilities, then the CITY shall cause the

damaged/destroyed facilities to be repaired or replaced, and placed in a safe, secure and useable condition within one hundred eighty (180) days from the date of said damage or destruction, or other reasonable period of time as mutually agreed to by the Parties, which shall be determined based upon the scope and nature of the damages, costs of the necessary repairs and available funding for such repairs. Should the damaged/destroyed facilities not be repaired and rendered tenantable within the aforementioned time period, then the BOARD may, at its sole option, place the CITY in default.

The Parties agree that in the event of cancellation of the Agreement due to damage or destruction, the CITY shall surrender the Site to the BOARD in compliance with Article XX of the Agreement. Any damage or destruction sustained to the Site as a result of the BOARD'S actions shall be repaired by the BOARD at the BOARD'S sole cost and expense.

#### **XXIX.**

#### **HAZARDOUS MATERIALS**

For purposes of this Agreement, the term "**Hazardous Substances**" shall include, but not be limited to, flammable substances, explosives, radioactive materials, asbestos, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, petroleum and petroleum products, and substances declared to be hazardous or toxic by Environmental Law. The term "**Environmental Law**" shall mean any law, ordinance, rule, order, decree, judgment, regulation and guideline (present and future), of any governmental, quasi-public authority and applicable board of insurance underwriters related to environmental conditions on, under, or about the Site, or arising from the CITY'S use or occupancy of the Demised Premises, including, but not limited to, soil, air and ground water conditions, or governing the use, generation, storage, transportation, or disposal of Hazardous Substances in, on, at, to or from the Site. The term "**Hazardous Substances Discharge**" shall mean any deposit, spill, discharge, or other release of Hazardous Substance that occurs during the term, at or from the Site (unless caused solely by the BOARD), or that arises at any time from the CITY'S use or occupancy of the Demised Premises.

The CITY shall not cause or permit to occur: (a) any violation of any Environmental Law in the Site or (b) the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substances on, under, or about the Site, or the transportation to or from the Demised Premises of any Hazardous Substance.

The CITY covenants and agrees that it shall, at the CITY'S expense, comply with all



applicable Environmental Laws with respect to the use, storage and disposal of oil, gasoline, diesel fuel, transmission fluid, brake fluid and/or any other petroleum based products or other environmentally sensitive materials related to its maintenance and repair of the Trolleys on the Demised Premises or balance of the Site. The CITY shall, at the CITY'S own expense, make all submissions to, provide all information required by and otherwise fully comply with all requirements of any governmental authority arising under Environmental Laws with respect to the Site during the term of this Agreement. If any governmental authority requires any clean-up or clean-up measures because of any Hazardous Substances Discharge demonstrated to have been caused by the CITY with respect to the Site, then the CITY shall, at the CITY'S own expense, prepare and submit the required plans and all related bonds and other financial assurances and shall carry out all such clean-up plans. The CITY shall promptly notify the BOARD of any notices or communications received from any jurisdictional entity in relation to any environmental issues on the Site, and shall promptly provide the BOARD with all information reasonably requested by the BOARD regarding the CITY'S use, generation, storage, transportation or disposal of Hazardous Substances in or at the Site.

The CITY shall indemnify the BOARD against any Hazardous Substances Discharge demonstrated to have been caused by the CITY. The obligations and liability of the CITY under this paragraph shall survive the expiration, cancellation or termination of this Agreement.

**XXX.**

#### **COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS**

The Parties shall comply with all applicable laws, rules, regulations, ordinances and codes of all governmental authorities, including, without limitation, the Florida Building Code, the Americans with Disabilities Act and the Jessica Lunsford Act, as all may be further amended from time to time and to the extent required by applicable law.

**XXXI.**

#### **SUBORDINATION**

This Agreement is and shall be subject and subordinate to any conveyance and ground or underlying leases and the rights of the BOARD under those leases and to all financing that may now or hereafter affect the leases or the Site, and to all renewals, modifications, consolidations, replacements and extensions thereof. This provision shall be self-operative and no further instrument of subordination shall be necessary. However, in confirmation of this subordination, the CITY shall execute promptly any certificate that the BOARD may request.

**XXXII.**

**FLORIDA PUBLIC RECORDS LAW; AUDITS AND INSPECTIONS &  
ACCESS TO RECORDS**

This Agreement shall be subject to Florida's Public Records Laws, Chapter 119, Florida Statutes. The Parties understand the broad nature of these laws and agree to comply with Florida's Public Records Laws and laws relating to records retention.

The CITY acknowledges and accepts the authority of the BOARD to request and authorize audits, inspections, and reviews, including, but not limited to, the authority to access the CITY'S records, its legal representatives' and contractors' records and the obligation of the CITY to retain and to make those records available upon request, and in accordance with all applicable laws. The CITY shall keep records to show its compliance with this Agreement. In addition, the CITY'S contractors and subcontractors must make available, upon the BOARD'S request, any books, documents, papers and records which are directly pertinent to this specific Agreement for the purpose of making audit, examination, excerpts, and transcriptions.

The CITY'S, its contractors and sub-contractors shall (a) retain all records for five (5) years after the completion of any construction work at the Site; and (b) the CITY shall retain records for five (5) years after the expiration, early termination or cancellation of this Agreement.

The CITY shall incorporate this provision into every contract that it enters into relating to the Site.

**XXXIII.**

**USE OF FACILITY AS A REVENUE GENERATOR**

The BOARD shall at all times retain the exclusive right to be the sole authorizer and recipient of revenue generators, in compliance with the BOARD'S Policies, relating to the Site, including, without limitation, third party advertising or installation of wireless telecommunications facilities, provided such endeavors do not unreasonably interfere with the CITY'S rights to peaceful enjoyment of the Demised Premises.

**XXXIV.**

**REPRESENTATIONS**

The CITY is duly organized, validly existing, and in good standing under the laws of the State of Florida and has full power to execute, deliver, and perform its obligations under this Agreement. The execution and delivery of this Agreement, and the performance by the CITY of its obligations under this Agreement, have been duly authorized by all necessary actions of the

CITY, and do not contravene or conflict with any rules, regulations, policies or laws governing the CITY, or any other agreement binding on the CITY. The individual(s) executing this Agreement on behalf of the CITY has/have full authority to do so.

The BOARD has full power to execute, deliver, and perform its obligations under this Agreement. The execution and delivery of this Agreement, and the performance by the BOARD of its obligations under this Agreement, have been duly authorized by all necessary action of the BOARD, and do not contravene or conflict with any rules, regulations, policies or laws governing the BOARD, or any other agreement binding on the BOARD. The individual(s) executing this Agreement on behalf of the BOARD has/have full authority to do so.

**XXXV.**

**INTELLECTUAL PROPERTY RIGHTS**

The CITY shall indemnify and hold harmless the BOARD from and against all liability of any nature or kind, including damages, costs and expenses (including reasonable attorney's fees and costs at the trial level and through all appeals) for or on account of any copyrighted, service marked, trademarked, patented or unpatented invention, process, article or work manufactured or used in the performance of this Agreement. If the CITY uses any design, device, materials or works covered by letters, service mark, trademark, patent, copyright or any other intellectual property right, it is mutually agreed and understood without exceptions that the CITY shall be liable for all royalties or costs arising from the use of such design, device or materials in any way involved in the activities contemplated by this Agreement.

**XXXVI.**

**MISCELLANEOUS PROVISIONS**

- A. RECORDATION: This Agreement may not be recorded by either Party.
- B. EMINENT DOMAIN: If any part of the Demised Premises is taken in the exercise of the power of eminent domain, this Agreement shall terminate on the date title vests in the taking authority. The COUNTY may pursue all available remedies for the taking but will have no interest in the award made to the BOARD.
- C. RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding

radon and radon testing may be obtained from your county health department.

- D. TIME IS OF THE ESSENCE: Time is of the essence in the performance of this Agreement.
- E. BROKERS: The CITY represents that there are no brokers, salesmen or finders involved in the transaction contemplated by this Agreement. If any other claim for a brokerage fee or commission in connection with this transaction is made by any broker, salesman or finder claiming to have dealt by, through or on behalf of the CITY ("Indemnitor"), and in consideration of the mutual promises contained in this Agreement, Indemnitor shall indemnify, defend and hold harmless the BOARD ("Indemnitee"), and Indemnitee's officers, directors, agents and representatives, from and against any and all liabilities, damages, claims, costs, fees and expenses whatsoever with respect to said claim for brokerage. The provisions of this Paragraph shall survive the expiration or earlier termination or cancellation of this Agreement.
- F. PROMOTION. The CITY shall not be permitted to use the Site for promotion or advertising of any type or nature whatsoever.
- G. COUNTERPARTS. This Agreement may be signed in any number of counterparts, each of which constitutes the Agreement of the Parties and each of which will be treated as an original.

**XXXVII.**

**ENTIRE AGREEMENT**

This Agreement and all Exhibits attached hereto, constitute the entire agreement between the Parties and supersede all previous negotiations, and it may be modified only by an agreement in writing signed by the BOARD and the CITY.

IN WITNESS WHEREOF, the BOARD and the CITY have caused this Agreement to be  
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executed by their respective and duly authorized officers the day and year first written above.

**CITY:**  
**CITY OF CORAL GABLES**

**BOARD:**  
**THE SCHOOL BOARD OF MIAMI-DADE  
COUNTY, FLORIDA**

By: \_\_\_\_\_  
Catherine B Swanson  
City Manager  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Alberto M. Carvalho  
Superintendent of Schools  
Date: \_\_\_\_\_

**ATTEST:**

**TO THE BOARD: APPROVED AS TO  
FORM AND LEGAL SUFFICIENCY:**

By: \_\_\_\_\_  
Walter Foeman  
City Clerk

\_\_\_\_\_  
School Board Attorney

**TO THE CITY: APPROVED AS TO LEGAL  
FORM AND SUFFICIENCY:**

**RECOMMENDED:**

By: \_\_\_\_\_  
Craig E. Leen  
City Attorney

By: \_\_\_\_\_  
Jaime G. Torrens  
Chief Facilities Officer

Exhibit "A"

DRAFT #3 - Levine 3.13.15