

**FACILITY USE AGREEMENT
BETWEEN
THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA
AND
CITY OF ORLANDO, FLORIDA**

This Agreement ("Agreement") is made by and between The School Board of Orange County, Florida, a political subdivision of the State of Florida, located at 445 West Amelia Street, Orlando, FL 32801, hereinafter referred to as "SBOC," and CITY OF ORLANDO, FLORIDA, 400 S. Orange Avenue, Orlando, FL 32801, hereinafter referred to as "CITY".

W ITNESSETH

WHEREAS, SBOC desires to enter into an agreement where the CITY provides to the SBOC the use of a portions of the CITY'S facilities for the purpose of providing an academic program specifically called "Alternative to Out-of-School Suspension" ("academic program"); and

WHEREAS, the parties desire to collaborate to facilitate said academic program subject to the terms and conditions as provided below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties agree as follows:

Article 1 – Recitations

The above recitations are true and correct and form a material part of this Agreement.

Article 2 – Term and Termination

- A. This Agreement shall be effective for an initial term commencing on September 10, 2014 and shall continue through June 30, 2017, unless sooner terminated as provided hereunder.
- B. Either party may terminate this Agreement by giving thirty (30) days' prior notice, in writing, to the other party for any or no reason, but, until so terminated, this Agreement shall remain in full force and effect. It is further agreed that a substantial breach of any section of this Agreement shall be a basis for immediate termination. Without limitation, failure of a party to meet its obligations hereunder for a period of ten (10) days is deemed a substantial breach hereunder.

Article 3 – SBOC Responsibilities

SBOC responsibilities for the academic program shall include the following items.

- A. SBOC shall utilize the designated areas within the Dr. James R. Smith Center located at 1723 Bruton Boulevard, Orlando, FL listed in Exhibit A between the hours of 7:30 a.m. and 3:00 p.m. Monday through Friday, during fall and spring school semesters. CITY facilities shall not be available during the summer school term.
- B. If SBOC wishes to expand the academic program to additional CITY facilities in subsequent years, SBOC shall seek CITY's written approval for said expansion. Orlando

City Council's approval of this Agreement shall authorize the Director of its Families, Parks, and Recreation Department to execute such expansion agreements on the substantially the same terms and conditions as contained in this Agreement without further approval from the Orlando City Council.

- C. SBOC shall be solely responsible to provide for the instruction, supervision, and safety of all students enrolled in the academic program, to include a maximum of twenty-five (25) students. There shall be a minimum of one (1) classroom instructor, one (1) assistant instructor/paraprofessional/aide and one (1) off-duty Orlando Police Officer or uniformed OCPs security officer at the Dr. James R. Smith Center and any additional facility hereafter to ensure that there are no disruptions to CITY operations and programs or to the safety of other visitors/staff at the Dr. James R. Smith Center and any additional facility hereafter. SBOC shall be responsible for direct payment of all personnel required for the operation of its academic program. SBOC shall be solely responsible for providing all instructional materials for the academic program. SBOC staff shall not leave the premises until all students are picked up from the program. Students, SBOC staff, and the academic program shall reflect positively on SBOC and CITY.
- D. SBOC shall clean-up designated rooms used, including trash removal, each day after use.
- E. SBOC is responsible for any damage to CITY property or equipment by SBOC staff or students.
- F. SBOC shall provide CITY with a weekly report of the total number of students served at the Smith Center and any additional facility hereafter. Such report shall include the number attended, the age of the participants, school(s) attended, and percentage of those students who reside in the Orlando City limits.
- G. SBOC shall be solely responsible for the storage and the security of all its equipment and supplies brought to CITY facilities for the academic program. SBOC shall request phone service and internet access with permission from CITY and be solely responsible for the installation and payment for any and all services used in connection with the academic program. CITY shall provide key access to one storage room at the Dr. James R. Smith Center. SBOC understands and agrees that any CITY facility used in the future for the academic program will need to be evaluated to determine if storage is available and if internet and phone service need to be installed.

Article 4 – CITY Responsibilities

For the SBOC's academic program, the CITY shall:

- A. Furnish designated portions of the Dr. James R. Smith Center for the implementation of the academic program during program hours. See Exhibit A.
- B. Provide, at its sole cost and expense, for the maintenance, repair, and custodial care of the Dr. James R. Smith Center including, without limitation, furnishing all necessary labor, materials, and equipment for said maintenance, repair, and care unless damage has been caused by SBOC students or staff in which case SBOC shall reimburse the CITY for such damage repair. The only exception will be that SBOC will clean-up the

rooms designated for academic program use, including trash removal, each day after use.

- C. Provide, at its sole cost and expense, electrical and water services used; secure, at its own expense, all necessary personnel required to maintain the facility.

Article 5 -- Indemnification and Insurance Requirements

- A. SBOC and CITY shall each exercise its privileges and duties hereunder at its own risk and expense.
- B. SBOC shall maintain throughout the term of the Agreement, a self-insurance program acceptable to the CITY. SBOC shall provide a certificate of self-insurance upon the execution of this Agreement and prior to August 1 of each year during the term of this Agreement. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall SBOC be liable to the CITY (or any person or entity claiming under or through CITY) under any contract, negligence, strict liability, or other legal or equitable theory for any amounts in excess of those limits per claim and per occurrence set for tort liability in Section 768.28 of the Florida Statutes which limits are hereby made applicable to all manner of claims against the CITY related to this Agreement and are not confined to tort liability.
- C. CITY shall maintain throughout the term of the Agreement, a self-insurance program acceptable to SBOC. CITY shall provide a certificate of self-insurance upon the execution of this Agreement and prior to August 1 of each year during the term of this Agreement. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall CITY be liable to SBOC (or any person or entity claiming under or through SBOC) under any contract, negligence, strict liability, or other legal or equitable theory for any amounts in excess of those limits per claim and per occurrence set for tort liability in Section 768.28 of the Florida Statutes which limits are hereby made applicable to all manner of claims against the SBOC related to this Agreement and are not confined to tort liability.
- D. Subject to the limitations set forth in Article 5 paragraph B above, to the extent permitted by law, the SBOC shall indemnify and hold CITY its agents and employees, harmless from any and all liability, claims, demands, disputes, damages, costs, attorney's fees and expenses (including prior to trial, during trial, through appeal) for any injury or damage which occurs on any property or facilities made available to SBOC pursuant to this Agreement and which occurs during the course of any program or activity sponsored by SBOC.
- E. Subject to the limitations set forth in Article 5 paragraph C above, to the extent permitted by law, the CITY shall indemnify and hold SBOC, its agents and employees, harmless from any and all liability, claims, demands, disputes, damages, costs, attorney's fees and expenses (including prior to trial, during trial, through appeal) for any injury or damage which occurs on any property or facilities made available to SBOC pursuant to this Agreement and which occurs during the course of any program or activity sponsored by SBOC.

Article 6 – Time of Essence

Time is of the essence concerning the performance of all terms and conditions of this Agreement.

Article 7– Successors and Assigns

SBOC and CITY each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Neither SBOC nor CITY shall assign, sublet, convey or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of SBOC or CITY, which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than SBOC and CITY

Article 8 – Governing Law and Remedies

This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary arising out of the Agreement will have its venue in Orange County, Florida, and the Agreement will be interpreted according to the laws of Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every other remedy given hereunder or 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 further exercise thereof.

If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an dispute, breach, default, or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled, all to the extent permitted by applicable Florida law.

Article 9 – Independent Contractor Relationship

By virtue of this Agreement, neither party to this Agreement shall be considered the employee, agent, or servant of the other. All persons engaged in any of the program work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to SBOC's sole direction, supervision, and control. SBOC shall exercise control over the means and manner in which it and its employees perform the program work. Neither party shall have the power or authority to bind the other in any promise, agreement or representation.

Nothing contained herein shall be deemed to create an association, partnership, joint venture, or relationship of principal and agent or master and servant between the parties or any affiliate thereof, or to provide any party hereto with the right, power, or authority whether expressed or implied, to create any such duty or obligation on behalf of any other party.

Article 10 – Nondiscrimination

Both parties warrant and represent that all of its employees are treated equally during employment without regard to race, color, religion, sex, age, national origin, sexual orientation, gender identity or expression, and genetic information or any other category of persons protected pursuant to federal and Florida law.

Article 11 – Survival

The insurance and indemnity provisions set forth in the Agreement shall survive the termination of the Agreement.

Article 12 – Severability

If any terms or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, such term or provision shall be stricken and deemed unenforceable and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

Article 13 – Names; Trademarks

CITY shall acquire no rights under the Agreement to, and shall not use, the name of SBOC or the name of “Orange County Public Schools” either alone or in conjunction with or as part of any other name, word, mark, picture, logo, design, and/or trademark (collectively, “SBOC Marks”) in any of CITY advertising, publicity or promotion; to express or imply any endorsement by SBOC or Orange County Public Schools of its services; or in any other manner (whether or not similar to the uses hereinabove specifically prohibited) without the prior review and written approval by SBOC, except as expressly permitted herein. No advertisement, publication or other use of SBOC Marks shall be published or otherwise promulgated by CITY without SBOC’s prior inspection and written approval. This clause shall survive the expiration or sooner termination of the Agreement.

SBOC shall acquire no rights under the Agreement to, and shall not use, the name of CITY or the name of “City of Orlando” either alone or in conjunction with or as part of any other name, word, mark, picture, logo, design, and/or trademark (collectively, “CITY Marks”) in any of SBOC’s advertising, publicity or promotion; to express or imply any endorsement by SBOC or Orange County Public Schools of its services; or in any other manner (whether or not similar to the uses hereinabove specifically prohibited) without the prior review and written approval by CITY except as expressly permitted herein. No advertisement, publication or other use of CITY Marks shall be published or otherwise promulgated by CITY without CITY’S prior inspection and written approval. This clause shall survive the expiration or sooner termination of the Agreement.

Article 14 – Non-Exclusive Agreement

The parties understand and agree this Agreement is a non-exclusive agreement and the parties hereto may participate in other comparable programs to and from any other person or entity.

Article 15 – Entirety of Agreement

SBOC and CITY agree that this Agreement and any documents made a part thereof, sets forth the entire agreement between the parties, that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

Article 16 – Authority

It is understood that those signing this Agreement have the legal authority to enter into binding Agreements on behalf of the SBOC and CITY.

Article 17 Notice

All formal notices, proposed changes and determinations between the parties hereto including, but not limited to, changes to the notification addresses set forth below, shall be in writing and shall be sufficient if mailed by certified United States mail, postage prepaid, to the parties at the contact information listed below:

THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA

Attention: Dr. Christopher Bernier
Associate Superintendent
School Choice Services
445 West Amelia Street
Orlando, FL 32801

CITY

Attention: Rodney Williams
Recreation Division Manager
City of Orlando
595 N. Primrose Drive
Orlando, FL 32803

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IN WITNESS WHEREOF, SBOC has made and executed this Agreement and CITY has made and executed this Agreement on the day and year indicated below.

CITY OF ORLANDO, FLORIDA

ATTEST:

By: _____

Alana C. Brenner, City Clerk

Name & Title (Type or Print) Date

Mayor/Mayor Pro Tem

Name (Type or Print) Date

APPROVED AS TO FORM AND
LEGALITY
FOR THE USE AND RELIANCE OF THE
CITY OF ORLANDO, FLORIDA

_____, 2014

Chief Assistant City Attorney

THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA

ATTEST:

**THE SCHOOL BOARD OF ORANGE
COUNTY, FLORIDA:**

By _____

Authorized Representative Signature

Name & Title (Type or Print) Date

Name & Title (Type or Print) Date

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND RELIANCE OF THE
THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA

_____, 2014

General Counsel/Attorney

Exhibit A

Map of facility showing rooms to be utilized.

