

## **AGREEMENT**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2014, 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

**NABORS, GIBLIN & NICKERSON, P.A.**  
(hereinafter referred to as "VENDOR"),  
whose principal place of business is  
1500 Manhan Drive #200  
Tallahassee, Florida 32308

**WHEREAS**, SBBC desires to obtain Disclosure Counsel services from VENDOR; and

**WHEREAS**, VENDOR will provide its professional and facilities in connection with bond and certificate issuance and other debt activities of SBBC subject to the conditions and in consideration of the payment of fees set forth herein; and

**WHEREAS**, SBBC desires to utilize an existing contract between The School Board of Miami-Dade County, Florida, dated December 27, 2012 and awarded pursuant to RFP No. 007-MM10 – Debt Counsel as permitted by Rule 6A.1.012(6), Florida Administrative Code and Board Policy 3320, Part II, Rule M.

**WHEREAS**, VENDOR and SBBC desire to enter into this Agreement for the use of the Disclosure Counsel Retainer Agreement by and between the School Board of Miami-Dade County, Florida and VENDOR. A copy thereof is attached hereto as **Attachment A** and is incorporated herein by reference.

**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 Agreement, the term of this Agreement shall commence on **upon execution of both parties** and conclude on **December 31, 2015**. The term of the contract may, by mutual agreement between SBBC and VENDOR be extended of two additional one-year periods and, if needed, 180 days beyond the expiration date of the renewal period. Procurement & Warehousing Services Department, will, if considering renewing, request a letter to renew from VENDOR, prior to the end of the contract period. VENDOR will be notified when any recommendation for renewal has been acted upon by SBBC.

2.02 **Pricing.** SBBC shall pay VENDOR for services rendered under this Agreement in accordance with **Attachment A** and the terms, conditions and specifications of RFP 007-MM10 by and between the School Board of Miami-Dade County, Florida and VENDOR. Invoicing for any hourly services shall be accomplished via the District's online billing system (Serengeti) and in accordance with the protocols / procedures adopted by the SBBC's General Counsel's Office associated therewith.

2.03 **Order of Precedence Among Agreement Documents.** All the terms and conditions as set forth in this Agreement, Disclosure Counsel Retainer Agreement by and between the School Board of Miami-Dade County, Florida and VENDOR and RFP 007-MM10 are collectively binding among the parties. In the event of a conflict between the provisions of this Agreement and any of the provisions contained in the attachments, the provisions of the following documents shall take precedence in this order:

- First: This Agreement; then
- Second: Disclosure Counsel Retainer Agreement by and between the School Board of Miami-Dade County, Florida and VENDOR; then
- Third: RFP 007-MM10, Debt Counsel

2.04 **Inspection of VENDOR's Records by SBBC.** VENDOR shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All VENDOR's Records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify any and all invoices, billings, payments and/or claims submitted by VENDOR or any of VENDOR's payees pursuant to this Agreement. VENDOR's Records subject to examination shall include, without limitation, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. VENDOR's Records subject to this section shall include any and all documents pertinent to the evaluation, analysis, verification and reconciliation of any and all expenditures under this Agreement without regard to funding sources.

(a) **VENDOR's Records Defined.** For the purposes of this Agreement, the term "VENDOR's Records" shall include, without limitation, any supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement.

## ARTICLE 2 – SPECIAL CONDITIONS

(b) Duration of Right to Inspect. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to VENDOR's Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to VENDOR's pursuant to this Agreement.

(c) Notice of Inspection. SBBC's agent or its authorized representative shall provide VENDOR reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction.

(d) Audit Site Conditions. SBBC's agent or its authorized representative shall have access to VENDOR's facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(e) Failure to Permit Inspection. Failure by VENDOR to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this Section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the denial of some or all of any VENDOR's claims for payment by SBBC.

(f) Overcharges and Unauthorized Charges. If an audit conducted in accordance with this Section discloses overcharges or unauthorized charges to SBBC by VENDOR in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by VENDOR. If the audit discloses billings or charges to which VENDOR is not contractually entitled, VENDOR shall pay said sum to SBBC within twenty (20) days of receipt of written demand under otherwise agreed to in writing by both parties.

(g) Inspection of Subcontractor's Records. VENDOR shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by VENDOR to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payee's costs from amounts payable by SBBC to VENDOR pursuant to this Agreement and such excluded costs shall become the liability of VENDOR.

(h) Inspector General Audits. VENDOR shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.05 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:

## **ARTICLE 2 – SPECIAL CONDITIONS**

To SBBC: Superintendent of Schools  
The School Board of Broward County, Florida  
600 S.E. 3<sup>rd</sup>. Avenue  
Fort Lauderdale, Florida 33301

With a Copy to: Office of the Treasurer  
The School Board of Broward County, Florida  
600 S.E. 3<sup>rd</sup>. Avenue  
Fort Lauderdale, Florida 33301

To VENDOR: Nabors, Giblin & Nickerson, P.A.  
1500 Manhan Drive #200  
Tallahassee, Florida 32308

2.06 **Background Screening:** VENDOR 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, (2) will have direct contact with students, or (3) have access or control of school funds, 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 SBBC in advance of VENDOR or its personnel providing any services under the conditions described in the previous sentence. VENDOR 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 VENDOR and its personnel. The parties agree that the failure of VENDOR to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. VENDOR agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from VENDOR's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

2.07 **Liability.** 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.

A. By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, 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.

B. By VENDOR: VENDOR agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by VENDOR, its agents, servants or employees; the equipment of VENDOR, its agents, servants or employees while such equipment is on premises

## **ARTICLE 2 – SPECIAL CONDITIONS**

owned or controlled by SBBC; or the negligence of VENDOR or the negligence of VENDOR's agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by VENDOR, SBBC or otherwise.

## **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 SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the other party or the other party'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 SBBC during the term hereof upon thirty (30) days written notice to the other parties of its desire to terminate this Agreement. SBBC shall have no liability for any property left on SBBC's property by any party to this Agreement after the termination of this Agreement. Any party contracting with SBBC under this Agreement agrees that any of its property placed upon SBBC'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 SBBC's facilities after that time shall be deemed to be abandoned, title to such property shall pass to SBBC, and SBBC may use or dispose of such property as SBBC deems fit and appropriate.

### **ARTICLE 3 – GENERAL CONDITIONS**

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 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

3.08 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBBC.

3.09 **Public Records.** Pursuant to Section 119.0701, Florida Statutes, 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**

3.10 **Student Records:** Notwithstanding any provision to the contrary within this Agreement, any party contracting with SBBC under this Agreement shall fully comply with the requirements of Sections 1002.22 and 1002.221, Florida Statutes; FERPA, and any other state or federal law or regulation regarding the confidentiality of student information and records. Each such party agrees, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes.

3.11 **Compliance with Laws.** Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.12 **Place of Performance.** All obligations of SBBC 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.

3.13 **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.

3.14 **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.

3.15 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.16 **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 SBBC.

3.17 **Incorporation by Reference.** Attachment A attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

### **ARTICLE 3 – GENERAL CONDITIONS**

3.18 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.19 **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.

3.20 **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.

3.21 **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 Agreement and executed by each party hereto.

3.22 **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.

3.23 **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.

3.24 **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 Agreement.

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



**ARTICLE 3 – GENERAL CONDITIONS**

3.26 **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.

**FOR SBBC**

(Corporate Seal)


THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

ATTEST:

By \_\_\_\_\_  
Donna P. Korn, Chair

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

Approved as to Form and Legal Content:

 11/6/14  
\_\_\_\_\_  
Office of the General Counsel

[  
**FOR VENDOR**

(Corporate Seal)

NABORS, GIBLIN & NICKERSON, P.A.

ATTEST:

By *Patricia Frost*

\_\_\_\_\_, Secretary

*W. A. Dilling*  
-or-  
Witness

\_\_\_\_\_  
Witness

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

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 3RD day of NOVEMBER, 2014 by RITESH PATEL of

Name of Person

NABORS, GIBLIN & NICKERSON, P.A., on behalf of the corporation/agency.

Name of Corporation or Agency

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

My Commission Expires:

*Eileen Gianfrancesco*  
Signature – Notary Public

(SEAL)

Printed Name of Notary  
 EILEEN GIANFRANCESCO  
Commission # EE 070612  
Expires March 6, 2015  
Bonded Thru Troy Fain Insurance 800-385-7019

\_\_\_\_\_  
Notary's Commission No.

**DISCLOSURE COUNSEL RETAINER AGREEMENT**

**THIS AGREEMENT** is made on the 27th day of December, 2012, by and between the **SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA** (the "Board") and the law firm of **NABORS, GIBLIN & NICKERSON, P.A., TAMPA, FLORIDA** ("Disclosure Counsel") for the initial term of March 1, 2012 through February 28, 2015, with a two-year additional extension option.

**WITNESSETH:**

**WHEREAS**, the Board wishes to retain Disclosure Counsel in connection with various bond and certificate issues and other matters;

**NOW, THEREFORE**, in consideration of the premises and mutual covenants herein contained, the parties hereto do hereby agree as follows:

**SECTION 1. AUTHORIZATION TO PROCEED AS DISCLOSURE COUNSEL.** Disclosure Counsel is hereby authorized to provide Disclosure Counsel services as described in this Agreement and for the professional fees described in this Agreement.

**SECTION 2. DISCLOSURE COUNSEL SERVICES.** Disclosure Counsel hereby agrees to provide its professional services and facilities in connection with bond and certificate issuance and other debt activities of the Board, subject to the conditions and in consideration of the payment of fees set forth herein. Disclosure Counsel agrees, at the request of the Board, to provide the following services as per Request for Proposal (RFP) 007-MM10 and Disclosure Counsel's RFP Response dated October 27, 2011. In the event of a conflict between the Agreement, the Request for Proposal #007-MM10, and Response, the RFP shall control:

(A) Consult with Board officials and staff concerning disclosure questions and issues relating to the initial issuance of bonds, certificates or other indebtedness and continuing disclosure requirements;

(B) Attend, upon request, any meeting of the Board or any meeting of staff, relating to the issuance of bonds, certificates or disclosure matters;

(C) Prepare and review the Board's bond purchase agreements in the event bonds are offered pursuant to a negotiated sale;

(D) Prepare and/or review the Board's public sale solicitation documents in the event bonds are offered pursuant to a competitive bid;

(E) Prepare the Board's preliminary and final official statements in connection with any bond offering;

(F) Supervise and coordinate the printing and delivery of the preliminary and final official/offering statements;

(G) Review all bond documents prepared in connection with an issuance of bonds or certificates to the extent such documents involve disclosure matters;

(H) Provide a written 10(b)-5 disclosure opinion to the Board at the time any bonds or certificates are issued;

(I) Provide a reliance letter or written 10(b)-5 disclosure opinion to the underwriters at the time any bonds or certificates are issued;

(J) Consult with Board officials and staff regarding all matters relating to continuing disclosure requirements, specifically those now imposed by the recent amendments to Securities and Exchange Commission Rule 15c2-12 (the "Rule"). Disclosure Counsel's responsibilities with respect to continuing disclosure shall involve, but not be limited to, the following issues:

(1) determination of "material events" (as defined in the Rule) and timely disclosure of same;

(2) yearly compilation, determination and disclosure of "annual information" (as defined in the Rule);

(3) yearly disclosure of audited financial statements;

(4) timely disclosure of any material failure by the Board to comply with the Rule;

(5) determination and preparation of new language required by the Rule to be included in bond resolutions and official statements;

(6) obtaining assurances and obligations from other "material persons" or "obligated persons" (as such terms are defined in the Rule) involved in a bond transaction that such persons will comply with the Rule; and

(7) any and all other matters regarding the Rule and the Board's continuing disclosure obligations.

**SECTION 3. PROFESSIONAL FEES FOR DISCLOSURE COUNSEL SERVICES; EXPENSES.** Disclosure Counsel agrees to be compensated for its services in accordance with the fee schedule set forth in Attachment A hereto. All fees shall be exclusive of any reasonable and necessary reimbursable expenses in accordance with state guidelines.

**SECTION 4. ANCILLARY SERVICES.** In addition to being asked to perform typical Disclosure Counsel services in connection with various issues of the Board as noted above, Disclosure Counsel agrees to provide certain ancillary services, such as ongoing consultation with the Board on routine matters, i.e., phone conversations, short correspondence and simple advice on proposed or closed transactions without additional cost. Other services such as continuing disclosure services (beyond the normal yearly

review of the Board's materials) and performance of other legal services at the request of the Board shall be performed at the rate of \$195 per hour for partners and \$155 per hour for associate time. No such services will be undertaken without prior approval of a representative of the District on the scope of the requested legal services and the estimated costs of said services.

**SECTION 5. INDEMNIFICATION AND INSURANCE.** Disclosure Counsel agrees to protect, defend, indemnify and hold the Board and its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or due to any negligent act or omission of Disclosure Counsel, its employees, agents and subcontractors in connection with or arising directly or indirectly out of this Agreement and/or the performance hereof. Without limiting its liability under this Agreement, Disclosure Counsel shall procure and maintain during the life of this Agreement professional liability insurance in an amount in excess of \$5,000,000. This provision shall survive the termination of this Agreement.

**SECTION 6. CONFLICT OF INTEREST.** It is understood by the Board and Disclosure Counsel that Disclosure Counsel is not aware of any clients of Disclosure Counsel that currently present any conflict between the interests of the Board and other clients of Disclosure Counsel. If any potential conflict of interest arises during the time Disclosure Counsel is representing the Board, Disclosure Counsel will promptly inform the Board. The Board is under no obligation to agree to permit the conflict representation.

**SECTION 7. CONSTRUCTION AND AMENDMENTS.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. This Agreement may be amended only by a writing duly entered into by the Board and Disclosure Counsel.

**SECTION 8. EFFECTIVE DATE.** This Agreement will be effective from the date of execution.

**SECTION 9. CANCELLATION OF AGREEMENT.** The Board may cancel or terminate this Agreement upon sixty days advance written notice to Disclosure Counsel. In the event of cancellation, Disclosure Counsel shall immediately cease work hereunder and shall be reimbursed for eligible and documented reimbursable expenses incurred prior to the date of cancellation. Further, it is understood and agreed between the Board and Disclosure Counsel that John R. Stokes and Steven E. Miller will be the lead attorneys assigned by Disclosure Counsel to provide the services contained herein and will be assisted by associates and legal assistants. The Board in its absolute discretion may immediately terminate this Agreement upon written notice to Disclosure Counsel if the services of any of these attorneys are unavailable to the Board.

**SECTION 10. ADMINISTRATION.** For ease and convenience of administration, the Board hereby designates its Treasurer to provide policy direction and instructions to the Disclosure Counsel in the administration of its duties hereunder, approving and

authorizing particular engagements relating to financing, and all other matters necessary to administer this Agreement on behalf of the Board.

IN WITNESS WHEREOF, the Board and Disclosure Counsel have executed this Agreement as of the date first written above.

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

By:   
School Board Attorney

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

By:   
Superintendent of Schools

**NABORS, GIBLIN & NICKERSON, P.A.**

  
John R. Stokes, Shareholder

Exhibit A

DISCLOSURE COUNSEL FEE SCHEDULE

C.O.P. / Lease Backed Financing	Initial	Subsequent/Refunding	
		Fixed Rate	Variable Rate
Fees per \$1,000 par value:	\$0.54	\$0.54	\$0.60
Minimum fee per sale:	\$36,850	\$36,850	\$43,550
Maximum fee per sale:	\$67,000	\$60,300	\$60,300
Maximum expenses per sale:	\$2,345	\$2,345	\$2,345
Fees for refunding per \$1,000 par value	\$0.54	\$0.54	\$0.60
G.O. / Sales Tax Financing	Initial	Subsequent/Refunding	
		Fixed Rate	Variable Rate
Fees per \$1,000 par value:	\$0.47	\$0.37	
Minimum fee per sale:	\$40,200	\$30,150	
Maximum fee per sale:	\$50,250	\$40,200	
Maximum expenses per sale:	\$2,010	\$2,010	
Fees for refunding per \$1,000 par value:	\$0.47	\$0.37	
Short Term Financings (TANs, RANs, BANs, ETC)	Initial	Subsequent/Refunding	
		Fixed Rate	Variable Rate
Fees per \$1,000 par value:	NA	NA	
Minimum fee per sale:	\$7,500	\$7,500	
Maximum fee per sale:	\$7,500	\$7,500	
Maximum expenses per sale:	\$1,005	\$1,005	