

**AMENDED SPECIAL COUNSEL SERVICES AGREEMENT
BY AND BETWEEN
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
AND BROWN, GARGANESE, WEISS & D'AGRESTA, P.A.**

This Special Counsel Services Agreement (the "Agreement") is entered into by and between **THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**, located at 600 Southeast Third Avenue, Fort Lauderdale, Florida 33301 (the "SCHOOL BOARD"), and **BROWN, GARGANESE, WEISS & D'AGRESTA, P.A.**, located at 111 N. Orange Avenue, Suite 2000, Orlando, Florida 32802-2873 (the "FIRM") effective this ____ day of _____, 2014.

WITNESSETH:

WHEREAS, the SCHOOL BOARD desires to retain the FIRM and the FIRM desires to be retained by the SCHOOL BOARD, to provide legal services ~~from time to time in the practice area of Redistricting regarding the matter of FDOT's Notice of Acquisition concerning a parcel on the North Fork Elementary School site;~~ and

WHEREAS, the FIRM represents that it has sufficient experience and expertise to provide competent and professional legal representation to the SCHOOL BOARD in connection with such areas of practice.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein, together with other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the SCHOOL BOARD agrees to retain the FIRM, and the FIRM agrees to represent the SCHOOL BOARD, upon the following terms and conditions.

RECITALS:

The parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

1. DUTIES.

The FIRM shall perform such legal services and provide representation as may be reasonably necessary to assist the SCHOOL BOARD in the above noted area of practice. The FIRM's work shall be directed by the SCHOOL BOARD's General Counsel. Services may include, but not necessarily limited to, trial practice, attendance at meetings and hearings, consultation, drafting of legal documents, and legal research. ~~Suzanne D'Agresta, Esq. shall be the primary provider of legal services under this Agreement.~~

2. TERM.

This Agreement shall be effective on the date of execution by all parties and shall continue in effect until terminated by either of the parties by notifying the other party in writing at least thirty (30) days prior to termination.

3. CONFLICTS OF INTEREST.

The FIRM affirms that it presently represents no other client that presents or will present a conflict of interest with the SCHOOL BOARD. If the FIRM becomes aware of a conflict between the interests of any of the FIRM's other present or future clients and the SCHOOL BOARD, the FIRM shall notify the SCHOOL BOARD promptly.

4. COMPENSATION - FEES.

The SCHOOL BOARD shall be billed Two Hundred Dollars and Zero Cents (\$200) per hour for services. Paralegals will bill at Eighty Five Dollars and Zero Cents (\$85) per hour. The agreement shall be for an initial not to exceed amount of \$ 15,000 in fees. The fee cap may be increased upon recommendation of the General Counsel with SCHOOL BOARD approval.

5. COMPENSATION - COSTS.

(a) Reimbursement for costs of such items as exhibits, transcripts and witness fees require prior authorization by the SCHOOL BOARD's General Counsel and shall be reimbursed based upon documented third party vendor charges. The SCHOOL BOARD shall not pay for FIRM surcharges added to third party vendor charges.

(b) Non-routine office overhead expenses such as courier services, bulk third party copying, photographs and computer-assisted legal research services must be justified to the SCHOOL BOARD and shall be reimbursed based on documented third party vendor charges. In-house bulk copying expenses must be justified to the SCHOOL BOARD, must be supported by usage logs or similar documentation and will be reimbursed at Fifteen Cents (\$0.15) per page. The FIRM shall endeavor to utilize the facilities of the SCHOOL BOARD for bulk third party copying and similar non-routine overhead prior to obtaining in-house or third party services.

(c) The FIRM shall only bill the SCHOOL BOARD for a proportionate share for the cost of legal research, attending hearings or engaging in client representation of any type, which is applicable to other clients.

(d) Exceptional non-routine office overhead expenses must be expressly defined in the Agreement or an Amendment hereto and approved by the SCHOOL BOARD before being incurred.

(e) The SCHOOL BOARD shall not pay travel reimbursement (such as mileage or tolls).

6. FORMAT FOR INVOICES

(a) The SCHOOL BOARD shall be billed monthly. All invoices shall be submitted via the District's online billing system (Serengeti) and in accordance with the protocols / procedures established by the General Counsel's Office for said system. Each statement for fees and costs shall be in a format that includes, at a minimum, the following information:

- i. Matter name and number, if applicable, or other legal matter reference.
- ii. Invoice number for the particular bill.
- iii. Inclusive dates of the month covered by the invoice.
- iv. Itemization of the hours billed; a concise meaningful description of the services rendered, with sufficient detail to enable the SCHOOL BOARD to evaluate the services rendered and costs; the person(s) who performed the services for each day being billed; and their hourly rate as specified herein.
- v. A listing of all invoiced costs to be reimbursed pursuant to paragraph 5, COMPENSATION – COSTS. Invoiced costs must be accompanied by copies of actual receipts. The total of only the current bill. Prior balances or payment history should be shown separately, if at all. Any other information as may reasonably be requested by the SCHOOL BOARD's General Counsel.

7. SPECIAL CONDITIONS – INSURANCE REQUIREMENTS.

(a) **VERIFICATION OF COVERAGE:** Proof of the required insurance must be furnished by any FIRM to The School Board's Risk Management Division by Certificate of Insurance within 15 days of notification of award by the SCHOOL BOARD. The certificate of insurance must contain a provision for written notification to the SCHOOL BOARD in accordance with policy provisions as outlined in the current ISO ACORD 25 (2010/05) form. All certificates and endorsements must be received and approved by the SCHOOL BOARD before any work commences to permit the FIRM time to remedy any deficiencies.

(b) **ACCEPTABILITY OF INSURANCE:** The insurance policies shall be issued by companies qualified to do business in the State of Florida. The insurance companies must be rated at least A- VI by AM Best or Aa3 by Moody's Investor Service.

(c) **MINIMUM LIMITS OF INSURANCE**

(1) **Professional Liability:** The Professional Liability (i.e., malpractice) insurance provided by the individual/firm shall conform to the following requirements:

(i) The individual firm's Professional Liability insurance shall be on a form acceptable to the SCHOOL BOARD and shall cover those sources of liability typically insured by Professional Liability Insurance, arising out of or the rendering or failure to render professional services in the performance of this Agreement.

(ii) If on a claims-made basis, the individual/firm shall maintain without interruption, the Professional Liability insurance until three (3) years after this Agreement.

(iii) The minimum limits to be maintained by the individual/firm (inclusive of any amounts provided by an umbrella or excess policy) shall be \$3 million per

claim/annual aggregate. The insurance shall be subject to a maximum deductible not to exceed \$25,000.

(2) **Workers' Compensation Insurance** - Workers' Compensation Insurance for all employees of the FIRM are required pursuant to the provisions of Section 440, Florida Statutes and Employer's Liability Insurance of no less than \$100,000/\$100,000/\$500,000 (each accident/disease each employee/disease policy limit.).

(3) **Commercial General Liability** – Commercial General Liability on a comprehensive basis in an amount not less than \$1,000,000 combined single limit per occurrence. The School Board of Broward County, Florida, its members, officers, employees and agents must be listed as an additional insured on the policy.

(4) **Auto Liability Insurance** covering all owned (if applicable), non-owned and hired vehicles with Bodily Injury and Property Damage limits of not less than \$1,000,000 per person; \$1,000,000 per occurrence; and property damage limits of not less than \$1,000,000.

In the event the FIRM does not own any vehicles, the SCHOOL BOARD will accept hired and non-owned coverage of not less than \$1,000,000. In addition, the SCHOOL BOARD requires an affidavit signed by the FIRM indicating the following:

The FIRM does not own any vehicles. In the event the FIRM acquires any vehicles throughout the term of this agreement, the FIRM agrees to provide proof of "Any Auto" coverage effective the date of acquisition.

(d) Prior to the commencement of any work, as evidence of required coverage the FIRM must provide a Certificate of Insurance to: The School Board's Risk Management Division.

The General Liability policies are to contain the following provisions. In addition, the following wording must be included on the Certificate of Insurance:

1. The School Board of Broward County, Florida, its members, officers, employees and agents are added as additional insured. The endorsement number will be provided upon execution of this Agreement.
2. All liability policies are primary of all other valid and collectable coverage maintained by The School Board of Broward County, Florida.
3. Thirty (30) days written notice will be given to the School Board's Risk Management Division prior to any material changes or for cancellation prior to the expiration date. (Or insured's cancellation provisions must be provided to Risk Management.)

8. NOTICE:

When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To SBBC: General Counsel for The School Board
The School Board of Broward County, Florida
600 Southeast Third Avenue, 11th Floor
Fort Lauderdale, Florida 33301

To the FIRM: Suzanne D'Agresta, Esq.
BROWN, GARGANESE, WEISS & D'AGRESTA, P.A.
111 N. Orange Avenue, Suite 2000
Orlando, Florida 32802-2873

9. INSPECTION OF THE FIRM'S RECORDS BY THE SCHOOL BOARD.

The FIRM shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by the SCHOOL BOARD under this Agreement. All FIRM 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 the SCHOOL BOARD's agent or its authorized representative to permit the SCHOOL BOARD 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 the FIRM or any of the FIRM's payees pursuant to this Agreement. The FIRM'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. The FIRM'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) The FIRM's Records Defined. For the purposes of this Agreement, the term the "FIRM's Records" shall include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement.

(b) Duration of Right to Inspect. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, the SCHOOL BOARD's agent or authorized

representative shall have access to The FIRM'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 the SCHOOL BOARD to the FIRM pursuant to this Agreement.

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

(d) Audit Site Conditions. The SCHOOL BOARD's agent or its authorized representative shall have access to the FIRM'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 the FIRM to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this Section shall constitute grounds for termination of this Agreement by the SCHOOL BOARD for cause and shall be grounds for the denial of some or all of any the FIRM's claims for payment by the SCHOOL BOARD.

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

(g) Inspection of Subcontractor's Records. The FIRM 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 the FIRM to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by the SCHOOL BOARD for cause and shall be grounds for the exclusion of some or all of any Payee's costs from amounts payable by the SCHOOL BOARD to the FIRM pursuant to this Agreement and such excluded costs shall become the liability of the FIRM.

(h) Inspector General Audits. The FIRM 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.

10. BACKGROUND SCREENING.

The FIRM 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 the SCHOOL BOARD in advance of the FIRM or its personnel providing any services under the conditions described in the previous sentence. The FIRM 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 the FIRM and its personnel. The parties agree that the failure of the FIRM to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling the SCHOOL BOARD to terminate immediately with no further responsibilities or duties to perform under this Agreement. The FIRM agrees to indemnify and hold harmless the SCHOOL BOARD, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting in the FIRM's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

11. 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.

12. 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.

13. 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 the SCHOOL BOARD retirement, leave benefits or any other benefits of the SCHOOL BOARD employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. The SCHOOL BOARD 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.

14. 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.

15. TERMINATION.

This Agreement may be canceled with or without cause by the SCHOOL BOARD during the term hereof upon thirty (30) days written notice to the other parties of its desire to terminate this Agreement. In the event of such termination, the SCHOOL BOARD shall pay the other party for all services rendered through the effective date of termination.

16. 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.

17. ANNUAL APPROPRIATION.

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

18. EXCESS FUNDS.

Any party receiving funds paid by the SCHOOL BOARD under this Agreement agrees to promptly notify the SCHOOL BOARD of any funds erroneously received from the SCHOOL BOARD upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to the SCHOOL BOARD 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 the SCHOOL BOARD.

19. PUBLIC RECORDS.

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.

20. 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.

21. PLACE OF PERFORMANCE.

All obligations of the SCHOOL BOARD 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.

22. 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.

23. 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.

24. Binding Effect.

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

25. 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 the SCHOOL BOARD.

26. Incorporation by Reference.

Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. Survival.

All representations and warranties made herein, indemnification obligations, obligations to reimburse the SCHOOL BOARD, 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.

34. 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 SCHOOL BOARD and the FIRM have caused these presents to be executed in their respective names the day and year first above written.

FOR THE SCHOOL BOARD

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
_____, Chair

Robert W. Runcie, Superintendent of
Schools

Approved as to Form and Legal Content:

Office of the General Counsel

FOR BROWN, GARGANESE, WEISS & D'AGRESTA, P.A.

(Corporate Seal)

BROWN, GARGANESE, WEISS &
D'AGRESTA, P.A.

ATTEST:

By _____

_____, Secretary

-or-

Witness

Witness

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2014,
by _____ of BROWN, GARGANESE, WEISS &

name of person
D'AGRESTA, P.A., on behalf of the corporation/agency. He/She is personally known to me or
produced _____ as identification and did/did not first take an

Type of Identification
Oath.

My Commission Expires:

Signature – Notary Public

(SEAL)

Printed Name of Notary

Notary's Commission No.