

AGENDA REQUEST FORM
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Meeting Date 08/03/10	<table style="width: 100%;"><tr><td style="width: 50%; text-align: center;">Open Agenda Yes <input checked="" type="checkbox"/> No</td><td style="width: 50%; text-align: center;">Time Certain Request ___ Yes <input checked="" type="checkbox"/> No</td></tr></table>	Open Agenda Yes <input checked="" type="checkbox"/> No	Time Certain Request ___ Yes <input checked="" type="checkbox"/> No	Agenda Item Number H-1
Open Agenda Yes <input checked="" type="checkbox"/> No	Time Certain Request ___ Yes <input checked="" type="checkbox"/> No			
TITLE: Agreement Between The School Board of Broward County, Florida and Broward Education Foundation, Inc.				
REQUESTED ACTION: Approve the Agreement between The School Board of Broward County, Florida and Broward Education Foundation, Inc. for use of a facility in which to operate the Kids in Need Resource Center.				
SUMMARY EXPLANATION AND BACKGROUND: Broward Education Foundation (BEF) is a district school board direct-support organization and is authorized to use district property and facilities under Section 1001.453, Florida Statutes. The BEF wishes to use a facility leased by The School Board of Broward County, Florida as the site of its Kids in Need Resource Center ("Center") to make donated school supplies and products available at no cost to SBBC's schools and teachers. The proposed agreement sets forth the terms under which the BEF may use the leased facility for the Center. The Lease Agreement between The School Board and the Landlord of the property (BRI 1181 Copans, LLC.) is brought forth as Agenda Item H-2 for The School Board's consideration. This agreement has been reviewed and approved as to form and legal content by the School Board Attorney.				
SCHOOL BOARD GOALS: <input checked="" type="checkbox"/> •Goal One: Raise achievement of all students to ensure graduation from high school and readiness for post-secondary education. <input type="checkbox"/> •Goal Two: Improve the health and wellness of students and personnel. <input checked="" type="checkbox"/> •Goal Three: Provide a safe and secure physical and technological environment for all students and employees. <input type="checkbox"/> •Goal Four: Promote innovation which focuses on best practices and quality efforts that improve our best-in-class position. <input type="checkbox"/> •Goal Five: Recruit, develop, retain, and recognize high performing and diverse faculty and personnel. <input checked="" type="checkbox"/> •Goal Six: Build strong partnerships with family, business, community and government at the classroom, school, area, and district level. <input type="checkbox"/> •Goal Seven: Ensure district's leadership as an environmental steward through innovative ecology and energy conservation programs.				
FINANCIAL IMPACT: There is no financial impact to the District for this Agreement. The financial impact to the District for leasing the facility is provided for in Agenda Item H-2.				
EXHIBITS: (List) Agreement between The School Board of Broward County, Florida and Broward Education Foundation, Inc.				
BOARD ACTION: <div style="text-align: center;">APPROVED</div> <small>(For Official School Board Records' Office Only)</small>		SOURCE OF ADDITIONAL INFORMATION: <div style="display: flex; justify-content: space-between;"><div>Edward J. Marko, Esq. <small>Name</small></div><div>754-321-2050 <small>Phone</small></div></div>		

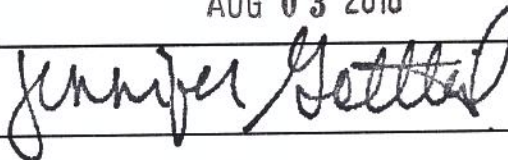
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Edward J. Marko, General Counsel
Office of The School Board Attorney

Approved in Open Board Meeting
on:

By:

AUG 03 2010



School Board Chair

AGREEMENT

THIS AGREEMENT is made and entered into as of this ^{3rd} ~~15th~~ day of ~~July~~ ^{August}, 2010, 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

THE BROWARD EDUCATION FOUNDATION, INC.

(hereinafter referred to as "BEF"),
a Florida not for profit corporation whose principal place of business is
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

WHEREAS, BEF is a district school board direct-support organization under Section 1001.453, Florida Statutes; and

WHEREAS, BEF has, as part of its mission, adopted the initiative of helping all children come to school ready to learn; and

WHEREAS, a lack of school supplies can become a barrier to student achievement; and

WHEREAS, the BEF has operated a free school supply center called the Kids In Need Resource Center (hereinafter "Center") to provide teachers with access to school supplies and other educational resources that they can provide to their students; and

WHEREAS, the BEF and SBBC wish to make arrangements for BEF's use of a facility in which to operate the Center.

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 3.04 of this Agreement, the term of this Agreement shall commence on the date of approval by both parties and conclude on June 30, 2015.

2.02 **Property Leased by SBBC.** SBBC will lease a facility located at 2300 W. Copans Road, Bay #5, Pompano Beach, FL 33069 (hereinafter referred to as “Property”). As lessee, SBBC is responsible for the annual leasing costs of the Property, related utility/operating costs and property insurance on the Property and shall pay for same.

2.03 **BEF Use of Leased Property.** Pursuant to Section 1001.453(2), Florida Statutes, SBBC will permit BEF to use the Property during the lease term to operate the Center for teachers employed by the school district; provided, however, that SBBC and BEF acknowledge that BEF is required by its major donor of school supplies to strive to ensure that a minimum of 70% of participating students (whether participating directly or indirectly through their teachers) using the Center’s supplies are eligible to participate in the free and/or reduced lunch program and BEF may take all actions necessary to comply with that requirement.

2.04 **Maintenance of Property.** BEF agrees to maintain the interior space of the Property in good working order. Any repairs to the interior space of the Property that are not covered by the Property’s lessor are the responsibility of BEF. Any requests by BEF for repairs or improvements to be made to the interior space of the Property by SBBC shall be solely within SBBC’s discretion and will be dependent upon availability of staff and funds. SBBC agrees to maintain all light fixtures, install fire extinguishers according to code, recharge discharged extinguishers and certify annually fire extinguishers for the Property during the lease term.

2.05 **Donated School Supplies and Products.** BEF will actively solicit contributions of school supplies and other products from donors and store such donated school supplies and products within the warehouse portion of the Property for the purpose of making such school supplies and products available to SBBC’s schools and teachers, subject to the conditions set forth above. Non-school district employees and the general public are not permitted to obtain school supplies and products in the center. BEF acknowledges that charter school employees are not school district employees.

2.06 **Staffing of the Center.** BEF will staff the Center sufficiently with employees paid by BEF and/or volunteers so that the Center is open to school district teachers for a minimum of three (3) hours per day for at least four (4) days per week.

2.07 **Termination of Lease by SBBC.** It shall be solely within SBBC’s discretion whether to discontinue, terminate or renew the lease of the Property and SBBC may take such

actions upon such notice as SBBC deems appropriate. SBBC shall notify BEF of its intention to discontinue, terminate or renew its lease of the Property at least six (6) months prior to such discontinuation, termination or renewal; provided, however, that SBBC shall not renew the Lease for BEF's benefit unless it has obtained BEF's prior written request to renew the lease. Provided further, however, that SBBC shall be required to provide thirty (30) days notice to BEF in the event SBBC terminates the lease due to a material breach by the lessor.

2.08 **Discontinuation of Center.** In the event that BEF determines that it wishes to discontinue its operation of the Center, it will notify SBBC at least seven (7) months prior to the end of the current year of the lease of the Property to enable SBBC to take any actions necessary to exercise its right to terminate the lease at the end of the lease year.

2.09 **Insurance.** If requested to do so by SBBC's Risk Management Department, BEF will purchase insurance to cover damage to its property and/or indemnification for acts of negligence occurring upon the Property during its period of use by BEF.

2.10 **Background Screening:** BEF 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 BEF or its personnel providing any services under the conditions described in the previous sentence. BEF 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 BEF and its personnel. The Parties agree that the failure of BEF 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. BEF 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 in BEF's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

~~2.05~~ 2.11 **Indemnification.**

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 agent's 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 BEF: BEF 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 BEF, its agents, servants or employees; the equipment of BEF, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of BEF or the negligence of BEF 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 BEF, SBBC or otherwise.

C. Notwithstanding anything to the contrary herein, to the maximum extent permitted by law and without affecting the coverage provided by insurance required to be maintained hereunder, if any, each party hereto (as such, the "Insured Party") waives any right to recover against the other party ("Covered Party") on account of any and all claims the Insured Party may have against such Covered Party with respect to any matter required under this Agreement to be insured through Insured Party's insurance.

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.

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 **Non-Discrimination.** The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

3.04 **Termination.** Except as otherwise provided in Section 2.07, This Agreement may be canceled with or without cause by SBBC during the term hereof upon six (6) months' prior written notice to BEF of its desire to terminate this Agreement.

3.05 **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.

3.06 **Entire 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.

3.07 **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.

3.08 **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.

3.09 **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. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

3.10 **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.

3.11 **Governing Law.** 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.

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

3.13 **Assignment.** Neither this Agreement nor 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.

3.14 **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.

3.15 **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.

3.16 **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not effect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

3.17 **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: Superintendent of Schools
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

With a Copy to: Director, Partnerships
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

To BEF: Jorene Jameson, Executive Director
Broward Education Foundation, Inc.
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

3.18 **Captions.** The captions, section numbers, article numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience 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 **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.

3.20 **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

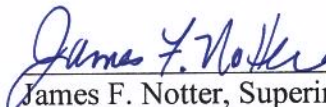
55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBBC.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date first above written.

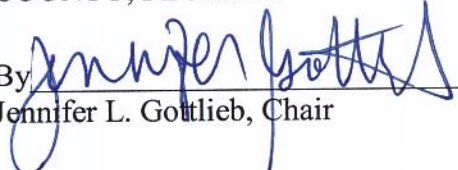
FOR SBBC

(Corporate Seal)

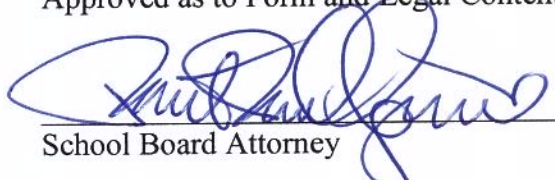
ATTEST:


James F. Notter, Superintendent of
Schools

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By 
Jennifer L. Gottlieb, Chair

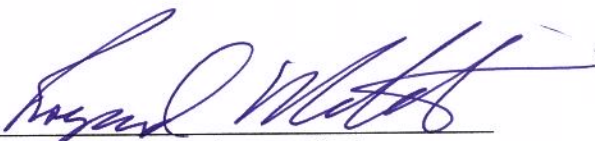
Approved as to Form and Legal Content:



School Board Attorney

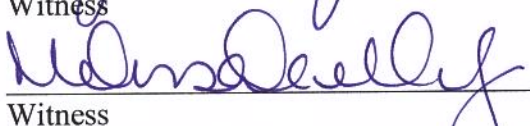
FOR BEF

(Corporate Seal)

**BROWARD EDUCATION FOUNDATION,
INC.**

By 
Raymond Monteleone, Chair
Board of Directors


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.**

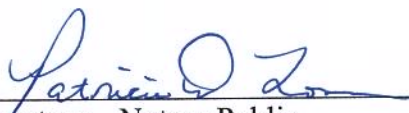
STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 15th day of
JULY, 2010 by Raymond MONTELEONE of
Name of Person


Broward Education Foundation, Inc. on behalf of the corporation/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:


Signature – Notary Public

PATRICIA D. LOOMIS
Printed Name of Notary

(SEAL)

NOTARY PUBLIC-STATE OF FLORIDA
 Patricia D. Loomis
Commission # DD976217
Expires: MAR. 28, 2014
BONDED THRU ATLANTIC BONDING CO., INC.

DD976217
Notary's Commission No.