

AGREEMENT

THIS AGREEMENT is made and entered into as of this 1st day of July, 2016, 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

SMITH COMMUNITY MENTAL HEALTH, INC.
(hereinafter referred to as "*SMITH COMMUNITY*"),
whose principal place of business is
601 South State Road 7, Plantation, FL 33317.

WHEREAS, SBBC must fulfill its constitutional obligation to educate children of compulsory school age; and

WHEREAS, SBBC has determined that some children need alternative settings and/or instructional strategies to achieve their educational goals; and

WHEREAS, SMITH COMMUNITY accepts, as clients, children who are residents of the State of Florida and who are now enrolled in, or have applied for enrollment in educational programs under the jurisdiction of the SBBC; and

WHEREAS, SMITH COMMUNITY is designated by the SBBC as an approved deliverer of services to the youth services clients enrolled in or remanded to its program; and

WHEREAS, SBBC desires to provide an educational component as part of SMITH COMMUNITY'S program; and

WHEREAS, SMITH COMMUNITY operates the Day Treatment program.

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 July 1, 2016 and conclude on June 30, 2017. The term of this Agreement includes a 180-day school term as approved by SBBC. Services will be provided in accordance with the approved SBBC calendar which is attached here to as **Attachment E**.

2.02 **SBBC Designee.** SBBC's designee for purposes of administering this Agreement will be the Superintendent who may assign a designated Administrator for monitoring compliance and educational program administration.

2.03 **SMITH COMMUNITY Designee.** SMITH COMMUNITY will identify one person with whom the SBBC is to communicate on all compliance issues related to this Agreement.

2.04 **SBBC Personnel Shall Provide:**

- a) Instruction for no more than 300 student contact minutes;
- b) Instructional personnel, including teachers, substitutes and paraprofessionals based on average daily attendance rates;
- c) Staff development for teachers in current instructional and behavior management methods;
- d) Support services as determined by SBBC such as admission and exiting conferences, IEP preparation and staffing, and maintaining ESE compliance for special education students;
- e) Textbooks, supplies and other School Board approved curriculum and curriculum supplements, including supplies, current technology and incentives necessary to provide an appropriate education and instructional program for the students;
- f) Approved SBBC registration forms to be used by SMITH COMMUNITY for new students and the initial review of students' current educational and/or SMITH COMMUNITY's records to determine if an IEP meeting needs to be held;
- g) Support services as determined by the SBBC, including but not limited to, eligibility staffing, IEP development, maintaining ESE compliance for special education students, and exit/dismissal staffings as needed;
- h) Guidance services to each student upon enrollment to ensure the students are enrolled properly and earning the appropriate credits towards promotion and / or high school graduation;
- i) Administrative visitation, support, and oversight of the educational program, and;
- j) An annual evaluation of student performance.

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2.05 **SMITH COMMUNITY Shall Provide:**

- a) A SBBC approved Authorization of Release of Information Form, signed by the student's parent or legal guardian, enabling the SBBC and SMITH COMMUNITY to share written and verbal information, including, but not limited to mental health, substance abuse and educational records and information; a copy

of the Authorization for Release of Information Form is attached and incorporated as **Attachment A**;

- b) Referrals of new students on approved SBBC forms, a copy of the Referral form is attached and incorporated as **Attachment B**;
- c) The SBBC with previous psychological, psychiatric and mental health records, for the purposes of implementing an appropriate educational program;
- d) A full time behavioral specialist / support staff trained in crisis management and behavior intervention, in each teacher's classroom at all times for the purpose of monitoring student behavior, addressing therapeutic needs and supervising students during instructional staff's lunch / planning periods;
- e) Additional therapeutic support staff to include a psychotherapist, psychologist, and/or psychiatrist;
- f) A staff member trained in the supervision and administration of all medication to be responsible for the dispensing and monitoring of all student medication;
- g) In emergency situations, updated assessments and evaluations consistent with Florida State Board of Education; and
- h) Opportunities for SBBC personnel to participate in SMITH COMMUNITY staff training.

2.06 **Eligibility.** Students shall be enrolled in accordance with their current ESE eligibility if appropriate and/or in accordance with State Board of Education Rules.

2.07 **Reimbursement.** SMITH COMMUNITY share to reimburse the SBBC on a per student pro-rata basis when the average student attendance during the October and February Full Time Equivalent (FTE) survey period as approved by SBBC falls below an average of 10 students per class.

2.08 **Student Supervision.** Supervision and control of students while in their program shall be the sole responsibility of SMITH COMMUNITY. SMITH COMMUNITY and SBBC shall work together to implement SMITH COMMUNITY's Behavioral Management System and establish classroom rules that align with SBBC Code of Conduct. SMITH COMMUNITY staff shall assist SBBC teachers in maintaining classroom control. SMITH COMMUNITY agrees to directly intercede in all situations of out-of-control students and violent or threatening behaviors. SMITH COMMUNITY staff shall remove out-of-control students from the classroom and notify SMITH COMMUNITY and SBBC administrators by the end of the academic day. Only the SBBC administrator has the authority to suspend students from school. SMITH COMMUNITY shall inform SBBC when a student is involved in a serious incident or is injured either during or after school hours as defined by SBBC.

2.09 **Code of Student Conduct.** SBBC shall provide the Code of Student Conduct which shall be signed by the parent(s) / guardian and the student as part of the intake process. SMITH COMMUNITY shall provide the SBBC with a signed copy of the Code of Student Conduct Acknowledgement Form for each student. The Code of Student Conduct shall be enforced by SMITH COMMUNITY. In the event of serious threat or harm to SBBC personnel, the SBBC Administrative Principal or designee has the authority to identify alternative discipline action to address and resolve the situation, in collaboration with SMITH COMMUNITY.

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2.10 **Fee Collection.** Any fees collected by SMITH COMMUNITY will not be collected as a condition of student's enrollment in the educational program.

2.11 **AGENCY Incident Procedures.** SMITH COMMUNITY shall provide SBBC its written procedures regarding critical incidents - bomb threats, fires and other such incidence(s) that could put students in jeopardy of bodily injury and / or cause bodily injury by July 1, 2016. Additionally, SMITH COMMUNITY shall inform the SBBC, within 24 hours, when a student involved is in a serious incident or is injured as defined by the SBBC during academic time.

2.12 **SMITH COMMUNITY Intake Procedures.** SMITH COMMUNITY shall provide SBBC, its written procedures governing intake, evaluation, dismissal and separation of students by July 1, 2016.

2.13 **Access to Student Meals.** SMITH COMMUNITY has the option of becoming a sponsor of the National School Lunch and Breakfast program and claiming reimbursement from that program for meals, purchasing meals from SBBC or purchasing meals elsewhere.

If SMITH COMMUNITY chooses to purchase meals from SBBC, a separate agreement with the Department of Food and Nutrition will be executed by the parties for such services.

2.14 **Transition.** SBBC and SMITH COMMUNITY mutually agree that all students' effective transition, both short and long-term, to the home, community, school and/or the work environment must begin at the program intake stage and continue throughout the program and / or treatment implementation. The transition plan shall include, but not be limited to, the following:

- a) Identification of the student's assessed strengths, competencies, and needs relating to survival/coping/independent living skills; crisis intervention/stress management/conflict resolution skill; social skills; employability skills; health/mental health/medical status; legal status, existing support network; and education progress and status;
- b) Realistic, meaningful and achievable goals and objectives and;
- c) Strategies to address specific needs; recognition of exemplary progress, achievement, or demonstration of leadership; review and update of a minimum of once per year, and in all cases before exit from the program; and recommendations for the student's discharge and aftercare.

2.15 **Program Completion.** SMITH COMMUNITY shall inform SBBC of a student's program completion date a minimum of 30 days prior to dismissal to the fullest extent possible to ensure the completion of the educational transition process. SBBC administrative school shall be informed as soon as an unanticipated exit has occurred. At the time of discharge, whether anticipated or unanticipated, SMITH COMMUNITY shall provide SBBC with the student's discharge summary to include, but not limited to; the discharge plan, discharge diagnosis (if applicable), and the reason for discharge. The parties need to mutually agree on the method of communication.

2.16 **Curriculum.** The responsibility for administration of the instructional program rests with SBBC and will be conducted in accordance with SBBC policies and rules, which includes, but may not be limited to, scheduling, staffing patterns, and student assessment and evaluation.

2.17 **Supplemental Efforts:**

- a) SMITH COMMUNITY is encouraged to supplement SBBC's efforts to provide an optimal learning environment;
- b) SMITH COMMUNITY and SBBC shall collaborate to develop the overall therapeutic/educational program, which will include each student's Individual Educational Plan (IEP); and
- c) The informational and/or promotional materials, which SMITH COMMUNITY prepares regarding the program, shall indicate SBBC is providing the educational component of the program;

2.18 **Facilities and Safety Requirements:**

- a) The facility will be provided and maintained by SMITH COMMUNITY and will be located at 601 South State Road 7, Plantation, FL 33317 or at another site approved by the Superintendent's designee, the Administrative Principal.
- b) SMITH COMMUNITY's facility shall be in compliance with the Americans with Disabilities Act requirements for students with disabilities.
- c) SMITH COMMUNITY will comply with the facility safety requirements embodied in the State Uniform Building Code for Public Educational Facilities and the Florida Department of Education's State Requirements for Educational Facilities (SREF) 1999, especially those pertaining to fire safety, storage of hazardous materials, exit marking, lighting, ventilation, evacuation and occupancy loads. Student classrooms must provide a minimum of twenty-five usable square feet per pupil. Instructional personnel must be provided adequate space for desk, file cabinets, instructional materials, and secured storage of SBBC owned equipment and confidential documents, such as student tests and records; and
- d) SMITH COMMUNITY shall maintain buildings used to house students in a state of good and clean repair and submit to SBBC inspections upon request.

2.19 **Staff Safety and Security.** SMITH COMMUNITY shall provide training on procedures for all drills, facility emergencies, fire, lockdown, tornado, and evacuation. Evacuations shall be posted in conspicuous locations throughout the facility. In the event of a serious threat or harm to SBBC personnel, the Superintendent's designee, the Administrative Principal, has the authority to suspend educational services for up to ten (10) days to allow for SBBC and SMITH COMMUNITY to address and resolve the emergency situation.

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2.20 **Building Maintenance.** SMITH COMMUNITY shall maintain buildings used to house students in a state of good repair and submit to SBBC annual safety inspections.

Maintenance of the facility shall include daily housekeeping activities, including but not limited to: basic cleaning, sweeping and mopping, garbage collection and removal, etc.

2.21 **Testing and Evaluation Room.** SMITH COMMUNITY shall make available a quiet, private room, with internet access, for SBBC sponsored psychological evaluations and ESE staffings. This room will be dedicated for SBBC use; however, SMITH COMMUNITY may use it for their purposes when the SBBC is not using it.

2.22 **Telephone Service.** SMITH COMMUNITY shall provide a dedicated telephone line, at no cost to SBBC, for a SBBC provided telephone facsimile machine for SBBC use only. SBBC personnel shall be afforded unlimited private access to telephone for official school-related business. In addition, SMITH COMMUNITY shall provide telephone lines, at no cost to SBBC, for instructional telecommunications/web based instruction purposes at mutually agreed upon locations.

2.23 **Damaged Property.** SMITH COMMUNITY assumes responsibility and shall pay for any damage to, or loss of, SBBC property. SMITH COMMUNITY will be billed by SBBC for repair or replacement costs. SMITH COMMUNITY will make such remuneration within thirty days of billing.

2.24 **Health Certificates.** SMITH COMMUNITY shall maintain current sanitation, and health certificates and submit to annual fire inspections for all buildings as part of its educational program.

2.25 **Transportation.** Only SBBC approved vehicles may be used to transport students during the school day for school sponsored activities.

2.26 **Attendance.** SMITH COMMUNITY agrees to comply with SBBC's attendance policy as described in the Elementary and Secondary Code of Student Conduct in order to prevent truancy and promote school attendance.

2.27 **Immunization.** SMITH COMMUNITY agrees to comply with the State of Florida immunization requirements as described in the Code of Student Conduct. Compliance with the current schedule of immunizations is required to be admitted to school or to attend classes.

2.28 **Behavior Management.** SMITH COMMUNITY is responsible for having a staff member within each classroom at all times, to provide management of student behavior and to ensure safety of students and SBBC personnel. SMITH COMMUNITY shall, at all times, adhere to the staff/youth population ratio as specified in their operational guidelines. SMITH COMMUNITY shall provide to SBBC a copy of their behavior management plan by July 1, 2016.

2.29 **Grievance Procedure.** Any disputes arising under this Agreement shall be addressed through the following measures:

- Step 1 is resolution of the dispute at the Exceptional Student Education Director level.

- Step 2 is resolution of the dispute at the Chief Academic Office level or designee.
- Step 3 is resolution of the dispute by the Superintendent of Schools or designee.

2.30 **Educational Funding.** Student enrollment figures will be reported in the July, October, February, and June FTE surveys. SMITH COMMUNITY shall make every effort not to move students out of the facility during FTE survey weeks, except in such cases where moves are mandated by the courts. SBBC shall notify SMITH COMMUNITY of FTE survey weeks.

2.31 **HIPAA Compliance.** SMITH COMMUNITY agrees to adhere to all applicable HIPAA guidelines as they relate to SBBC students and to enter into the District's HIPAA business associate agreement (Attachment C) with the SBBC regarding HIPAA rules, regulations, and procedures. Because SMITH COMMUNITY may access, use and disclose HIPAA-covered information from SBBC, SBBC is considered the Covered Entity" and SMITH COMMUNITY is considered the "Business Associate" in the HIPAA agreement. A copy of the HIPAA agreement is attached and incorporated as **Attachment C**.

2.32 **FERPA Compliance.** SMITH COMMUNITY shall adhere to all applicable FERPA guidelines with regard to confidentiality of student records and to the requirements contained in **Attachment D** which is attached here to and incorporated herein by reference.

2.33 **Background Screening.** SMITH COMMUNITY 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 SMITH COMMUNITY or its personnel providing any services under the conditions described in the previous sentence. SMITH COMMUNITY 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 SMITH COMMUNITY and its personnel. The Parties agree that the failure of SMITH COMMUNITY 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. to the extent permitted by law, SMITH COMMUNITY 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 SMITH COMMUNITY's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

2.34 **Inspection of Agency's Records by SBBC.** SMITH COMMUNITY 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 SMITH COMMUNITY'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 SMITH COMMUNITY or any of SMITH COMMUNITY's payees pursuant to this Agreement. SMITH COMMUNITY'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. SMITH COMMUNITY'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) SMITH COMMUNITY's Records Defined. For the purposes of this Agreement, the term "SMITH COMMUNITY'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, SBBC's agent or authorized representative shall have access to SMITH COMMUNITY'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 SMITH COMMUNITY pursuant to this Agreement.

(c) Notice of Inspection. SBBC's agent or its authorized representative shall provide SMITH COMMUNITY 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 SMITH COMMUNITY'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 SMITH COMMUNITY 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 SMITH COMMUNITY'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 SMITH COMMUNITY in excess of two percent (2%) of the total billings under this Agreement, the

actual cost of SBBC's audit shall be paid by SMITH COMMUNITY. If the audit discloses billings or charges to which *Insert Name* is not contractually entitled, SMITH COMMUNITY 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. SMITH COMMUNITY 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 SMITH COMMUNITY 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 SMITH COMMUNITY pursuant to this Agreement and such excluded costs shall become the liability of SMITH COMMUNITY.

(h) Inspector General Audits. SMITH COMMUNITY 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

2.35 **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: Executive Director
Exceptional Student Education/Student Support
The School Board of Broward County, Florida
Arthur Ashe Administrative Center
1701 NW 23rd Avenue, Rm 277
Fort Lauderdale, FL 33311

To SMITH COMMUNITY: Joanne Correia-Kent, Co-CEO
Smith Community Mental Health, Inc.
601 South State Road 7
Plantation, FL 33317

With a Copy to: Donna Lavalley, Co-CEO
Smith Community Mental Health, Inc.
601 South State Road 7
Plantation, FL 33317

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 SMITH COMMUNITY 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 SMITH COMMUNITY 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.

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.

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.

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, state and local laws, SBBC policies, 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, B, C, D and E attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

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 affect 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.

3.26 **Indemnification.** 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 up to said limits.

B. By SMITH COMMUNITY : SMITH COMMUNITY 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 SMITH COMMUNITY , its agents, servants or employees; the equipment of SMITH COMMUNITY , its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of SMITH COMMUNITY or the negligence of SMITH COMMUNITY'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 SMITH COMMUNITY, SBBC or otherwise.

3.27 **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.

REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY

FOR SBBC

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Dr. Rosalind Osgood, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

Office of the General Counsel

FOR SMITH COMMUNITY MENTAL HEALTH, INC.

(Corporate Seal)

Smith Community Mental Health, Inc.
601 South State Road 7
Plantation, FL 33317

ATTEST:

By _____

, Secretary

-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 _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by _____ of

Name of Person

_____, on behalf of the corporation/SMITH COMMUNITY.

Name of Corporation or SMITH COMMUNITY

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

(SEAL)

Printed Name of Notary

Notary's Commission No.