

AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2017,
by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(hereafter 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 DISTRICT BOARD OF TRUSTEES OF BROWARD COLLEGE, FLORIDA

(hereafter referred to as BC),
a political subdivision of the State of Florida,
whose principal place of business is
225 East Las Olas Blvd, Fort Lauderdale, Florida 33301

WHEREAS, SBBC and BC desire to enter into an agreement to provide BC student tutors to high school students;

WHEREAS, BC college student tutors will provide support and guidance to SBBC high school students in a student’s major area of interest.

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 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 August 1, 2017 and conclude July 31, 2018, and, if both parties mutually agree, may be renewable for one (1) additional one (1) year period.

2.02 **Joint Responsibilities**. SBBC and BC shall maintain responsibility for implementing this Agreement and shall review this Agreement and performance of parties hereunder each year to ensure that it continues to serve their mutual interests. BC and SBBC may provide personally identifiable student records to each other in the performance of this Agreement. Such records are provided pursuant to Sections 1002.22 and, 1002.221 Florida Statutes, and 20 U.S.C. 1232g. Each

party further agrees to comply with Sections 1002.22 and 1002.221, Florida Statutes, and 20 U.S.C. 1232g, including but not limited to provisions related to confidentiality, access, consent, length of retention and security of student records. For purposes of this Agreement, BC is considered a "school official" with a "legitimate educational interest" to receive limited personally identifiable student information to perform the responsibilities listed in Section 2.03. To disclose information from education records to BC for any other purpose (except as allowable by federal and state law), SBBC shall obtain and maintain written consent of the parent or student age 18 or over.

2.03 **BC Responsibilities.** As part of this Agreement BC will do the following:

- a) Provide college student tutors proficient in various subjects to participating high schools based upon availability.
- b) College student tutors will conduct tutoring services on the high school campus.
- c) Provide training for student tutors.

2.04 **SBBC Responsibilities.** As part of this Agreement SBBC will do the following:

- a) Provide a list of schools to BC that desire to participate in this Agreement.
- b) Provide a tutoring schedule by school to BC.
- c) Provide any additional training to BC college tutors as needed.
- d) Supervise the BC college tutors while on an SBBC campus.
- e) Provide BC with information from SBBC student education records that BC tutor will need to effectively serve students, including: student names, grade level, grade(s) on work, course grade, status pertaining to completion of course, sample of student's work, and parent contact information.
- f) Compensate BC in accordance with Section 2.07 hereof.

2.05 **Student Eligibility and Admissions.** Each SBBC high school will determine the individual student's need to participate in the tutoring program.

2.06 **Services and Resources for Students with Disabilities.**[INTENTIONALLY OMITTED.]

2.07 **Charges.**

a) SBBC will pay BC \$15 per hour for each hour of tutoring services provided._ Student tutors are employees of BC and BC is responsible for their compensation.

BC will submit an invoice to each individual participating school on a date prior to the end of each fall and spring semester. The invoice will list the BC tutor's name, the name of the SBBC student that was provided the tutoring services, and the date and time the tutoring services were provided. Each individual SBBC high school participating in this Agreement will be responsible for payment for services provided under this Agreement. Tutoring services will not be provided during any summer term. Each participating school will be required to pay its invoices within thirty (30) days of receipt of the invoice.

b) **Instructional Materials.** BC will not provide instructional materials under this Agreement.

2.08 **Shared Student Records.** Each party will comply with applicable state and federal laws and administrative rules regarding the sharing of student records and reports and establish procedures, including Sections 1002.22 through 1002.222, Florida Statutes. Pursuant to FERPA and its implementing regulations, 34 CFR Part 99, et seq., the information provided shall be limited to that which is necessary to effectively serve the student and each party hereby certifies by signing the Agreement that the information will not be re-disclosed by its agents or employees to any other party except as provided by law.

2.09. **Family Educational Rights and Privacy Act (FERPA) Compliance.**

In addition to the requirements under Section 3.10, Student Records, each party will comply with the requirements of **Appendix A**, Safeguarding the Confidentiality of Student Records and Information.

2.10 **Inspection of BC's Records by SBBC.** BC 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 BC'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 BC or any of BC's payees pursuant to this Agreement. BC'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. BC'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

(a) **BC's Records Defined.** For the purposes of this Agreement, the term "BC's Records" shall include, without limitation, any 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 BC'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 BC pursuant to this Agreement.

(c) **Notice of Inspection.** SBBC's agent or its authorized representative shall provide BC 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 BC 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 BC 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 BC'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 BC in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by BC. If the audit discloses billings or charges to which BC is not contractually entitled, BC shall pay said sum to SBBC within twenty (20) days of receipt of written demand unless otherwise agreed to in writing by both parties.

(g) Inspection of Subcontractor's Records. BC 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 BC 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 BC pursuant to this Agreement and such excluded costs shall become the liability of BC.

(h) Inspector General Audits. BC 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.

2.11 **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: Chief Academic Officer
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

To BC: President
Broward College
225 East Las Olas Boulevard
Fort Lauderdale, Florida 33301

With a Copy to: Vice President of Academic Affairs

Broward College
225 East Las Olas Boulevard
Fort Lauderdale, Florida 33301

2.12 **Background Screening.** Both parties agree 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 BC or its personnel providing any services under the conditions described in the previous sentence. BC 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 BC and its personnel. The parties agree that the failure of either party to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling the breaching party to terminate immediately with no further responsibilities or duties to perform under this Agreement.

2.13 **Indemnification.** Each party agrees to be fully responsible 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. 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.

2.14 **Required Insurance Coverages.** Each party acknowledges without waiving its right of sovereign immunity as provided by Section 768.28, Florida Statutes, that each party is self-insured for general liability under state law with coverage limits of \$200,000 per person and \$300,000 per occurrence, or such monetary waiver limits that may change and be set forth by the legislature.

ARTICLE 3 – GENERAL CONDITIONS

3.01 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this

Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

3.03 **Independent Contractor**. The parties to this Agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. No right to BC retirement, leave benefits or any other benefits of BC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. The parties 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, sexual orientation, or any other basis prohibited by law, 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 BC 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 the parties under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If funds for the payment of services or products to be provided under this Agreement are not

allocated, this Agreement may be terminated at the end of the period for which funds have been allocated. Notice shall be provided at the earliest possible time before such termination. No penalty shall accrue in the event this provision is exercised, and there shall be no obligation or liability 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.** Each party shall be in full compliance with Chapter 119, Florida Statutes. 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 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 and shall comply with the requirements of **Appendix A.**

3.11 **Compliance with Laws.** Each party shall comply with all applicable federal, state and 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 the parties 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 exclusively 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**. **Appendix A** 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 effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.19 **Severability**. In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.20 **Preparation of Agreement**. The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.21 **Amendments**. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.22 **Waiver**. The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.23 **Force Majeure**. Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.24 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

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

3.26 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

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

FOR SBBC

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Abby M. Freedman, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

Office of the General Counsel

FOR BC

(Corporate Seal)

THE DISTRICT BOARD OF TRUSTEES
OF BROWARD COLLEGE, FLORIDA

By _____

Name _____

ATTEST:

By _____

-or-

APPROVED AS TO FORM
AND LEGALITY:

Witness

GREGORY A. HAILE

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/agency.

Name of Corporation or Agency

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

My Commission Expires:

Signature – Notary Public

(SEAL)

Printed Name of Notary

Notary's Commission No.

APPENDIX A

Safeguarding the Confidentiality of Student Records and Information

The parties acknowledge that Sections 1002.022, 1002.221 and 1002.222, Florida Statutes and the Family Educational Rights and Privacy Act (FERPA, 20 U.S.C. § 1232g) and its implementing regulations (34 C.F.R. Part 99), protect the privacy rights of students and their parents with respect to information and records created and/or maintained by public schools. The student personally identifiable information (PII) may be disclosed only in compliance with FERPA. Pursuant to FERPA, the information provided by SBBC shall be limited to that which is necessary to effectively serve the student.

Each party participating in this Agreement further agrees to:

(1) Hold the student records and information in strict confidence and not use or disclose except as required by this Agreement or as required or permitted by law unless the parent of a student provides prior written consent for their release. All shared student records will be disclosed only to those who have a need to access the information in order to perform their assigned duties in the performance of this Agreement. Absent consent from the parent or eligible student, student records and information will not be disclosed except as allowed by the aforementioned laws.

(2) Safeguard the student records through administrative, physical and technological safety standards to ensure adequate controls are in place to protect the student information in accordance with FERPA's privacy requirements.

(3) Continually monitor its operations and take all actions necessary to assure that the student information and records are safeguarded in accordance with the terms of this Agreement, and

(4) Ensure that all employees, appointees or agents of each party to this Agreement who are granted access to shared student records will have successfully completed (1) the background screening requirements under Section 435.04, Florida Statutes, under Level 1 screening standards and (2) the FERPA training webinars, as they may become available, at the U.S. Department of Education, Privacy Technical Assistance Center website:

<http://www2.ed.gov/policy/gen/guid/ptac/index.html>, <http://ptac.ed.gov/> including, but not limited to, <http://www2.ed.gov/policy/gen/guid/ptac/pdf/slides.pdf>

Each party to this Agreement agrees to notify the other party immediately upon discovery of a breach of confidentiality of student information and to take all necessary notification steps as may be required by federal and Florida law. A breach of the confidentiality requirements shall constitute grounds for immediate termination of this Agreement without advance notice. Any provisions within this Agreement concerning the resolution of disputes shall not be applicable to a breach of the requirements of this attachment.

This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such student records are returned to The School Board of

Broward County, Florida (“SBBC”) or disposed of in compliance with the applicable Florida Retention Schedules and a written acknowledgment of said disposition is provided to SBBC.