



AGENDA REQUEST FORM

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

MEETING DATE	2017-12-05 10:05 - School Board Operational Meeting
AGENDA ITEM	ITEMS
CATEGORY	EE. OFFICE OF STRATEGY & OPERATIONS
DEPARTMENT	Procurement & Warehousing Services

Special Order Request <input type="radio"/> Yes <input checked="" type="radio"/> No
Time
Open Agenda <input checked="" type="radio"/> Yes <input type="radio"/> No

ITEM No.:
EE-3.

TITLE:
Direct Negotiation Recommendation of \$500,000 or Less - 58-091E - The Flying Classroom Curriculum Program

REQUESTED ACTION:
Approve the above Direct Negotiation Agreement. Contract Term: December 6, 2018 through December 5, 2018, 1 Year; User Department: Title I; Award Amount: \$206,498; Awarded Vendor(s): The Flying Classroom, LLC; Small/Minority/Women Business Enterprise Vendor(s): None.

SUMMARY EXPLANATION AND BACKGROUND:
This Agreement provides access for fifty (50) teachers at up to twenty-five (25) Title one schools to Science Technology, Engineering and Mathematics (STEM), Art and Literacy curriculum enhancement programs based on the global expeditions of National Geographic Explorer, Captain Barrington Irving, and STEM professionals across the globe.
This Agreement has been reviewed and approved as to form and legal content by the Office of the General Counsel.

SCHOOL BOARD GOALS:
 Goal 1: High Quality Instruction Goal 2: Continuous Improvement Goal 3: Effective Communication

FINANCIAL IMPACT:
The estimated financial impact to the District will be \$206,498. The funding source will come from Title I. The financial impact amount represents an estimated contract value; however, the amount authorized will not exceed the estimated contract award amount.

EXHIBITS: (List)
(1) Executive Summary (2) Agreement (3) Financial Analysis Worksheet

BOARD ACTION:
APPROVED
(For Official School Board Records Office Only)

SOURCE OF ADDITIONAL INFORMATION:

Name: Luwando L. Wright-hines	Phone: 754-321-1420
Name: Mary C. Coker	Phone: 754-321-0501

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
Senior Leader & Title
Maurice L. Woods - Chief Strategy & Operations Officer

Signature
Maurice Woods
11/28/2017, 3:06:54 PM

Approved In Open Board Meeting On **DEC 05 2017**
By: *Nora Rupert*
School Board Chair

EXECUTIVE SUMMARY

Direct Negotiation Recommendation of \$500,000 or Less 58-091E - The Flying Classroom Curriculum Program

This request is to approve the agreement between The Flying Classroom, LLC and The School Board of Broward County (SBBC), for one (1) year, starting December 6, 2017 through December 5, 2018, with a spending authority of \$206,498. The budget will be taken from Title 1 Grant funding to provide fifty (50) Science Technology, Engineering and Mathematics (STEM) Curriculum Licenses for a twelve (12) month subscription, professional development support services and access to two (2) STEM Festival Events. A STEM festival is a celebration of science, technology, engineering and mathematics that provides an opportunity for engagement and exchange between children, teens, families, and local STEM professionals.

Project Description

This Agreement provides access for fifty (50) teachers at up to twenty-five (25) Title 1 schools to STEM, Art and Literacy curriculum enhancement programs based on the global expeditions of National Geographic Explorer, Captain Barrington Irving, and STEM professionals across the globe. The program consists of thirty (30) STEM+ expeditions, led by Captain Barrington Irving, a National Geographic Explorer. The STEM expeditions allow students and teachers to explore virtually along with Captain Irving as he meets STEM professionals and solves real world and relevant problems that require students to apply knowledge and skills embedded within academic standards. This experience will help the students realize the importance of STEM in solving local and global problems and engage them in the possibilities of advanced STEM careers. Captain Irving will serve as a guide and role model for the community for engagement in authentic STEM experiences. Teachers, students, and parents will interact directly with Captain Irving and the STEM professionals involved in the expeditions through in-person and online sessions. Teacher professional development will be delivered through in-person workshops, webinars, learning communities and in-school coaching through the duration of implementation. All schools that utilized the program last school year through this initiative will have an opportunity to participate for the 2017-2018 school year.

Community-wide engagement events will also be held as part of this project. A STEM Festival on December 9, 2017, and March 10, 2018, will be held to engage the entire BCPS community in STEM education. Also, a parent engagement event will be held that will feature Captain Irving speaking and interacting with parents/caregivers, students, and community members on February 15, 2018.

Deliverables

- Online Flying Classroom expedition STEM+ Curriculum for fifty (50) teachers.
- Teacher professional development: four (4) hour initial training session, STEM+ hands-on expedition and in-school coaching for participating teachers.
- On-call support via email and phone as needed.
- Captain Irving visit and present at ten (10) of the participating schools selected through an incentive contest.

Appraisal of Impact on Student Learning

- Engagement with authentic STEM experiences will provide students with connections to classroom learning to STEM careers.
- Role model interactions with Captain Irving and the STEM professionals visited on the expeditions will expose students to potential future STEM careers.
- Application of grade-appropriate science standards to hands-on problem-solving in the authentic context of the varied expeditions.

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Procurement Method

Direct negotiation was conducted with the vendor based on Purchasing Policy 3320. Pursuant to Purchasing Policy 3320, Section II, N, and pursuant to the Department of Education, Rule 6A-1.012, 11 (b), Florida Administrative Code as authorized by Section 010.04(4) (a), Florida Statutes, a contract for commodities or contractual services may be awarded, without competitive solicitations, if state or federal law, a grant or a state or federal agency contract prescribes with whom SBBC must contract or if the rate of payment is established during the appropriations process.

Financial Impact

List price for licenses (\$2,495 x 50 teachers)	\$124,750
Less discount (\$700 x 50)	(\$35,000)
Add discounted price for licenses (\$1,795 x 50)	\$89,750
Add STEM Festivals and Professional Development	\$116,748 (see breakdown below)
Total	\$206,498

Total Savings, as shown above, is \$35,000

Flying Classroom STEM+ Instructional or Engagement Item		Cost per Item/Activity	Total Cost
Professional Learning	Introduction to Flying Classroom Professional Learning Sessions (FC100PD) (two (2) half-day sessions, twenty-five (25) participants per session, venue must be provided by BCPS)	\$2,250/session	\$4,500
	Flying Classroom Professional Learning Sessions (FC 101PD) (two (2) full-day sessions that will provide hands-on, relevant and standards-based STEM Expeditions for teachers that promote teacher development and student inquiry and investigation, two (2) full day sessions, twenty-five (25) participants per session) Discounted Amount of \$7,500	\$0/session	\$0
	Lead Explorer In-School Coaching Sessions (FC 102LECS) (Sessions are in three (3) hour blocks of time. The trainer can visit two (2) Lead Explorer classrooms per day; daily rate is \$1,750, BCPS needs twenty-five (25) days of in-school coaching and support)	\$1,750/session	\$43,750
STEM+ Engagement	Captain Barrington Irving Lecture Series (FC 202LS) (ten (10) school lecture visits by Captain Irving)	\$1,850/session	\$18,500
	Flying Classroom STEM+ Fest (FC 202SHE) (four (4) hour STEM exploratory festival, two (2) events per academic year, venue must be provided by BCPS, the events will take place in the fall semester and spring semester)	\$24,999/event	\$49,998
Total			\$116,748

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Pricing Comparison for 2016/2017 vs. 2017/2018

Flying Classroom STEM+ Instructional or Engagement Item	Savings Explanation	2017/2018 Agreement		2016/2017 Agreement	
		Unit Pricing	Total Cost	Unit Pricing	Total Cost
Licenses	10% decrease in per unit cost	\$1,795 per license 50 teachers	\$89,750	\$1,995 per license 50 teachers	\$99,750
On-site Professional Development Training	13% total price increase, however number of participants increased from 25 to 50 teachers	\$2,250 per session (25 participants per session) 2 half-day sessions. Total 50 teachers	\$4,500	\$999 per session (5 participants per session) 4 half-day sessions. Total of 25 teachers	\$3,996
Lead Explorer In-School Coaching Sessions (FC 102LECS)	12% decrease for each session	\$875 per teacher 50 teachers	\$43,750	\$999 per teacher 25 teachers	\$24,975
Captain Irving Lecture Series	1% increase per series	\$1,850 per series 10 series	\$18,500	\$1,825 per series 10 series	\$18,250
Four (4) hour STEM exploratory festival, two (2) events per academic year.	Additional Item not purchased under this Agreement in the previous year	\$24,999 per event 2 events	\$49,998	Not Applicable	
TOTAL			\$206,498		\$146,971

The previous agreement started on August 31, 2016, with a spending authority of \$146,971.

AGREEMENT

THIS AGREEMENT is made and entered into as of this 5th day of December, 2017, 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 FLYING CLASSROOM, LLC
(hereinafter referred to as "The Flying Classroom"),
whose principal place of business is
14950 NW 44th Court
Suite 23
Opa Locka, FL 33322

WHEREAS, SBBC desires to license certain educational material from The Flying Classroom, and

WHEREAS, The Flying Classroom is willing to provide SBBC with licenses for use of such educational materials; and

WHEREAS, pursuant to SBBC Policy 3320, Section II, H, and pursuant to the Department of Education, Rule 6A-1.012, 1 l(b), Florida Administrative Code as authorized by Section I010.04(4)(a), Florida Statutes, the requirement for requesting competitive solicitation for commodities or contractual services from three (3) or more sources is hereby waived as for the SBBC's purchase of computer software.

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 upon the execution of both parties and conclude on December 5, 2018.

2.02 **The Flying Classroom.** The Flying Classroom shall provide SBBC with a 12 month license for subscriptions for teachers to utilize the 30 STEM expedition lessons and English Language Arts literacy lessons within the web-based platform in accordance with the proposal attached hereto as **Exhibit A** and incorporated herein by reference. An invoice will be generated upon access being granted and the payment terms are net 30 days from the invoice date.

2.03 **The Flying Classroom Implementation Specialist.** The Flying Classroom shall assign SBBC with an implementation specialist for teachers to utilize throughout the duration of the yearly curriculum license. The outline and description of the implementation specialist can be in accordance with the proposal attached hereto as **Exhibit B** and incorporated herein by reference. An invoice will be generated upon access being granted and the payment terms are net 30 days from the invoice date.

2.04 **The Flying Classroom Usage Analytics.** The Flying Classroom will provide monthly data documenting usage for the entire school year. The Flying Classroom will be reporting on which schools are logging in and usage of lessons. The Flying Classroom Professional Development team will also use the teacher profiles created to monitor expedition lessons completed.

2.05 **The Flying Classroom Total Cost and Payment Distribution.** The Flying Classroom total cost is \$206,498.00. The *Flying Classroom* will be paid \$89,750 for 50 STEM Curriculum licenses upon approval of this contract after receipt of a proper and appropriate invoice net 30 days from the date of that invoice. All payments for Professional Development and Stem Engagements, not to exceed \$116,748, shall be paid after satisfactory performance of each session or event based on prices listed in Exhibit B. The *Flying Classroom* will submit a proper and appropriate invoice for each activity and it will be paid net 30 days from the date of that invoice.

2.06 **Studies Conducted for SBBC:**

(a) Under the terms of this Agreement, The Flying Classroom will conduct annual, empirical studies and/or evaluations for or with SBBC to:

1. Develop, validate or administer predictive tests
2. Improve instruction
3. Measure the model's successful implementation in participating schools/classrooms
4. Enhance implementation fidelity

(b) The purposes and scope of the evaluation(s) and or study/studies are described as follows:

1. To determine the extent to which the use of Flying Classroom's lesson plans are improving critical thinking skills among students
2. To determine the extent to which the use of Flying Classroom's lesson plans improve classroom engagement;
3. To determine the extent to which the use of Flying Classroom's lesson plans

- improve student performance (school grades) and/or achievement (standardized test scores)
- 4. To determine the extent to which hours of use of Flying Classroom's lesson plans are related to successful student outcomes
- 5. To determine the extent to which instructors use Flying Classroom's program with fidelity.

(c) SBBC may disclose a file from an education record of a student, his/her parent(s) and teachers to The Flying Classroom for it to conduct said evaluation and or study. All information from an education record that SBBC provides to The Flying Classroom will be de-identified. The information to be disclosed by SBBC to The Flying Classroom is described as follows:

- 1. Student Demographic Information, not limited to Race/Ethnicity, Gender
- 2. English Language Learner Stats
- 3. Student Standardized Exam Scores
- 4. Student Classroom Grades
- 5. Parent Demographic Information, including, but not limited to, Race/Ethnicity, Gender
- 6. Teacher Personnel Number
- 7. Teacher Demographic Information, including, but not limited to, Years Teaching, Gender.

(d) The Flying Classroom agrees that the annual study/studies and/or evaluation(s) shall be conducted in a manner that does not permit access to personal identification of parents and students by individuals other than the representatives of The Flying Classroom that have legitimate interests in the information. The annual study/studies and/or evaluation(s) shall commence at the beginning of the first month of the school year and conclude mid-summer of said school year throughout the life of the present agreement. All research and evaluation products will be determined at the start of the school year and must be delivered by the end of said school year, no later than the mid-summer conclusion date mentioned above. The Flying Classroom agrees that any disclosed information will be destroyed or returned to SBBC when no longer needed for the purposes for which the agreed-upon evaluation and or study was conducted. The Flying Classroom acknowledges and agrees that it may use personally identifiable information from education records only to meet the purpose or purposes of the studies and/or evaluations as stated in this Agreement. The Flying Classroom agrees to comply with all requirements of the District's IRB and Research Review Process, which may be accessed at: <http://www.broward.k12.fl.us/sar/irb/index.htm>

2.07 Inspection of the Flying Classroom Records by SBBC. *The Flying Classroom* 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 *The Flying Classroom'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 *The Flying Classroom* or any of *The Flying Classroom's* payees pursuant to this Agreement. The Flying Classroom's Records subject to examination shall include, without limitation, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. *The Flying Classroom's* Records subject to this section shall include any and all documents pertinent to the evaluation, analysis, verification and reconciliation of any and all expenditures under this Agreement without regard to funding sources.

(a) *The Flying Classroom's* Records Defined. For the purposes of this Agreement, the term "*The Flying Classroom'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 *The Flying Classroom'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 *The Flying Classroom* pursuant to this Agreement.

(c) Notice of Inspection. SBBC's agent or its authorized representative shall provide *The Flying Classroom* 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 *The Flying Classroom's* facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(e) Failure to Permit Inspection. Failure by *The Flying Classroom* 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 *The Flying Classroom'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 *The Flying Classroom* in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by *The Flying Classroom*. If the audit discloses billings or charges to which *Insert Name* is not contractually entitled, *The Flying Classroom* 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. *The Flying Classroom* shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by *The Flying Classroom* 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 *The Flying Classroom* pursuant to this Agreement and such excluded costs shall become the liability of *The Flying Classroom*.

(h) Inspector General Audits. *The Flying Classroom* 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.

2.08 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: Mr. Daniel Gohl
Chief Academic Officer
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

To The Flying Classroom: Hannah Maharaj,
Director of Curriculum and Professional Learning
The Flying Classroom, LLC
14850 NW 44th Court, Suite 203
Opa Locka, FL 33054

With a Copy to: Barrington Irving, CEO, Founder
The Flying Classroom, LLC
14850 NW 44th Court, Suite 203
Opa Locka, FL 33054

2.09 Background Screening. *The Flying Classroom* 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 *The Flying Classroom* or its personnel providing any services under the conditions described in the previous sentence. *The Flying Classroom* shall bear the cost of acquiring the background screening

required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to *The Flying Classroom* and its personnel. The parties agree that the failure of *The Flying Classroom* 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. *The Flying Classroom* agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from *The Flying Classroom's* failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

2.10 **Insurance Requirements.** *The Flying Classroom* shall comply with the following insurance requirements throughout the term of this Agreement.

(a) **General Liability.** Limits not less than \$1,000,000 per occurrence for Bodily Injury/ Property Damage; \$1,000,000 General Aggregate. Limits not less than \$1,000,000 for Products/Completed Operations Aggregate.

(b) **Professional Liability/Errors & Omissions.** Limit not less than \$1,000,000 per occurrence covering services provided under this Agreement.

(c) **Workers' Compensation.** Florida Statutory limits in accordance with Chapter 440; Florida Statutes, Employer's Liability limits not less than \$100,000/\$100,000/\$500,000 (each accident/disease-each employee/disease-policy limit).

(d) **Auto Liability, Owned, Non-Owned and Hired Auto Liability with Bodily Injury and Property Damage** limits of not less than \$1,000,000 Combined Single Limit.

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

(f) **Verification of Coverage.** Proof of Insurance must be furnished within 15 days of execution of this Agreement. To streamline this process, SBBC has partnered with EXIGIS Risk Works to collect and verify insurance documentation. All certificates (and any required documents) must be received and approved by SBBC before any work commences to permit *The Flying Classroom* time to remedy any deficiencies. Please verify your account information and provide contact details for your company's Insurance Agent via the link provided in the email upon award.

(g) **Required Conditions.** Liability policies must contain the following provisions. In addition, the following wording must be included on the Certificate of Insurance:

1. The School Board of Broward County, Florida, its members, officers, employees and agents are added as additional insured;
2. All liability policies are primary of all other valid and collectable coverage maintained by The School Board of Broward County, Florida; and

3. Certificate Holder: The School Board of Broward County, Florida, c/o EXIGIS Risk Management Services, P. O. Box 4668-ECM, New York, New York 10163-4668.

(h) Cancellation of Insurance. *The Flying Classroom* is prohibited from providing services under this Agreement with SBBC without the minimum required insurance coverage and must notify SBBC within two business days if required insurance is cancelled.

(i) SBBC reserves the right to review, reject or accept any required policies of insurance, including limits, coverage's or endorsements, herein throughout the term of this agreement.

ARTICLE 3 – GENERAL CONDITIONS

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

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

3.03 **Independent Contractor.** The parties to this agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.04 **Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

3.05 **Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof upon thirty (30) days written notice to the other parties of its desire to terminate this Agreement. SBBC shall have no liability for any property left on SBBC's property by any party to this Agreement after the termination of this Agreement. Any party contracting with SBBC under this Agreement agrees that any of its property placed upon SBBC's facilities pursuant to this Agreement shall be removed within ten (10) business days following the termination, conclusion or cancellation of this Agreement and that any such

property remaining upon SBBC's facilities after that time shall be deemed to be abandoned, title to such property shall pass to SBBC, and SBBC may use or dispose of such property as SBBC deems fit and appropriate.

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 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**. Exhibits A and B 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. **Liability.** This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

A. By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

B. By *The Flying Classroom*: *The Flying Classroom* 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 *The Flying Classroom*, its agents, servants or employees; the equipment of *The Flying Classroom* its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of *The Flying Classroom* or the negligence of *The Flying Classroom'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 *The Flying Classroom*, 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.

FOR SBBC

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By *Nora Rupert*
Nora Rupert, Chair

ATTEST:

Robert W. Runcie

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

Kathelyn Jacques-Adams
Digitally signed by Kathelyn Jacques-Adams, Esq. - kathelyn.jacques-adams@gbrowardschools.com
Reason: The Flying Classroom, LLC
Date: 2017.11.17 09:34:34 -05'00'

Office of the General Counsel

FOR THE FLYING CLASSROOM

(Corporate Seal)

ATTEST:

The Flying Classroom, LLC

By

[Signature]
Dianella Irving

_____, Secretary

[Signature]
-or-
_____, Secretary

Witness

[Signature]

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 Miami-Dade

The foregoing instrument was acknowledged before me this 28 day of November, 2017 by Dianella Irving of

Name of Person

_____, on behalf of the corporation/agency.

Name of Corporation or Agency

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

My Commission Expires: Oct 7, 2019

[Signature]

Signature - Notary Public

(SEAL)

DANAIY ROMAN

Printed Name of Notary

FF 925555

Notary's Commission No.

