

## AGREEMENT

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2018, 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

**ARTHUR J. GALLAGHER RISK MANAGEMENT SERVICES, INC.**

(hereinafter referred to as "AJG"),  
whose principal place of business is  
2555 Glades Road, Suite #200E, Boca Raton, Florida 33431

**WHEREAS**, SBBC issued a Request for Proposal identified as RFP 19-003V for Property and Casualty Insurance Brokerage Services dated October 27, 2017, and amended by Addendum No. 1 dated October 30, 2017, Addendum No. 2 dated November 9, 2017, and Addendum No. 3 dated November 15, 2017 (hereinafter collectively as "RFP"), each of which is incorporated by reference herein; for the purpose of receiving proposals for Property and Casualty Insurance Brokerage Services.

**WHEREAS**, AJG submitted a proposal on November 28, 2017, including a Cost Proposal, in response to the RFP, (hereinafter collectively referred to as "Proposal") which is incorporated herein by reference; and

**WHEREAS**, RFP 19-003V authorized negotiations pursuant to the State Board of Education Administrative Rules, Board Rule 6A-1.012(11) and School Board Purchasing Policy 3320.

**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 May 16, 2018 and conclude on May 15, 2021. The term of the Agreement may, by mutual agreement between SBBC and AJG, be extended for two additional one-year periods and, if needed, 180 days beyond the expiration date of the renewal period.

2.02 **AJG's Service Obligations.** AJG shall provide all services to SBBC as specified in its Proposal and in compliance with this Agreement and the RFP and its Addenda. See **Attachment A.**

2.03 **AJG's Compensation and Payment.** In consideration of the services provided hereunder, SBBC shall compensate AJG as set forth in **Attachment B.**

2.04 **AJG's Insurance Requirements.**

(a) **Evidence of AJG's Insurance.** AJG shall provide evidence of such insurance in the following manner:

- 1) As evidence of compliance with the required Workers' Compensation/Employer's Liability, Commercial General Liability, Business Auto Liability, and Professional Liability, AJG shall furnish SBBC with a fully completed satisfactory Certificate of Insurance such as a standard ACORD Certificate of Liability Insurance (ACORD Form 25) or other evidence satisfactory to SBBC, signed by an authorized representative of the insurer(s) providing the coverages. The Certificate of Insurance, or other evidence, shall verify that Workers' Compensation/Employer's Liability contains a waiver of subrogation in favor of SBBC, identify this Agreement, and provide that SBBC shall be given no less than thirty (30) days' written notice prior to cancellation.
- 2) As evidence of the required Additional insured status for SBBC on the Commercial General Liability insurance, AJG shall furnish SBBC with a fully completed satisfactory Certificate of Insurance, and a copy of the actual additional insured endorsement as issued on the policy, signed by an authorized representative of the insurer(s) verifying inclusion of SBBC and SBBC's members, officials, officers and employees as Additional Insureds in the Commercial General Liability coverage; or other evidence satisfactory to SBBC.
- 3) Until such time as the insurance is no longer required to be maintained by AJG, AJG shall provide SBBC with renewal or replacement evidence of the insurance in the manner heretofore described no less than thirty (30) days before the expiration or termination of the insurance for which previous evidence of insurance has been provided.
- 4) Notwithstanding the prior submission of a Certificate of Insurance, copy of endorsement, or other evidence initially acceptable to SBBC, if requested by SBBC, AJG shall, within thirty (30) days after receipt of a written request from SBBC, provide SBBC with a certified copy or certified copies of the policy or policies providing the coverage required by this Section 2.04. AJG may redact or omit, or cause to be redacted or omitted, those provisions of the policy or policies which are not relevant to the insurance required by Section 2.04.

(b) **Qualifications of AJG's Insurers.**

- 1) Insurers providing the insurance required by this Agreement for AJG must either be: (A) authorized by a subsisting certificate of authority issued by the State

of Florida to transact insurance in the State of Florida, or (B) except with respect to coverage for the liability imposed by the Florida Workers' Compensation Act, an eligible surplus lines insurer under Florida Statutes.

- 2) In addition, each such insurer shall have and maintain throughout the period for which coverage is required, a Best's Rating of "A-" or better and a Financial Size Category of "VII" or better according to A.M. Best Company.
- 3) If, during the period when an insurer is providing the insurance required by this Agreement, an insurer shall fail to comply with the foregoing minimum requirements, as soon as AJG has knowledge of any such failure, AJG shall immediately notify SBBC and immediately replace the insurance provided by the insurer with an insurer meeting the requirements. Until AJG has replaced the unacceptable insurer with an insurer acceptable to SBBC, AJG shall be in default of this Agreement.

(c) Description of AJG Required Insurance. Unless and to the extent SBBC has agreed otherwise, without limiting any of the other obligations or liabilities of AJG, AJG shall, at AJG's sole expense, procure, maintain and keep in force the amounts and types of insurance conforming to the minimum requirements set forth herein. Except as otherwise specified in this Agreement, the insurance shall commence at or prior to the execution of this Agreement by SBBC and shall be maintained in force throughout the term of this Agreement.

- 1) Workers' Compensation/Employers' Liability. The Workers' Compensation/Employers' Liability insurance provided by AJG shall conform to the requirements set forth hererin.
  - i. AJG's insurance shall cover AJG (and to the extent its Subcontractors and Sub-subcontractors are not otherwise insured, its Subcontractors and Sub-subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers' Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Florida Workers' Compensation Act and any other applicable federal or state law.
  - ii. The policy must be endorsed to waive the insurer's right to subrogate against SBBC, and its members, officials, officers and employees in the manner which would result from the attachment of the NCCI Waiver Of Our Right To Recover From Others Endorsement (Advisory Form WC 00 03 13) with SBBC, and its members, officials, officers and employees scheduled thereon.
  - iii. Subject to the restrictions of coverage found in the standard Workers' Compensation policy, there shall be no maximum limit on the amount of coverage for liability imposed by the Florida Workers'

Compensation Act or any other coverage customarily insured under Part One of the standard Workers' Compensation policy. The Compensation policy. The minimum amount of coverage for those coverages customarily insured under Part Two of the standard Workers' Compensation policy (inclusive of any amounts provided by an umbrella or excess policy) shall be:

\$1,000,000	Each Accident
\$1,000,000	Disease – Each Employee
\$1,000,000	Disease – Policy Limit

2) Commercial General Liability. The Commercial General Liability insurance provided by AJG shall conform to the requirements hereinafter set forth:

i. AJG's insurance shall cover those sources of liability which would be covered by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida by the Insurance Services Office (ISO) without any restrictive endorsements other than those which are required by the State of Florida, or those which, under an ISO filing, must be attached to the policy (i.e., mandatory endorsements) and those described in Subsection 2.04.(c).2).iv., 2.04.(c).3).i., and 2.04.(c).3).ii., below, which would apply to the Services contemplated under this Agreement.

ii. The coverage may include restrictive endorsements which exclude coverage for liability arising out of:

Mold, fungus, or bacteria  
Terrorism  
Silica, asbestos or lead  
Sexual molestation

iii. The minimum limits to be maintained by AJG (inclusive of any amounts provided by an umbrella or excess policy) shall be:

\$1,000,000	General Aggregate
\$1,000,000	Products/Completed Operations Aggregate
\$1,000,000	Personal and Advertising Injury
\$1,000,000	Each Occurrence

iv. AJG shall include SBBC and SBBC's members, officials, officers and employees as "additional insureds" on the Commercial General Liability coverage. The coverage afforded such additional insureds shall be no more restrictive than that which would be afforded by adding SBBC and SBBC's members, officials, officers and employees as additional insureds on the latest edition of the Additional Insured - Owner's, Lessees or Contractors – Scheduled Person or Organization endorsement (ISO Form CG 20 1 0) filed for use in the State of Florida by the Insurance Services Office.

3) Business Auto Liability. The automobile liability insurance provided by AJG shall conform to the requirements hereinafter set forth:

i. AJG's insurance shall cover AJG for those source of liability which would be covered by Section II of the latest occurrence edition of the standard Business Auto Coverage Form (ISO Form CA 00 01) as filed for use in the State of Florida by ISO without any restrictive endorsements other than those which are required by the State of Florida, or those which, under an ISO filing, must be attached to the policy (i.e., mandatory endorsements). Coverage shall include all owned, non-owned and hired autos used in connection with this Agreement.

ii. The SBBC and SBBC's members, officials, officers and employees shall be included as "additional insureds" in a manner no more restrictive than that which would be afforded by designating the SBBC and SBBC's members, officials, officers and employees as additional insureds on the latest edition of the ISO Designated Insured (ISO Form CA 20 48) endorsement.

iii. The minimum limits to be maintained by AJG (inclusive of any amounts provided by an umbrella or excess policy) shall be:

\$1,000,000 Each Occurrence – Bodily Injury and Property  
Damage Combined

4) Professional Liability. The professional liability insurance provided by AJG shall conform to the requirements hereinafter set forth:

i. The professional liability insurance shall be on a form acceptable to SBBC and shall apply to those claims which arise out of Services performed by or on behalf of AJG pursuant to this Agreement which are first reported to AJG within four years after the expiration or termination of this Agreement.

ii. If the insurance maintained by AJG also applies to services other than Services under this Agreement, the minimum limits of insurance maintained by AJG shall be \$2,000,000 per claim/annual aggregate. If the insurance maintained by AJG applies exclusively to the Services under this Agreement, the minimum limits of insurance maintained by AJG shall be \$1,000,000 per claim/annual aggregate.

iii. AJG shall maintain the professional liability insurance until the end of the term of this Agreement. Through the use of an extended discovery period or otherwise, the insurance shall apply to those claims which arise out of professional services, prior to the expiration or termination of this Agreement which are reported to AJG or the insurer within four years after the expiration or termination of this Agreement.

(d) AJG's Insurance Primary and Non-Contributory. The insurance provided by AJG pursuant to this Agreement shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by SBBC or an SBBC's member, official, officer or employee.

(e) Self-Insurance, Deductibles or Self-Insured Retentions. Except as otherwise specifically authorized in this Agreement, or for which prior written approval has been obtained hereunder, the insurance maintained by AJG shall apply on a first dollar basis without application of a deductible or self-insured retention. Under limited circumstances, SBBC may permit the application of a deductible or permit AJG to self-insure, in whole or in part, one or more of the insurance coverages required by this Agreement. However, except as otherwise specifically permitted pursuant to this Agreement, any such self-insurance, deductible or self-insured retention shall be subject to all of the following provisions:

- 1) Prior Written Approval of SBBC Required. No such self-insurance, deductible or self-insured retention will be allowed unless and until AJG has received prior written approval from SBBC to use such self-insurance, deductible or self-insured retention.
- 2) Subject to SBBC's Sole Discretion. The extent to which, if any, SBBC agrees to allow self-insurance, deductibles or self-insured retentions is subject to the sole discretion of SBBC.
- 3) AJG Responsible for Deductible or Retentions. AJG shall pay on behalf of SBBC or SBBC's member, officer, official or employee any self-insurance, deductible or self-insured retention applicable to a claim against SBBC or SBBC's member, officer, official or employee.
- 4) Circumstances SBBC Will Consider. Although the extent to which, if any, SBBC agrees to allow self-insurance, deductibles or self-insured retentions is subject to SBBC's sole discretion, the following are among the factors and circumstances that SBBC will consider in making its determination:
  - i. Whether AJG is qualified under any applicable Florida or federal laws, rules, or regulations to assume a deductible or self-insured retention for, or otherwise self-insure, the coverage in the manner proposed;
  - ii. The financial ability of AJG to pay or otherwise provide all of the coverages and services AJG proposes to assume which would otherwise be a part of the insurance coverages required by this Agreement;
  - iii. The extent, quality, and attachment point(s) of any excess insurance to be maintained by AJG;
  - iv. The extent and manner in which AJG would provide SBBC with collateral to guarantee the payment of the coverages and services to be assumed by AJG; and
  - v. The manner in which AJG proposes to actually provide the services which are typically provided by the insurer in an insured program.

5) Approval Subject to Cancellation and Modification. The agreement by SBBC to allow the use of any such self-insurance, deductible or self-insured retention shall be subject to periodic review by SBBC. If, at any time, SBBC deems that the continued use of the self-insurance, deductible or self-insured retention by AJG should not be permitted, SBBC may, upon 60 days written notice to AJG, require AJG to eliminate, replace, or modify the self-insurance, deductible or self-insured retention, at no additional cost to SBBC, in a manner satisfactory to SBBC.

(f) AJG's Insurance As Additional Remedy. Compliance with the insurance requirements of this Agreement shall not limit the liability of AJG, or its Subcontractors or Sub-subcontractors, employees or agents to SBBC or others. Any remedy provided to SBBC or SBBC's members, officials, officers or employees by the insurance shall be in addition to and not in lieu of any other remedy available under this Agreement or otherwise.

(g) No Waiver by SBBC Approval/Disapproval. Neither approval by SBBC nor failure to disapprove the insurance furnished by AJG shall relieve AJG of AJG's full responsibility to provide the insurance as required by this Agreement.

2.05 Priority of Documents. In the event of a conflict between documents, the following priority of documents shall govern.

- First: This Agreement; then
- Second: RFP 19-003V – Addendum No. 3; then
- Third: RFP 19-003V – Addendum No. 2; then
- Fourth: RFP 19-003V – Addendum No. 1; then
- Fifth: RFP 19-003V – Property and Casualty Insurance Brokerage Services; then
- Sixth: Proposal submitted in response to the RFP by Arthur J. Gallagher Risk Management Services, Inc.

2.06 Inspection of AJG's Records by SBBC. AJG 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 AJG's applicable 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 the applicable business records of AJG directly relating to this Agreement in order to verify the accuracy of invoices provided to SBBC. Such audit shall be no more than one (1) time per calendar year.

(a) 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 AJG'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 AJG pursuant to this Agreement.

(b) Notice of Inspection. SBBC's agent or its authorized representative shall provide AJG reasonable advance written notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction.

(c) Audit Site Conditions. SBBC's agent or its authorized representative shall have access to AJG'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.

(d) Failure to Permit Inspection. Failure by AJG 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 SBBC's denial of some or all of any AJG's claims for payment.

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

(f) Inspection of Subcontractor's Records. If applicable, AJG 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 AJG 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 Payees' costs from amounts payable by SBBC to AJG pursuant to this Agreement and such excluded costs shall become the liability of AJG.

(g) Inspector General Audits. AJG 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.

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

To SBBC:	Superintendent of Schools The School Board of Broward County, Florida 600 Southeast Third Avenue Fort Lauderdale, Florida 33301
With a Copy to:	Director of Risk Management The School Board of Broward County, Florida 600 Southeast Third Avenue Fort Lauderdale, Florida 33301



To AJG: David L. Marcus, ARM-P  
Area Chairman – South Florida  
Arthur J. Gallagher & Co.  
Arthur J. Gallagher Risk Management Services, Inc.  
2255 Glades Road, Suite 200E  
Boca Raton, Florida 33431

With a Copy to: Zebediah K. Holt, CIC, CLCS, CLP  
Area President – South Florida  
Arthur J. Gallagher & Co.  
Arthur J. Gallagher Risk Management Services, Inc.  
8333 NW 53<sup>rd</sup> Street, Suite 600  
Miami, Florida 33166

2.08 **Background Screening.** AJG shall 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 AJG or its personnel providing any services under the conditions described in the previous sentence. AJG 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 AJG and its personnel. The parties agree that the failure of AJG 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. AJG 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 AJG's failure to comply with the requirements of this section or with Sections 1012.32 and 1012.465, Florida Statutes.

2.09 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. AJG shall keep and maintain public records required by SBBC to perform the services required under this Agreement. Upon request from SBBC's custodian of public records, AJG shall provide SBBC with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. AJG shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if AJG does not transfer the public records to SBBC. Upon completion of the Agreement, AJG shall transfer, at no cost, to SBBC all public records in possession of AJG or keep and maintain public records required by SBBC to perform the services required under the Agreement. If AJG transfers all public records to SBBC upon completion of the Agreement, AJG shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If AJG keeps and maintains public records upon completion of the Agreement, AJG shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to SBBC, upon request from SBBC's custodian of public records, in a format that is compatible with SBBC's information technology systems.

**IF A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 754-321-1900, REQUEL.BELL@BROWARDSCHOOLS.COM, RISK MANAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SOUTHEAST THIRD AVENUE, FORT LAUDERDALE, FLORIDA 33301.**

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

2.11 **Nondiscrimination.**

(a) As a condition of entering into this Agreement, AJG represents and warrants that it will comply with the SBBC's Commercial Nondiscrimination Policy, as described under, Section D.1 of SBBC's Policy No. 3330 – Supplier Diversity Outreach Program.

(b) As part of such compliance, AJG shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall AJG retaliate against any person for reporting instances of such discrimination. AJG shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the SBBC's relevant marketplace. AJG understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement,

disqualification of the company from participating in SBBC Agreements, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

2.12 **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.

2.13 **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

2.14 **Incorporation by Reference.** **Attachment A** and **Attachment B**, attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

### **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 Agreement.

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 **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.

3.05 **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. In the event of such termination, SBBC shall be entitled to a *pro rata* refund of any pre-paid amounts for any services scheduled to be delivered after the effective date of such termination. 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 **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.

3.07 **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.

3.08 **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 or to the jurisdiction of the United States District Court for the Southern District of Florida. Each party agrees and admits that the state courts of the Seventeenth Judicial Circuit of Broward County, Florida or the United States District Court for the Southern District of Florida shall have jurisdiction over it for any dispute arising under this Agreement.

3.09 **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.

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

3.11 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

3.12 **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.

3.13 **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.

3.14 **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.

3.15 **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.

3.16 **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.

3.17 **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.

3.18 **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.

3.19 **Agreement 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.

3.20 **Counterparts and Multiple Originals.** This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

3.21 **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.

**[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW]**

**FOR SBBC:**

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

ATTEST:

By \_\_\_\_\_  
Nora Rupert, Chair

\_\_\_\_\_  
Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:



Digitally signed by Kathelyn Jacques-Adams, Esq. - kathelyn.jacques-adams@gbrowardschools.com  
Reason: Arthur J. Gallagher Risk Management Services, Inc.  
Date: 2018.03.23 11:22:07 -04'00'

\_\_\_\_\_  
Office of the General Counsel

**[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]**

**FOR AJG**

(Corporate Seal)

ARTHUR J. GALLAGHER RISK  
MANAGEMENT SERVICES, INC.

ATTEST:

By David L. Marcus

\_\_\_\_\_, Secretary

-or-

Cynthia S. Preston  
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 Palm Beach

The foregoing instrument was acknowledged before me this 30th day of  
March, 2018 by David L. Marcus of  
Name of Person

Arthur J. Gallagher Risk Management Services, Inc., 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

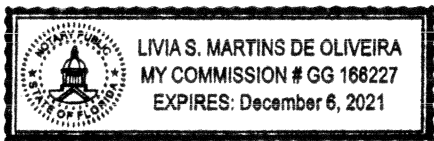
My Commission Expires: 12/06/2021

[Signature]  
Signature - Notary Public

(SEAL)

Livia S. Martins De Oliveira  
Printed Name of Notary

# GG 166227  
Notary's Commission No.





**ATTACHMENT A**  
**Scope of Services as Defined in RFP 19-003V**

Section	Scope of Service
4.4.2.1	Awardee shall use its best efforts to place the following lines of insurance coverage on SBBC's behalf: property and ancillary insurance coverages. Ancillary insurance coverages include property insurance terrorism, package policy (including primary property, excess general and automobile liability coverage), petroleum storage tank liability, accidental death and dismemberment for security officers, broadcaster's liability, and any builder's risk outside of the Master Builder's Risk placement.
4.4.2.2	The current Master Builder's Risk policy is in effect with Arthur J. Gallagher through the completion of the bond program construction. The compensation for the placement of this policy is outside of the Broker Compensation shown in Attachment B.
4.4.2.3	Awardee must consult with SBBC to formulate a marketing strategy that focuses on delivering a cost- effective risk management strategy and structure based upon current market conditions. Suggest alternative risk financing vehicles to reduce SBBC's cost of risk.
4.4.2.4	Awardee shall work with SBBC to produce comprehensive underwriting data and criteria for insurance carrier negotiations. Represent SBBC in negotiations with insurers, underwriters and other parties with regards to the insurance program.
4.4.2.5	Awardee shall formally present coverage submissions to agreed-upon insurance carrier(s) and negotiate terms on behalf of SBBC.
4.4.2.6	Annually, Awardee shall coordinate and provide SBBC with copies of catastrophe analysis studies to be used in the marketing of the program.
4.4.2.7	Awardee shall summarize the results of executing the marketing strategy developed with SBBC and communicate program recommendations.
4.4.2.8	Awardee shall provide consultation to SBBC on exposures, existing coverage, and the desirability and/or feasibility of potential program changes when recommended or when requested by SBBC.
4.4.2.9	Awardee shall request change endorsements, when requested by SBBC or when otherwise necessary, ensuring accuracy and delivery in a timely manner.
4.4.2.10	Awardee shall administer insurance program, including extensive policy review and issuance, invoicing, coordination and/or issuance of required documentation; i.e., automobile identification cards, certificates of insurance and other program administration, as required by the SBBC.
4.4.2.11	Awardee shall review accounting and billing data received from insurance markets on SBBC's behalf to ensure accuracy.
4.4.2.12	Annually, Awardee shall provide stewardship report summarizing program and services provided throughout the year.
4.4.2.13	Awardee shall provide, SBBC Risk Management Department, staff with access to, and training for, online access to policy information and relevant risk management tools.
4.4.2.14	Except with the prior written approval of SBBC, Awardee shall place insurance on behalf of SBBC with insurers that meet or exceed agreed upon minimum financial guidelines or a Best rating of not less than "A-" as assigned by A.M. Best. Monitor published financial information of any insurers with whom SBBC's coverage is placed. Awardee shall alert SBBC if the status of an insurer falls below the A.M. Best guidelines herein.
<b>CLAIMS ADMIN/PERSONNEL:</b>	
4.4.2.15	Awardee shall participate in claims review meetings with Risk Management to ensure accuracy of reserves and effective claims management.
4.4.2.16	Awardee shall coordinate with designated property insurance catastrophic claims adjuster for purposes of adjusting ground-up catastrophic property losses with respect to necessary documentation for FEMA assistance.
4.4.2.17	Awardee shall assist with emergency procedures and disaster planning with Risk Management Department.
4.4.2.18	Awardee shall assist with claim and coverage disputes with Risk Management Department.
Section	Scope of Service

**ATTACHMENT A**  
**Scope of Services as Defined in RFP 19-003V**

<b>LOSS CONTROL PERSONNEL:</b>	
4.4.2.19	Awardee shall develop, with SBBC's assistance and involvement, loss control programs and strategies, including educational training, seminars, research and analysis of loss trends, and develop communication materials.
4.4.2.20	Awardee shall provide a full-time, qualified loss control representative to assist with the implementation of such loss control programs and strategies mentioned in 4.4.2.19. Loss control services will not be limited to property exposures but will also support the SBBC workers' compensation program and other safety initiatives as agreed between Awardee and SBBC.
<b>ADMINISTRATIVE PERSONNEL</b>	
4.4.2.21	Awardee shall provide administrative support services to SBBC, Risk Management Department. This support shall include a full-time staff member employed by and managed by Awardee and located at the SBBC Risk Management Department, 600 SE 3 <sup>rd</sup> Avenue, Fort Lauderdale, Florida 33301. This full-time staff member will work with Awardee and SBBC staff to manage certificate of insurance issuance, update and coordinate Risk Management insurance policy files, assist in statement of values development, and provide other administrative support services as agreed between Awardee and SBBC.
<b>ADDITIONAL SERVICES WHICH MAY BE REQUESTED OF RESPONDENT:</b>	
4.4.2.22	<b>APPRAISAL SERVICES:</b> Awardee may subcontract with a vendor, approved by SBBC, to provide reconstruction cost appraisal services for certain facilities of SBBC as agreed upon by Awardee and SBBC.
4.4.2.23	<b>RISK MANAGEMENT INFORMATION SYSTEMS:</b> Awardee shall provide Risk Management Department with access or subscription to a Risk Management Information System (EXIGIS, or equivalent).
4.4.2.24	<b>INSURANCE CERTIFICATE TRACKING SYSTEM:</b> Awardee shall provide Risk Management Department with access or subscription to a certificate tracking program (EXIGIS, or equivalent).

Attachment B  
Annual Broker Compensation

**Compensation to AJG brokerage**

The following outlines the compensation to be provided to AJG over the term of this Agreement:

Property Insurance Placements:

The property placement would be capped at \$1,050,000 in total annual retail broker compensation with an annual average commission not to exceed 6.125%;

Ancillary Insurance Placements:

All other casualty lines listed defined in the RFP 19-003V will be capped at \$115,000 in total annual retail broker compensation (whether fee or capped commission – District's choice) with an annual average not to exceed 7.75%.

**Compensation to AJG for Intermediaries (whether independent or owned)**

AJG may utilize insurance intermediaries (such as a wholesale insurance broker, managing general agent and managing general underwriter or reinsurance broker) for the placement of SBBC's insurance. Compensation paid to the insurance intermediary for placing SBBC insurance is a mechanism of the insurance premium paid to AJG by SBBC and is to be no more than the following:

Property Insurance Placements:

London/Internationally Based Intermediaries, no more than an average of 5.25% of annual premium

U.S. Based Intermediaries, no more than an average of 3.85% of annual premium

Ancillary Insurance Placements:

Per full disclosure by AJG and written agreement by SBBC, at a rate of no more than an average of 8% of annual premium

**NFIP Flood Insurance**

Compensation to AJG for the purchase of NFIP will be subject to full disclosure and prevailing commission schedules at time of placement.

**Other Lines of Coverage**

Compensation to AJG for the purchase of policies not defined in RFP 19-003V will be subject to full disclosure by AJG and agreement in writing by SBBC on retail broker compensation and intermediaries compensation that is a part of the insurance premium paid by AJG.