

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

OMNI AUTOMOTIVE SOUTH, LLC
d/b/a OMNI ADVERTISING
(hereinafter referred to as "OMNI"),
a foreign limited liability company
authorized to do business in Florida
whose principal place of business is
813 Ridge Lake Boulevard,
Memphis, Tennessee 38120

WHEREAS, SBBC issued a Request for Proposal for the purpose of receiving proposals for adult workforce education advertising agency services as RFP 19-043V, Adult Workforce Education Advertising Agency Services dated April 13, 2018; which was amended by Addendum No. 4 dated June 19, 2018; Addendum No. 3 dated June 12, 2018 Addendum No. 2 dated June 7, 2018 and Addendum No. 1 dated May 14, 2018, (hereinafter referred to collectively as "RFP"), all of which are incorporated by reference herein,; and

WHEREAS, OMNI offered a proposal in response to this RFP dated June 22, 2018 (hereinafter referred to as "Proposal") which is incorporated by reference herein,; and

WHEREAS, OMNI is willing to provide SBBC with professional advertising services utilizing a media mix of outdoor, television (cable or broadcast), video, radio, print, direct mail, grassroots initiatives, internet (to include social media), and mobile app advertising services and to over see the marketing efforts on behalf of Career, Technical and Adult/Community Education (CTACE) and Workforce Education (WKE) and Continuing Education Programs (CE) whereby the marketing plan mission will be to increase the enrollment and awareness of SBBC's CTACE, WKE and CE Programs.

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 **January 1, 2019** and conclude on **June 30, 2022**. The term of the Agreement may, by mutual agreement between SBBC and OMNI be extended for two (2) additional one (1) year periods and, if needed, one-hundred eighty (180) calendar days beyond the expiration date of the renewal period. SBBC's Procurement & Warehousing Services Department, shall, if considering renewing, request a letter consenting to renewal from OMNI, prior to the end of the term. Any renewal period shall be approved by an Amendment to this Agreement executed by both parties.

2.02 **Scope of Services.** The scope of services to be provided under this Agreement is specified in **Attachment A** of this Agreement.

2.03 **Cost of Services.** Costs to be paid for services provided under this Agreement are specified in **Attachment B** of this Agreement.

2.04 **Disclosure of Education Records and Student Images.**

(a) Purpose: To include actual footage and images of SBBC students in advertising materials; to depict SBBC programs in marketing to prospective adult students; and

(b) SBBC shall provide access to OMNI's creative and production teams to videotape and/or photograph adult students in their classroom / program settings, including but not limited to culinary and automotive programs. SBBC shall also provide the names of students to OMNI on consent forms; and

(c) SBBC shall obtain written consent from each student's parent/guardian or student age 18 or older prior to allowing access to OMNI to videotape or photograph students to appear in advertising materials; and

2.05 **OMNI's Confidentiality of Education Records.**

(a) Notwithstanding any provision to the contrary within this Agreement, OMNI shall:

1) fully comply with the requirements of Sections 1002.22, 1002.221, and 1002.222, Florida Statutes; the Family Educational Rights and Privacy Act, 20 U.S.C § 1232g (FERPA) and its implementing regulations (34 C.F.R. Part 99), and any other state or federal law or regulation regarding the confidentiality of student information and records;

2) hold any education records in strict confidence and not use or redisclose same except as required by this Agreement or as required or permitted by law unless the parent of each student or a student age 18 or older whose education records are to be shared provides prior written consent for their release;

3) ensure that, at all times, all of its employees who have access to any education records during the term of their employment shall abide strictly by its obligations under this Agreement, and that access to education records is limited only to its employees that require the information to carry out the responsibilities under this Agreement and shall provide said list of employees to SBBC upon request;

4) safeguard each education record through administrative, physical and technological safety standards to ensure that adequate controls are in place to protect the education records and information in accordance with FERPA's privacy requirements;

5) utilize the education records solely for the purposes of providing products and services as contemplated under this Agreement; and shall not share, publish, sell, distribute, target advertise, or display education records to any third party;

6) notify SBBC immediately upon discovery of a breach of confidentiality of education records by telephone at 754-321-0300 (Manager, Information Security), and 754-321-1900 (Privacy Officer), and email at privacy@browardschools.com, and take all necessary notification steps as may be required by federal and Florida law, including, but not limited to, those required by Section 501.171, Florida Statutes;

7) fully cooperate with appropriate SBBC staff, including Privacy Officer and/or Information Technology staff to resolve any privacy investigations and concerns in a timely manner;

8) prepare and distribute, at its own cost, any and all required breach notifications, under federal and Florida Law, or reimburse SBBC any direct costs incurred by SBBC for doing so, including, but not limited to, those required by Section 501.171, Florida Statutes;

9) be responsible for any fines or penalties for failure to meet breach notice requirements pursuant to federal and/or Florida law;

10) provide SBBC with the name and contact information of its employee who shall serve as SBBC's primary security contact and shall be available to assist SBBC in resolving obligations associated with a security breach of confidentiality of education records; and

11) securely erase education records from any media once any media equipment is no longer in use or is to be disposed; secure erasure shall be deemed the deletion of the education records using a single pass overwrite Secure Erase (Windows) or Wipe (Unix).

(b) All education records shall remain the property of SBBC, and any party contracting with SBBC serves solely as custodian of such information pursuant to this Agreement and claims no ownership or property rights thereto and, upon termination of this Agreement shall, at SBBC's request, return to SBBC or dispose of the education records in compliance with the applicable Florida Retention Schedules and provide SBBC with a written acknowledgment of said disposition.

(c) OMNI shall, 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. This section shall survive the termination of all performance required or conclusion of all obligations existing under this Agreement.

2.06 **Inspection of OMNI's Records by SBBC.** OMNI 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 OMNI'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 OMNI 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 OMNI'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 OMNI pursuant to this Agreement.

(b) **Notice of Inspection.** SBBC's agent or its authorized representative shall provide OMNI 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 OMNI'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 OMNI 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 OMNI'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 OMNI in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by OMNI. If the audit discloses billings or charges to which OMNI is not contractually

entitled, OMNI shall pay said sum to SBBC within twenty (20) calendar days of receipt of written demand unless otherwise agreed to in writing by both parties.

(f) **Inspection of Subcontractor's Records.** If applicable, OMNI 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 OMNI 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 OMNI pursuant to this Agreement and such excluded costs shall become the liability of OMNI.

(g) **Inspector General Audits.** OMNI 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 shall 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: Principal
McFatter Technical College and
McFatter Technical High School
The School Board of Broward County, Florida
6500 Nova Drive
Davie, Florida 33317

To OMNI: Gail Yaciuk, General Manager
Omni Automotive South, LLC
d/b/a Omni Advertising
622 Banyan Trail, Suite 300
Boca Raton, Florida 33431

With a Copy to: Minda Katz, CFO
Omni Automotive South, LLC
d/b/a Omni Advertising
622 Banyan Trail, Suite 300
Boca Raton, Florida 33431

2.08 **Background Screening.** OMNI shall comply with all requirements of Sections 1012.32, 1012.465, 1012.467 and 1012.468, 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 OMNI or its personnel providing any services under the conditions described in the previous sentence. OMNI 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 OMNI and its personnel. The parties agree that the failure of OMNI 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. OMNI 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 OMNI's failure to comply with the requirements of this section or with Sections 1012.32, 1012.465, 1012.467 and 1012.468, Florida Statutes.

2.09 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. OMNI 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, OMNI 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. OMNI 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 OMNI does not transfer the public records to SBBC. Upon completion of the Agreement, OMNI shall transfer, at no cost, to SBBC all public records in possession of OMNI or keep and maintain public records required by SBBC to perform the services required under the Agreement. If OMNI transfers all public records to SBBC upon completion of the Agreement, OMNI shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If OMNI keeps and maintains public records upon completion of the Agreement, OMNI shall meet all applicable requirements for retaining public records. All records stored electronically shall 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 OMNI:** OMNI 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 OMNI, its agents, servants or employees; the equipment of OMNI, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of OMNI or the negligence of OMNI'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 OMNI, SBBC or otherwise.

2.11 **Insurance Requirements.** OMNI shall comply with the following insurance requirements throughout the term of this Agreement:

(a) **General Liability.** OMNI shall maintain General Liability insurance during the term of this Agreement with limits not less than \$1,000,000 per occurrence for Bodily Injury/Property Damage; \$1,000,000 General Aggregate; and limits not less than \$1,000,000 for Products/Completed Operations Aggregate.

(b) **Professional Liability/Errors & Omissions.** OMNI shall maintain Professional Liability/Errors & Omissions insurance during the term of this Agreement with a limit of not less than \$1,000,000 per occurrence covering services provided under this Agreement.

(c) **Workers' Compensation.** OMNI shall maintain Workers' Compensation insurance during the term of this Agreement in compliance with the limits specified in Chapter 440, Florida Statutes, and Employer's Liability limits shall not be less than \$100,000/\$100,000/\$500,000 (each accident/disease-each employee/disease-policy limit).

(d) **Auto Liability.** OMNI shall maintain Owned, Non-Owned and Hired Auto Liability insurance 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 required under this Agreement shall be issued by companies qualified to do business in the State of Florida and having a rating of at least A- VI by AM Best or Aa3 by Moody's Investor Service.

(f) **Verification of Coverage.** Proof of the required insurance shall be furnished by OMNI to SBBC's Risk Management Department by Certificate of Insurance within fifteen (15) days of the date of this Agreement. To streamline this process, SBBC has partnered with EXIGIS Risk Management Services to collect and verify insurance documentation. All certificates (and any required documents) shall be received and approved by SBBC's Risk

Management Department before any work commences to permit OMNI to remedy any deficiencies. OMNI shall verify its account information and provide contact details for its Insurance Agent via the link provided to it by email.

(g) Required Conditions. Liability policies shall include the following terms 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.
- 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. OMNI is prohibited from providing services under this Agreement with SBBC without the minimum required insurance coverage and shall notify SBBC within two (2) 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 or endorsements, herein throughout the term of this Agreement.

2.12 Nondiscrimination.

(a) As a condition of entering into this Agreement, OMNI represents and warrants that it shall 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, OMNI 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 OMNI retaliate against any person for reporting instances of such discrimination. OMNI 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. OMNI 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.

2.13 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.

2.14 **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.

2.15 **Incorporation by Reference.** Attachment A and Attachment B attached hereto and the RFP, its Addenda and the Proposal which are referenced herein shall be deemed to be incorporated into 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 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) calendar days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) calendar days 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) calendar 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** of this Agreement.

3.05 **Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof upon thirty (30) calendar 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 TO FOLLOW]

FOR SBBC:

(Corporate Seal)

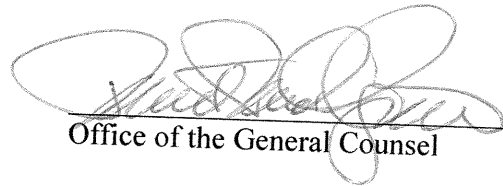
THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Nora Rupert, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

 09/06/2018
Office of the General Counsel

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE TO FOLLOW]

FOR OMNI:

(Corporate Seal)

OMNI AUTOMOTIVE SOUTH, LLC
d/b/a OMNI ADVERTISING

ATTEST:

By Gail Yaciuk

Print Name: Gail Yaciuk

Title: General Manager

_____, Secretary

-or-

Den K Pano
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 28 day of August, 2018 by Gail Yaciuk of
Name of Person

Omni Automotive South, LLC on behalf of the entity.
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:

Minda B Katz
Signature – Notary Public

Minda B KATZ
Printed Name of Notary

(SEAL)

Notary's Commission No. MINDA B. KATZ
Commission # FF 926785
Expires November 9, 2019
Bonded Thru Troy Fain Insurance 800-385-7019

S:/v/allwork-use/contracts/review/1819year/180824omniautomotive

SCOPE OF WORK

1. Upon notification of the available annual Workforce Education Marketing Budget, OMNI shall develop an annual creative and media marketing plan that shall be proposed to the Workforce Education Marketing Committee (hereinafter referred to as "Committee". Throughout the term of service, OMNI may propose adjustments to monthly expenditures for media allocation based upon effectiveness of prior media flights, trends or needs emerging, or other factors. This is to be determined by call tracking reports, website hits or click through or measure of all media performance (return on investment). Initial proposed budget plan, and any subsequent adjustments to the plan, shall be approved by the Workforce Education Marketing Committee prior to implementation. Each enrollment period marketing/advertising results shall be discussed by OMNI and the Marketing Committee at regularly scheduled Marketing Meetings and adjustments shall be made accordingly.
2. OMNI shall supply the Committee creative work for prior approval via pdf, jpeg, mp3 or wmv. Artwork shall be submitted to the media outlets chosen in the format prescribed. Once creative work has Committee approval, OMNI shall place media buys.
3. OMNI shall allow SBBC and the Committee the right to inspect the final advertisements for content and quality. SBBC and the Committee shall have sole and exclusive rights to limit the number of advertisements per flight and to exclude media buys on any stations, platforms, or environments that SBBC, in its sole judgment, deems inconsistent with SBBC's mission. Any such determinations and limitations shall occur during and as a result of discussion and review at the Committee meetings.
4. The Committee shall provide a schedule to OMNI outlining enrollment and registration periods, from which OMNI shall develop the plan and media to increase student registration. Enrollment dates vary each year and are made available after Board approval in the Spring for each following school year. The initial enrollment period covered by this contract shall be January, 2019.
5. OMNI shall track responses to advertising flights, calculate return on investment for media buys (cost per click, cost per lead, etc.), and report such metrics to the Committee on a monthly and summary basis. These reports shall be presented to the Committee at regularly scheduled Marketing meetings. OMNI shall provide recommendations and support regarding the selection and implementation of Customer Relationship (CRM) software.

SCOPE OF WORK

6. OMNI shall utilize all of the following media/platforms:
- Print (newspaper or periodicals); and
 - Print (direct mail); and
 - Billboards/outdoor; and
 - Broadcast television; and
 - Cable television; and
 - Radio; and
 - Digital (online and mobile) including but not limited to Search Engine Optimization and Marketing, online display, retargeting, etc.; and
 - Maintenance and hosting of the Workforce centers' websites; and
 - Email; and
 - Social media; and
 - Other, as recommended by OMNI and approved by Workforce Education Marketing Committee.

COST OF SERVICES

Price Adjustments: **Prices offered shall remain firm through the first three (3) years of the contract.** A request for price adjustment, with proper documentation justifying the adjustment, may be submitted, in writing, thirty (30) calendar days prior to the third (3rd) anniversary date of the contract. Price adjustment requests shall be evaluated on an annual basis thereafter. Unit price adjustments shall have written approval from SBBC prior to invoicing. Any unit price adjustment invoiced without written approval from SBBC shall not be paid and the invoice returned to OMNI for correction. Requests for price adjustments shall not exceed three percent (3%) per adjustment.

Service Fees/Agency Fees

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| 1. | (a) Basic Agency Fee: Development, monitoring and adjustment of monthly advertising plan, cost for services to place media buys, etc. | \$4,000.00/month |
| | (b) Ongoing call tracking and data capture for all advertising to include , but not limited to, radio, television, newspaper, direct mail, billboard, email and website) and monthly reporting of all data | \$1,000.00/month |
| | (c) Design and ongoing maintenance of eight SBBC workforce education webpages | \$5,450.00/month |
| | (d) Ongoing Search Engine Optimization/Marketing (SEO/SEM) services. | \$7,748.00/month |
| | (e) Ongoing updates, maintenance and monitoring of SBBC's Workforce education social media to include: Facebook, Twitter, and mobile app. | \$ 750.00/month |

Production Charges by Media

To include, but not limited to, typesetting, color copies, disk, photography, illustrations, retouching film, matching prints, scans, printing, studio time, talent, props, dubs and all alterations, editing or production work required to deliver a complete creative product.

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| 2. | (a) Quarter page color newspaper advertisement | No Cost |
| | (b) Direct mail piece | No Cost |
| | (c) Billboard design | No Cost |
| | (d) Digital media design (i.e. social media advertisement) | \$2,225.00/month |
| | (e) 30 second television commercial | \$1,400.00/month |
| | (f) 60 second radio commercial | \$ 208.00/month |