

AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2019, 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

YOUNG AT ART of BROWARD, INC.

(hereinafter referred to as “VENDOR”),
whose principal place of business is
751 SW 121st Avenue,
Davie, FL 33325

WHEREAS, SBBC Policy 3320, Section II, N, and Section 6A-1.012(12)(f) Florida Administrative Code, as authorized by Section 1010.04(4)(a), Florida Statutes, permit a district school board to award a contract without competitive solicitations if state or federal law, a grant or a state or federal agency contract prescribes with whom the district school board must contract; and

WHEREAS, grants from local, state and federal funding sources (such as Title IX, Part A. and Title I, Part A. homeless set-aside), and foundations support the continued implementation of the ArtReach program; and

WHEREAS, the Agreement supports the continuation of an existing after school care enrichment program of fourteen (14) years called ArtReach (Art – Reaching and Educating At-Risk Children Experiencing Homelessness) successfully co-administered since 2004 between SBBC Homeless Education Program (Homeless Education Assistance Resource Team herein referred to as HEART) and at Sunland Park Academy, Fort Lauderdale, FL. between the hours of 2-6pm during school days primarily for students in K-8; and

WHEREAS, the program solely serves students enrolled in HEART who are experiencing homelessness, in accordance with the McKinney-Vento Homeless Assistance Act, and Title IX. Part A. Education of Homeless Children and Youth, and is staffed by YAA of Broward, Inc. employees and SBBC certified teachers on payroll under grant funding; and

WHEREAS, the McKinney-Vento Homeless Assistance Act, amended in 2015 by the Every Student Succeeds Act, mandates the removal of barriers to education stability for children and youth (Pre-K-12) experiencing homelessness.

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 upon the execution of all parties and shall conclude on **July 31, 2021**. The term of the Agreement may, by written mutual agreement between SBBC and VENDOR in the form of a written amendment to the Agreement, be extended for two (2) additional one-year periods.

2.02 **Program Purpose**. To use the creation of art, reading, homework assistance, tutoring, and behavioral support to improve the educational and emotional welfare of students experiencing homelessness in grades K-8 residing in Broward County emergency and transitional shelters and other qualifying living situations.

2.03 **VENDOR Responsibilities**. Provide up to 180 days of after school enrichment programming through fine art instruction, Conscious Discipline training to diminish anger and aggressiveness and life coaching to build self-esteem; cultural field trips to Vendor facilities; participation in Vendor’s Festival of the Arts and Holiday celebration hosted for students and their families; end of school year exhibition of students’ artwork at Sunland Park Academy. VENDOR will implement a quality program that provides visual arts and humanities, STEAM, Conscious Discipline and life coach training.

2.04 **JOINT Responsibilities**.

- (a) SBBC and VENDOR jointly identify and serve students experiencing homelessness residing at local emergency and transitional shelters and in other qualifying transitional housing situations.
- (b) SBBC and Vendor will provide program orientation for families and collaborate on program logistics, teacher staffing, and communicate regularly (phone calls, emails and meetings) to discuss student and program progress and needs.

2.05 **SBBC Responsibilities**.

- (a) SBBC will collaborate with local shelter case managers to identify homeless children enrolled in the district in need of after school support; coordinate SBBC bus transportation from students schools to the ArtReach program during 180 days of the school calendar
- (b) SBBC will share student report cards (with parental/caregiver consent) and academic assessment data to support achievement outcomes with Vendor and coordinate staff logistics and oversight of certified teacher/tutors
- (c) SBBC will ensure a hot meal is provided to students attending ArtReach during supper time.
- (d) SBBC shall provide transportation daily from local schools to ArtReach as feasible; and communicate with parents/caregivers and shelter case managers;

and implement a quality program that provides homework and reading tutoring, art therapy, conscious discipline, and life coach training.

- (e) SBBC shall ensure the coordination of at least two (2) on-site educational field trips for students enrolled in the ArtReach program.

2.06 **Cost of Goods or Services.** The cost to fund the ArtReach after school care program is approximately \$189,129 plus in-kind support (supplies provided by Broward County Public Schools' Student Services Department) as detailed below:

- (a) SBBC shall cover the cost associated with hiring up to four (4) certified teacher/tutor positions (approximately \$50,610) to cover established hourly rates in addition to fringe benefits (Social Security, Workers Comp, Life Insurance and Retirement).
- (b) VENDOR shall provide approximately \$138,519 to fund Young At Art Museum ArtREACH Educators.

2.07 **SBBC Disclosure of Education Records.**

- (a) SBBC will provide personally identifiable education records to the VENDOR for the following purposes:
 - 1) to better inform tutoring tailored to each student's current academic levels in reading and writing.
 - 2) to evaluate academic progress by each student and overall programmatic gains. Academic progress will be evaluated using academic assessment tools and reports such as SBBC Benchmark Assistance System assessments, Florida Standard Assessment (FSA) English Language Acquisition and Math results. Program gains will be measured according to students who improve academically and behaviorally during their enrollment in the after school care program. SBBC will create reports based on the data provided. SBBC will also share de-identified information with the Florida Department of Education (DOE), including number of students served in the HEART and ArtREACH program and program effectiveness. To provide meaningful results and protect the privacy of individual students, data are not reported when the total number of students in a group is less than 10.
 - 3) Selected contact information to coordinate student transportation.
 - 4) Photographs and videotapes of SBBC students for VENDOR's marketing and fundraising purposes.

(b) SBBC will provide VENDOR the following personally identifiable education records:

- 1) Student first and last name
- 2) Student identification number
- 3) Student report card (grades, attendance and behaviors)
- 4) Student's home address
- 5) Student i-Ready assessment data (Student's grade level, diagnostics and gains in reading comprehension)

- 6) Student Florida Standards Assessment (FSA) (Grades 3-5) and English Language Arts (ELA) results (as applicable)
 - 7) Student Broward Standards Assessment Test (BSA) for Reading, Math and Science (grades 3-10) testing results (as applicable)
 - 8) Florida Assessment for Instruction in Reading (FAIR) (Grades 3-12)
 - 9) Other relevant academic testing results (as applicable)
 - 10) Registration form information including parent's first and last name, emergency contact information, date of birth, age, ethnicity, information pertaining to exceptional student needs.
 - 11) Photographs and videotapes of students participating in Young at Art activities
- (c) SBBC will obtain written consent from each student's parent/guardian or student age 18 or older prior to disclosing the education records listed in this section. Regarding VENDOR's marketing and fundraising activities that use photographs and videotapes featuring SBBC students, parents/guardians and students age 18 or over who want to participate shall sign a third-party release form, accompanied by an SBBC notification letter informing them the request for participation is not sponsored by the District and they have the right to refuse participation.
- (d) The requirements of this section shall supersede any uses of student information as listed in VENDOR's privacy policies.

2.08 **VENDOR Re-disclosure of SBBC of Education Records.**

- (a) VENDOR will re-disclose de-identified education records to sponsors, donors, and grant funders for the purpose of demonstrating grant outcomes and achievements to students after participating in VENDOR's program.
- (b) VENDOR will re-disclose the following de-identified education records:
- 1) Student i-Ready assessment data (Student's grade level, diagnostics and gains in reading comprehension)
 - 2) Student Florida Standards Assessment (FSA) (Grades 3-5) and English Language Arts (ELA) results (as applicable)
 - 3) Student Broward Standards Assessment Test (BSA) for Reading, Math and Science (grades 3-10) testing results (as applicable)
 - 4) Florida Assessment for Instruction in Reading (FAIR) (Grades 3-12)
 - 5)
 - 6) Other relevant academic testing results (as applicable)
 - 7) Grades and Attendance
 - 8) Reports developed in collaboration with SBBC
 - 9) List of participating schools (including number of students participating in the ArtReach program from each school)

- (c) SBBC will obtain written consent from each student's parent/guardian or student age 18 or older prior to disclosing the education records listed in this section.

2.09 VENDOR Disclosure of Student Information created during the ArtReach program (not information received from SBBC)

- (a) VENDOR will disclose the following records to SBBC, sponsors, donors, and grant funders, to demonstrate fulfillment of grant requirements.
- (b) VENDOR will disclose the following information:
 - (1) Sample from student journals (students names will be redacted)
 - (2) Attendance reports of students' participation in ArtReach program and related events (student names will be redacted)
 - (3) De-identified information from third party vendors, who may include, but are not limited to, non-affiliated arts programs and community based organizations, and life coaches.
- (c) VENDOR will obtain written consent from each student's parent/guardian or student age 18 or older prior to disclosing the student information listed in this section.

2.10 VENDOR Confidentiality of Education Records.

- (a) Notwithstanding any provision to the contrary within this Agreement, VENDOR 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 (e.g. data collection) 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 will 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) VENDOR 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.

2.11 **Inspection of VENDOR's Records by SBBC.** VENDOR 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 VENDOR'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 VENDOR 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 VENDOR'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 VENDOR pursuant to this Agreement.

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

(g) **Inspector General Audits.** **VENDOR** 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.

2.12 **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:	District Homeless Education Program (HEART) Liaison The School Board of Broward County, Florida 1400 NW 14 th Court, Fort Lauderdale, Florida 33311
With a Copy to:	Young at Art of Broward Museum, Inc., Founder & CEO 751 SW 121 st Avenue, Davie, FL 33325

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

2.14 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. **VENDOR** 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, **VENDOR** 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. **VENDOR** 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 VENDOR does not transfer the public records to SBBC. Upon completion of the Agreement, VENDOR shall transfer, at no cost, to SBBC all public records in possession of VENDOR or keep and maintain public records required by SBBC to perform the services required under the Agreement. If VENDOR transfers all public records to SBBC upon completion of the Agreement, VENDOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If VENDOR keeps and maintains public records upon completion of the Agreement, VENDOR 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, RECORDREQUESTS@BROWARDSCHOOLS.COM, RISK MANAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SOUTHEAST THIRD AVENUE, FORT LAUDERDALE, FLORIDA 33301.

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

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

(a) **General Liability.** VENDOR 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) Workers' Compensation. VENDOR 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).

(c) 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. I have to check into this.

(d) Verification of Coverage. Proof of the required insurance must be furnished by VENDOR 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) must be received and approved by SBBC's Risk Management Department before any work commences to permit VENDOR to remedy any deficiencies. VENDOR must verify its account information and provide contact details for its Insurance Agent via the link provided to it by email.

(e) Required Conditions. Liability policies must 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.

(f) Cancellation of Insurance. VENDOR is prohibited from providing services under this Agreement with SBBC without the minimum required insurance coverage and must notify SBBC within two (2) business days if required insurance is cancelled.

(g) 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.

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

2.18 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.

2.19 **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.

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.

FOR SBBC:

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Heather P. Brinkworth, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

Office of the General Counsel

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

FOR VENDOR:

(Corporate Seal)

YOUNG AT ART OF BROWARD, INC.

ATTEST:

By Harold D. Hancock
Name Harold Hancock
Title Finance Director

, Secretary

-or-

Maria Berli
Witness

Mary Lynn Perrino
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 BROWARD

The foregoing instrument was acknowledged before me this 11th day of June, 2019 by Harold D. Hancock of Young At Art of Broward, Inc on behalf of the corporation/agency.

Name of Person
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:

Mary Lynn Perrino
Signature - Notary Public

Mary Lynn Perrino
Printed Name of Notary

(SEAL)

FF 906656
Notary's Commission No.

