



AGENDA REQUEST FORM

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

MEETING DATE: Mar 21 2017 10:35AM - Regular School Board Meeting

Special Order Request
 Yes No

ITEM No.:
EE-11.

AGENDA ITEM: ITEMS

Time

CATEGORY: EE. OFFICE OF STRATEGY & OPERATIONS

DEPARTMENT: Procurement & Warehousing Services

Open Agenda
 Yes No

TITLE:
 Recommendation for Award - 17-008H - Integrated Payables

REQUESTED ACTION:
 Approve the recommendation to award for the above Request for Proposal (RFP). Contract Term: March 22, 2017, through December 31, 2019, 2 Years, 10 Months; User Department: Treasurer's Office; Award Amount: Income; Awarded Vendor(s) CPS Payment Services, LLC; Minority/Women Business Enterprise Vendor(s): None

SUMMARY EXPLANATION AND BACKGROUND:
 The School Board of Broward County, Florida, received five (5) bids for 17-008H - Integrated Payables. Vendors responding to the RFP were CPS Payment Services, LLC, SunTrust Bank, Bank of America, JP Morgan, and U.S. Bank. Integrated Payable Solution enables the School Board's payment of Florida Power & Light invoices the ability to generate substantial rebates.
 This Agreement has been reviewed and approved as to form and legal content by the Office of the General Counsel.

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

FINANCIAL IMPACT:
 The integrated payables solution is initially expected to generate revenues (rebates) of approximately \$750,000.

EXHIBITS: (List)
 (1) Executive Summary (2) Agreement (3) Recommendation Tabulation

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

SOURCE OF ADDITIONAL INFORMATION:

Name: Ivan Perrone	Phone: 754-321-1980
Name: Mary C. Coker	Phone: 754-321-0501

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
 Senior Leader & Title

Maurice L. Woods - Chief Strategy & Operations Officer

Approved In Open Board Meeting On: **MAR 21 2017**

Signature
 Maurice Woods
 3/13/2017, 3:40:08 PM

By: *Stacy M. Friedman*
 School Board Chair

EXECUTIVE SUMMARY

Recommendation for Award 17-008H - Integrated Payables

The District's accounts payable system currently issues payments to vendors via check and/or Automated Clearing House (ACH) for invoices received. The District also utilizes Purchasing Cards (P-Cards), which are physical cards that can be used for direct face-to-face (in store) or indirect (via phone, online, etc.) transactions when making a purchase from a vendor. With P-Cards, the bank sends statements which are then reviewed, approved, and ultimately processed for payment through accounts payable's normal process.

With an Integrated Payables solution (IP), the District would process the invoice/billing file received from a vendor, generate a file from SAP, and send the file to the IP firm selected for this award, who in turn pays the vendor by way of a "virtual" credit card. The IP vendor then bills the District; the District receives a rebate based on the total dollars of invoices processed.

The School Board of Broward County, Florida, issued a Request for Proposal seeking responses from vendors to provide a virtual/merchant card payment solution. The payment of one (1) particular vendor, Florida Power & Light (FPL), was especially critical in the selection process.

The Request for Proposal was released on February 16, 2017, with a bid opening dated March 16, 2016. The District received five (5) proposals: Bank of America, CPS Payment Services, LLC, JP Morgan, SunTrust Bank, and U.S. Bank. The selection committee recommends award to CPS Payment Services, LLC.

The District currently pays approximately \$5 million per month to FPL. The selected vendor would pilot the IP solution for FPL. Once the District determines the IP solution with FPL is successful, the District may elect to enroll additional vendors.

The selected IP vendor has calculated/offered the District a rebate (a payment from the IP vendor to the District) of approximately \$750,000 per year, based on the anticipated FPL invoices of approximately \$5 million per month. Additional rebates are expected to be generated if and when more vendors are enrolled.

The implementation of a virtual/merchant payment solution will assist the District in improving process efficiencies and reducing administrative costs, as well as the benefit of an income/rebate for transactions with enrolled vendors.

The contract award is for two (2) years and ten (10) months. The District has the option to renew the contract award for two (2) additional one-year agreements.

AGREEMENT

THIS AGREEMENT is made and entered into as of this 21st day of March, 2017, by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
(hereinafter referred to as "SBBC"),
a body corporate and political subdivision of the State of Florida,
whose principal place of business is
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

CPS PAYMENT SERVICES LLC
(hereinafter referred to as "CPS"),
whose principal place of business is
600 Galleria Parkway, Suite 150
Atlanta, GA 30339

WHEREAS, SBBC issued a Request for Proposal identified as 17-008H – Integrated Payables (hereinafter referred to as RFP), dated February 16, 2016 and amended by Addendum No.1 dated March 9, 2016 all of which are incorporated by reference herein, **Exhibit A** for the purpose of receiving proposals integrated payable services; and

WHEREAS, CPS offered a proposal dated March 16, 2016 (hereinafter referred to as "Proposal") which is incorporated by reference herein, **Exhibit B**, in response to this RFP.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 - RECITALS

1.01 **Recitals.** The parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence upon execution by all parties and conclude on December 31, 2019. The term of the contract may, by mutual agreement between SBBC and the Awardee, be extended for one (1) additional year and, if needed, be extended 180 days beyond the expiration date by mutual agreement between SBBC and Awardee.

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

- First: This Agreement, then;
- Second: Addendum No.1, then;
- Third: RFP 17-008H – Integrated Payables, then;
- Fourth: Proposal submitted in response to the RFP by VENDOR

2.03 **CPS shall provide the following services:**

A). Provide SBBC with services as proposed in its Proposal and in compliance with this Agreement and the RFP and its Addenda and as specified in **Exhibit A**.

B). Provide SBBC with a MasterCard Corporate Card per the following terms and conditions:

1). **Nature of Account and Card Use.** CPS will provide Customer with an account through the use of which Customer may access the financial information and other services provided for herein (“Account”). In connection with the Account, CPS, in accordance with Customer’s request, shall provide special CPS®MasterCard Corporate Cards® (“Cards”), which are issued by Regions Bank, headquartered in Birmingham, Alabama, or another financial institution (“Issuing Bank”). Customer represents that it is either a government, non-profit or commercial business enterprise and agrees that the Account is for business purposes only, and any Card(s) issued under the Account will not be used for personal, family or household purposes. Further, the Account and Card(s) may be used only for valid and lawful purposes. If Customer uses, or allow someone else to use, the Card(s) or Account for any other purpose, Customer shall be responsible for such use and may be required to reimburse CPS, the Issuing Bank, and MasterCard International Incorporated (MasterCard”) for all amounts or expenses either CPS, the Issuing Bank or MasterCard pays as a result of such use. All Cards issued to Customer shall remain the property of the Issuing Bank and must be returned upon request. CPS or the Issuing Bank may cancel, revoke, repossess or restrict the use of Cards at any time.

2). **Credit Limit.** CPS will advise Customer of its available credit limit for the Account, as the same may be changed from time to time and may require security for the performance of Customer’s payment obligations. Customer shall not allow its unpaid balance, including fees and other charges on the Account, to exceed its credit limit

3). **Payment Terms.** (a) Customer shall be responsible for credit extended on the Account. **The total amount shown on each Account statement is due and payable in accordance with the payment terms on Schedule A. (See Exhibit C)** This amount includes current transactions, applicable Card fees as set forth in Schedule A, applicable service fees, amounts past due, late payment charges, charges for returned checks and other applicable charges. For international transactions, the transaction amount includes a MasterCard cross border fee of 90 basis points and a MasterCard currency conversion assessment fee of 20 basis points. Customer agrees to pay a late payment charges on past due balances of \$75.00 or the maximum amount permitted by applicable law, whichever is less. CPS reserves the right to charge a returned check fee of twenty dollars (\$20) or the maximum amount permitted under applicable law, whichever is less.

4). **Statements, Reporting and Maintenance.** Billing statements and reports are available on-line. At Customer's request, CPS will provide paper copies of billing statements and reports for a fee of \$20.00 per billing cycle. Customer understands and agrees that CPS may filter data received from merchants from time to time as necessary to provide complete reporting information to Customer. CPS will charge Customer an account maintenance fee of \$1.50 per transaction for performing any card maintenance transaction through a customer service representative that affects the status of a particular card and for credit limit or current day activity inquiries by Customer.

5). **Credit Information.** Customer authorizes CPS to make any credit investigations CPS deems necessary or appropriate and to request reports from credit bureaus in connection with this Agreement or any update, renewal or extension of credit. CPS may furnish information with respect to Customer's Account to credit bureaus or others who may properly receive such information.

6). **Disputed Item.** Customer must notify CPS in writing of any disputed item on Customer's billing statement within sixty (60) days from the date of the billing statement, or it will be deemed undisputed and accepted by Customer. Unless required by law, CPS is not responsible for any problem Customer may have with any goods or services charged on the Account. If Customer has a dispute with a merchant, Customer must pay CPS and settle the dispute directly with the Merchant. CPS is not responsible if any merchant refuses to honor the Card.

7). **Default and Remedies.** In the event of Customer's default under this Agreement, including, without limitation, failure to comply with the credit limit and payment terms provisions hereof, CPS shall have the right to immediately suspend the Account until such breach is cured. In the event any such breach or default is not cured within a reasonable period of time, then CPS may thereafter terminate this Agreement. Customer's obligation to pay for all outstanding amounts on the Account incurred before the effective date of termination shall survive termination.

8). **Lost or Stolen Cards.** Customer agrees to notify CPS immediately of any loss, theft or unauthorized use of the Account or of any Card. Except as set forth in this Section, Customer understands that it is liable for unauthorized use of the Account and Cards. Customer will not be liable for unauthorized charges that occur after Customer notifies CPS of the loss, theft or possible unauthorized use of the Account or a Card issued to Customer.

C). CPS shall provide SBBC with an established Short-term credit in the following context:

- SBBC plans to participate in the CPS MasterCard Corporate Card arrangement to pay corporate expenses
- SBBC has chosen not to pre-pay its account under the CPS Master Card arrangement
- CPS shall provide to SBBC short-term (3days) credit in order to facilitate SBBC's participation in the CPS Master Card Corporate Card arrangement

- Short-term credit is providing to SBBC by CPS pursuant to the following terms and conditions

1). **Short-term Credit Facility.** From time to time during the Commitment Period (as defined below), upon Customer's request, and subject to due satisfaction of the terms and conditions of this Agreement and so long as no Event of Default (as hereinafter defined) shall have occurred and be continuing, CPS will make short-term advances not to exceed three (3) days (a "Short-term Advance") to Customer and not exceeding in the aggregate three million dollars (\$3,000,000) (the "Credit Limit") with regard to the principal amount of Short-term Advance outstanding at any time. Customer acknowledges and agrees that CPS will pay a vendor(s) of Customer only in an amount up to the amount of Short-term Advances then outstanding, and the amount of Short-term Advances is limited by the Credit Limit.

2). **No Interest on non-Delinquent Short-term Advances.** Non delinquent Short-term Advances shall not bear interest. However, all Short-term Advances shall be due and payable with the receipt of good funds by CPS on or before the close of business on the fourth (4th) day after CPS makes the Short-term Advance.

3). **Account Funding.** When Customer desires to pay vendor invoices, Customer shall deliver to CPS the payment batch summary report (or electronic payment batch through the CPS Payment Portal), not later than 2:00 p.m. ET on the business day before the payments will be processed against the credit facility. Any payment batch request may be delivered electronically through the CPS Payment Portal or through electronic communication and shall include all necessary information for CPS to assist in processing such payment.

4). **Interest on Delinquent Short-term Advances.** Interest will accrue on Delinquent Short-term Advances at a rate of interest equal to ten percent (10%) per annum beginning as of the date that CPS made such Short-term Advance. If at any time it is determined by a court of competent jurisdiction that the rate of interest payable hereunder shall, for any period of time, exceed the maximum permitted by applicable period of time (such applicable period of time being referred to herein as the "Relevant Time Period") to the maximum lawful rate permitted during the Relevant Tie Period (which reduction may be retroactive to the beginning of the Relevant Time Period if so required in order to be lawful); (2) this Agreement shall be reformed and modified to reflect such reduction; and (3) any excess interest CPS may have received hereunder shall be applied as a credit against Short-term Advances then outstanding (with any excess, if any refunded to Customer); The interest fee for late payments will be deducted from the next rebate payment from CPS. In addition, rebate payments will be held with any outstanding balances due.

5). **Event of Default.** The occurrence of any one or more of the following events (each an "Event of Default") will constitute a default of Customer under this Agreement:

- a). Failure of Customer to make payment of any principal or interest on any of the Short-term Advances when and as the same becomes due and payable, whether at maturity or by acceleration or otherwise;
- b). If any statement, representation, or warranty of Customer make in or pursuant to this Agreement proves to be untrue, incorrect,

misleading or incomplete in any material and adverse respect as of the date made:

- c). If Customer becomes insolvent or makes an assignment for the benefit of creditors, or if any action is brought by Customer seeking its dissolution or liquidation or seeking the appointment of a trustee, interim trustee, receiver or other custodian for all or any substantial part of its property, or if Customer commences a voluntary case under the Federal Bankruptcy Code, or any reorganization or arrangement proceeding is instituted by Customer for the settlement, readjustment, composition or extension of any of its debts upon any terms, or if any action or petition is otherwise brought by Customer seeking similar relief or alleging that it is insolvent or unable to pay its debts as they mature;
- d). If any action is brought against Customer seeking its dissolution or liquidation of any of its assets or seeking the appointment of a trustee, interim trustee, receiver or other custodian for all or any material part of its property, and such action is consented to or acquiesced in by Customer or is not dismissed within ninety (90) days of the date upon which it was instituted; or if any reorganization or arrangement proceeding is instituted against Customer for the settlement, readjustment, composition or extension of any of its debts upon any terms and such proceeding are consented to or acquiesced in by Customer or is not dismissed within ninety (90) days of the date upon which it was instituted; or if any action or petition is otherwise brought;

6). **Customer Representations and Warranties.** Customer represents and warrants the following:

- Customer is either a governmental non-profit or commercial enterprise, and the CPS MasterCard Corporate Card arrangement will not be used for personal, household or consumer purposes;
- Customer will use the CPS MasterCard Corporate Card arrangement only for legitimate business charges only and Customer will have neither consumer law rights nor remedies available to consumers associated with any purchases, charges or other activity associated with the CPS MasterCard Corporate Card arrangement;
- Customer will use the CPS MasterCard Corporate Card arrangement only for valid and lawful purposes and will not be used for gambling, online gaming, illicit drug transactions, or any unlawful purposes including without limitation (i) other illegal purchases of goods or services, regardless of whether such transaction violates the laws applicable in the territory where the transaction was initiated or merchant is located, or (ii) purchases that are prohibited by local law; and
- Customer will not use the CPS MasterCard Corporate Card arrangement in any way that would cause CPS to violate applicable Law.

If Customer uses, or allows someone else to use, the CPS MasterCard Corporate Card arrangement in violation of the above representations and

warranties, Customer shall be responsible for such use and may be required to reimburse CPS, the Issuing Bank or MasterCard pays as a result of such use.

7). **Confidentiality: Proprietary Rights.** CPS and Customer agree and covenant to each other that they shall not, during the performance of this Agreement or at any time after the termination or expiration hereof, use or disclose to any third party, other than during the proper performance of their duties hereunder, the confidential and propriety information of the other party hereto ("Confidential Information"). The foregoing shall not apply to a disclosure required by Chapter 119, Florida Statutes and other law. Each party agrees to takes reasonable steps, when permissible, to notify the other party prior to such disclosure.

2.04 **CPS shall provide a Rebate to SBBC.** Each month, an incentive rebate will be paid to SBBC at a rate between 1.5% - 1.6% on all standard transactions. The incentive is paid monthly and is calculated each month based on the SBBC previous month's spend volume. The following tiered rebate schedule would be valid for volume on an annual basis and resets every year on the contract anniversary.

- 1.5% rebate rate for annual total payments of \$0 - \$25 Million
- 1.55% rebate rate for annual total payments of \$25 - \$50 Million
- 1.60% rebate rate for annual total payments above \$50 Million

The rate applies for standard interchange transactions, not reduced interchange transactions (Ex. "large ticket"). Reduced interchange transactions are transactions where the total MasterCard Interchange fee is 2.0% or less. For reduced interchange transactions, the customer rebate will be the net MasterCard Interchange minus a 0.85% (85 BPS) service fee. For example, a reduced interchange transaction that is processed at 1.90%, the client rebate would be 1.05% (105 BPS) on that transaction.

Any vendor or vendor's Merchant Service Provider (MSP) that charges a fee will be either netted against the rebate or provided within the credit line and communicated via the Confirmation Report generated. For example, Florida Power & Light's Merchant Service Provider charges a \$14.95 fee per \$5,000 in transaction volume. This will be communicated on the Confirmation Report (CPS invoice) as a line item.

Any vendor or vendor's Merchant Service Provider (MSP) that charges a fee will be either netted against the rebate or provided within.

2.05 **Inspection of CPS's Records by SBBC.** CPS 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 CPS's Records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify any and all invoices, billings, payments and/or claims submitted by CPS or any of CPS's payees pursuant to this Agreement. CPS's Records subject to examination shall include, without limitation, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement.

CPS's Records subject to this section shall include any and all documents pertinent to the evaluation, analysis, verification and reconciliation of any and all expenditures under this Agreement without regard to funding sources.

(a) CPS's Records Defined. For the purposes of this Agreement, the term "CPS's Records" shall include, without limitation, and any supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement.

(b) Duration of Right to Inspect. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to CPS'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 CPS pursuant to this Agreement.

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

(d) Audit Site Conditions. SBBC's agent or its authorized representative shall have access to CPS's facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(e) Failure to Permit Inspection. Failure by CPS to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this Section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the denial of some or all of any CPS's claims for payment by SBBC.

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

(g) Inspection of Subcontractor's Records. CPS 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 CPS to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payee's costs from amounts payable by SBBC to CPS pursuant to this Agreement and such excluded costs shall become the liability of CPS.

(h) Inspector General Audits. CPS 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.

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

To SBBC: Superintendent of Schools
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

With a Copy to: Chief Financial Officer
The School Board of Broward County, Florida
600 southeast Third Avenue
Fort Lauderdale, Florida 33301

Treasurer
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

To CPS: Scott Saltmarsh, Senior Vice-President
CPS Payment Services
600 Galleria Parkway, Suite 150
Atlanta, GA 30339

With a Copy to: Jeff Wiesinger, Executive Vice President
CPS Payment Services
12400 N Meridian Street, Suite 185
Carmel, IN 46032

2.07 **Background Screening.** CPS agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of CPS or its personnel providing any services under the conditions described in the previous sentence. CPS 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 CPS and its personnel. The parties agree that the failure of CPS 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. CPS 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 CPS's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

ARTICLE 3 – GENERAL CONDITIONS

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

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

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

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

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

3.06 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable

cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.07 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

3.08 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

3.09 **Public Records:** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. CPS 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, CPS 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. CPS 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 CPS does not transfer the public records to SBBC. Upon completion of the Agreement, CPS shall transfer, at no cost, to SBBC all public records in possession of CPS or keep and maintain public records required by SBBC to perform the services required under the Agreement. If CPS transfer all public records to SBBC upon completion of the Agreement, CPS shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CPS keeps and maintains public records upon completion of the Agreement, CPS 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 754-321-0505, PROCUREMENT & WAREHOUSING SERVICES, 7720 WEST OAKLAND PARK BLVD., SUITE 323, SUNRISE FLORIDA, 33351.

3.10 **Student Records.** Notwithstanding any provision to the contrary within this Agreement, any party contracting with SBBC under this Agreement shall fully comply with the requirements of Sections 1002.22 and 1002.221, Florida Statutes; FERPA, and any other state or federal law or regulation regarding the confidentiality of student information and records. Each such party agrees, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes.

3.11 **Compliance with Laws.** Each party shall comply with all applicable federal state and local laws, SBBC policies codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.12 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.13 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the CPS admits that the state courts of the Seventeenth Judicial Circuit of Broward County, Florida and the Southern District of Florida shall have jurisdiction over CPS.

3.14 **Entirety of Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

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

3.16 **Assignment.** Neither this Agreement 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.

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

3.18 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of

convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way affect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

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

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

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

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

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

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

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

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

A. By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence. Further, CPS shall not be responsible for, and shall have no liability for the acts of employees of SBBC, regardless of whether such acts are within the scope of their employment.

B. By CPS: CPS 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 CPS, its agents, servants or employees; the equipment of CPS, 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.

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

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



FOR SBBC

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By Abby M. Freedman
Abby M. Freedman, Chair

ATTEST:

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

Approved as to Form and Legal Content:

Kathelyn Jacques-Adams

Digitally signed by Kathelyn Jacques-Adams
DN: cn=Kathelyn Jacques-Adams, o=The School Board of Broward
County, Florida, ou=Office of the General Counsel,
email=kathelyn.jacques-adams@browardschools.com, c=US
Reason: CPS Payment Services LLC - RFP 17-008H - Integrated Payables
Date: 2017.02.16 15:56:15 -0500

Office of the General Counsel

FOR CPS

(Corporate Seal)

ATTEST:

CPS Payment Services LLC

By

[Handwritten Signature]
Scott Saltmarsh

, Secretary

-or-

[Handwritten Signature]
Witness Ken Barrett

[Handwritten Signature]
Witness Patrick Kennedy

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.

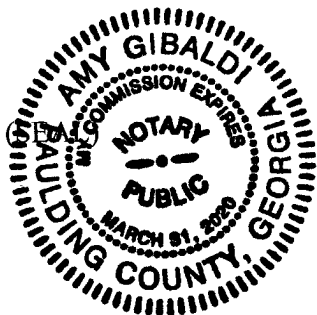
STATE OF Georgia

COUNTY OF Paulding

The foregoing instrument was acknowledged before me this 24 day of January, 2017 by Scott Saltmarsh of CPS Payment Services, on behalf of the corporation/agency.

He/She is personally known to me or produced Drivers License as identification and did/did not first take an oath.

My Commission Expires:



[Handwritten Signature]
Signature - Notary Public

Amy Gibaldi
Printed Name of Notary

NS3
Notary's Commission No.