



AGENDA REQUEST FORM

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

ITEM No.:

E-2.

MEETING DATE	2020-02-04 10:05 - School Board Operational Meeting
AGENDA ITEM	ITEMS
CATEGORY	E. OFFICE OF STRATEGY & OPERATIONS
DEPARTMENT	Procurement & Warehousing Services

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

TITLE:
 Recommendation to Approve First Amendment to Agreement - FY20-075 - Montessori Education Method Training for Teachers

REQUESTED ACTION:
 Approve the First Amendment to Agreement with Barry University (BU). Contract Term: Upon execution of all parties through June 30, 2020; User Department: Innovative Programs; Previously Awarded Amount: \$251,158; Awarded Vendor(s): Barry University Inc.; Small/Minority/Women Business Enterprise Vendor(s): None.

SUMMARY EXPLANATION AND BACKGROUND:
 This Agreement was awarded on May 21, 2019 under Agenda Item EE-4 for one (1) year, commencing upon execution through June 30, 2019. This First Amendment to the Agreement has been issued in order to correct the end date of this Agreement from June 30, 2019 to June 30, 2020. This First Amendment to the Agreement has been reviewed and approved as to form and legal content by the Office of the General Counsel. See Supporting Docs for continuation of Summary Explanation and Background.

SCHOOL BOARD GOALS:
 Goal 1: High Quality Instruction Goal 2: Safe & Supportive Environment Goal 3: Effective Communication

FINANCIAL IMPACT:
 There is no additional financial impact to the District. BU will bill the District each semester.

EXHIBITS: (List)
 (1) Continuation of Requested Action (2) Executive Summary (3) Financial Analysis Worksheet (4) Agreement (5) Original Executed Documents

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

SOURCE OF ADDITIONAL INFORMATION:	
Name: Shernette Grant	Phone: 754-321-2071
Name: Mary C. Coker	Phone: 754-321-0501

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

Maurice L. Woods - Chief Strategy & Operations Officer

Signature
Maurice Woods
1/27/2020, 1:19:22 PM

Approved In Open Board Meeting On: **FEB 04 2020**
 By:
 School Board Chair

**Recommendation to Approve First Amendment to Agreement
FY20-075 - Montessori Education Method Training for Teachers
February 4, 2020 Board Agenda**

CONTINUATION OF REQUESTED ACTION

The School Board of Broward County, Florida, has been a partner with Barry University for the training of district teachers on Montessori learning. Barry University is the only university in the State of Florida offering graduate-level courses in Montessori education. The program is accredited by the Montessori Accreditation Council for Teacher Education and is affiliated with the American Montessori Society.

The benefits to Broward teachers participating in Barry University Montessori training are the high rigor including research that Barry requires as part of the graduate coursework. The teachers are able to complete the program in two (2) years while attending classes at Beachside Montessori Village. The Elementary I & II Montessori certification allows the elementary teacher to teach in all grades K-5. The teachers will be able to take two (2) additional courses to complete their Masters' Degree. The Secondary I & II allows the teacher to teach in all grades six through twelve (6-12).

EXECUTIVE SUMMARY

Recommendation to Approve First Amendment to Agreement FY20-075 – Montessori Education Method Training for Teachers

Introduction

Responsible: Procurement & Warehousing Services (PWS)

This request is to approve the First Amendment to Agreement FY20-075 – Montessori Education Method Training for Teachers between Barry University (BU) and The School Board of Broward County, Florida (SBBC), to correct the ending date of the Agreement from June 30, 2019 to June 30, 2020.

This Agreement was first awarded on May 21, 2019, Agenda Item #EE-4, with a spending authority of \$251,158.

Goods/Services Description

Responsible: Innovative Programs

SBBC has been a partner with Barry University for the training of district teachers on Montessori learning. Barry University is the only university in the state of Florida offering graduate-level courses in Montessori education. The program is accredited by the Montessori Accreditation Council for Teacher Education and is affiliated with the American Montessori Society.

The benefits to Broward teachers participating in Barry University Montessori training are the high rigor, including research that Barry requires as part of the graduate coursework. The teachers are able to complete the program in two (2) years while attending classes at Beachside Montessori Village. The Elementary I & II Montessori certification allows the elementary teacher to teach in all grades K-5. The teachers will be able to take two (2) additional courses to complete their Masters' Degree. The Secondary I & II allows the teacher to teach in all grades six through twelve (6-12).

BU issues the billing for these services each semester, and invoices are sent directly to the schools.

Procurement Method

Responsible: PWS

Pursuant to Purchasing Policy 3320 and the Department of Education, Rule 6A-1.012, 11(a), Florida Administrative Code as authorized by Section 1010.04(4)(a), Florida Statutes, and Purchasing Policy 3320, Section II, G, the requirement for requesting competitive solicitation for commodities or contractual services from three (3) or more sources is hereby waived for the purchase of professional services.

Financial Impact

Responsible: PWS and Innovative Programs

There is no additional financial impact to the District.

FIRST AMENDMENT TO AGREEMENT

THIS FIRST AMENDMENT TO AGREEMENT is made and entered into as of this day 4th of Feb., 2020 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

BARRY UNIVERSITY, INC.
(hereinafter referred to as "BU"),
Whose principal place of business at
11300 Northeast Second Avenue, Miami Shores, Florida 33301

WHEREAS, SBBC and BU entered into an Agreement dated May 21, 2019 (hereafter "Agreement") for a term of one year; and

WHEREAS, BU has made a commitment to supporting Montessori education; and

WHEREAS, the parties mutually desire to amend certain provisions of the Agreement through this First Amendment to Agreement (hereafter "Amendment").

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:

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

1.02 **Amended Provision**. The parties hereby agree to the following amended provisions to the Agreement:

The following provision – 2.01 - shall replace the respective provision in the Agreement, by interlineation, as follows:

2.01 **Term of Agreement**. Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence upon the execution of both parties and conclude on June 30, 2020.

1.03 **Order of Precedence among Agreement Documents.** In the event of conflict between the provisions of the Agreement and the provisions contained herein, the provisions of the following documents shall take precedence in this order:

- a) this First Amendment to Agreement; then
- b) the Agreement.

1.04 **Other Provisions Remain in Force.** Except as expressly provided herein, all other portions of the Agreement remain in full force and effect.

1.05 **Authority.** Each person signing this First Amendment to Agreement on behalf of either party individually warrants that he or she has full legal power to execute this First Amendment to 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 First Amendment to Agreement.

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

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW]

FOR SBBC:

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By



Donna P. Korn, Chair

ATTEST:



Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

Digitally signed by Kathelyn Jacques-Adams, Esq. - kathelyn.jacques-adams@gbrowardschools.com
Reason: Barry University, Inc. - First Amendment
Date: 2020.01.17 15:15:27 -05'00'

Office of the General Counsel

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

FOR BU.:

(Corporate Seal)

BARRY UNIVERSITY, INC.

ATTEST:

David Dudson
David Dudson, Secretary

By [Signature]
Signature

Printed Name: John Murray

Title: Provost

-or-

Witness

Witness

STATE OF Florida
COUNTY OF Miami Dade

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 17 day of January 2020 by _____ (name of officer or agent, title of officer or agent) of _____ (name of corporation acknowledging), a _____ (state or place of incorporation) corporation, on behalf of the _____ corporation. He/She is personally known to me or produced _____ (type of Identification) as identification and did did not first take an oath.

My Commission Expires: Feb 17, 2020

[Signature]
Signature – Notary Public

Jasmine Trana
Printed Name of Notary

FF 954799
Notary's Commission No

(SEAL)



AGREEMENT

THIS AGREEMENT is made and entered into as of this 21st day of May 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

BARRY UNIVERSITY, INC.
(herein referred to as "BU"),
Whose principal place of business is
11300 Northeast Second Avenue, Miami Shores, Florida 33161

WHEREAS, BU has made a commitment to supporting Montessori education; and

WHEREAS, BU has a relationship and meets qualification standard with the American Montessori Society to train and certify Montessori teachers specifically in the area of early childhood level learning, elementary I and II level learning, secondary level I and II level learning; and

WHEREAS, BU has an historic commitment to providing these resources to the School Board; and

WHEREAS, BU and SBBC will collaborate to provide Bair Middle School, Beachside Montessori Village, Dr. Martin Luther King, Jr. Montessori Academy, Sunrise Middle and Virginia Shuman Young Elementary with the opportunity to train and certify teachers in the Montessori Method.

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

ARTICLE 1 - RECITALS

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

ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence upon the execution of both parties and conclude on June 30, 2019.

2.02 **SBBC Responsibilities.** SBBC shall:

(a) Permit Montessori-certified professors from BU to teach up to eleven (11) Early Childhood, Elementary I & II courses to teachers from Beachside Montessori Village, Dr. Martin Luther King, Jr. Montessori Academy and Virginia Shuman Young Elementary for completion of American Montessori Society certification and six (6) Secondary I and II courses to teachers from Bair Middle School, Beachside Montessori Village, and Sunrise Middle School for completion of a Secondary Montessori credential program.

(b) Permit BU to monitor teacher progress through classroom observation of Montessori methodologies in the classrooms at Bair Middle School, Beachside Montessori Village, Dr. Martin Luther King, Jr. Montessori Academy, Sunrise Middle and Virginia Shuman Young Elementary.

(c) Allow the following facilities to be utilized for the purpose of this Agreement is Beachside Montessori Village. There will be no cost to BU for the utilization of the facility. Beachside Montessori Village agrees to allow BU faculty members and its representatives the use of its school facilities including, but not limited to, the classrooms, science laboratory, media center, art room, and music room for the purpose of conducting classes on the philosophy and methodology of the Montessori approach to education.

(d) Allow Beachside Montessori Village to provide BU faculty and its representatives access to their Montessori instructional materials and related equipment necessary to fulfill the obligations of the Agreement. Access to these materials will continue throughout the duration of the program delivery. The access and use of the materials described above will be provided at no cost to BU.

2.03 **BU Responsibilities.** BU shall: Provide SBBC with a rigorous program (inclusive of, but not limited to, instruction, materials, supervised practice labs and examinations) in Montessori Education at the graduate level for Bair Middle School, Beachside Montessori Village, Dr. Martin Luther King, Jr. Montessori Academy, Sunrise Middle and Virginia Shuman Young Elementary teachers, allowing each teacher to take up to six courses related to early childhood, elementary I and II, or secondary I and II, during the course of this Agreement, which result in Montessori certification qualification for the respective teacher.

2.04 **SBBC Disclosure of Education Records.** Although no student education records shall be disclosed pursuant to this Agreement, should BU come into contact with education records during the course of contracted responsibilities, these records are confidential and protected by the Family Educational Rights and Privacy Act (FERPA) and state laws and may not be used or re-disclosed. Any use or re-disclosure may violate applicable federal and state laws.

2.05 **SBBC Disclosure of Employee Records.**

(a) SBBC employees complete their own application to receive training from BU. They will disclose their own information directly to BU.

(b) SBBC will not disclose any employee information without prior written consent of the employee.

2.06 Safeguarding Confidential Employee Records. Notwithstanding any provision to the contrary within this Agreement, BU shall (a) fully comply with the requirements of state or federal law or regulation regarding the confidentiality of employee records, (b) hold the employee records in strict confidence and not use or disclose same except as required by this Agreement or as required or permitted by law, (c) only share employee records with those who have a need to access the information in order to perform their assigned duties in the performance of this Agreement, (d) protect employee records through administrative, physical and technological safeguards to ensure adequate controls are in place to protect the employee's records and information, (e) notify SBBC immediately upon discovery of a breach of confidentiality of employee 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, (f) prepare and distribute, at its own cost, any and all required notifications, under federal and Florida Law, or reimburse SBBC any direct costs incurred by SBBC for doing so, and (g) be responsible for any fines or penalties for failure to meet notice requirements pursuant to federal and/or Florida law. This section shall survive the termination of all performance or obligations under this Agreement.

2.07 Cost of Services and Payment. Upon BU's satisfactory completion of the services under this Agreement for early childhood courses, elementary I and II courses, and secondary I and II courses, SBBC shall pay the tuition amount of Four Hundred Ninety-Eight Dollars and 33/100 Cents (\$498.33) per credit in addition to a one-time Adult Learner Fee of Four Hundred One Dollars and 00/100 Cents (\$401.00) per teacher at the start of Practicum I with a maximum total amount not to exceed Two Hundred Fifty-One Thousand, One Hundred Fifty Eight Dollars and 00/100 Cents (\$251,158.00).

2.08 Inspection of BU's Records by SBBC. BU 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 BU'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 satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify the applicable business records of BU 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 BU'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 BU pursuant to this Agreement.

(b) **Notice of Inspection.** SBBC's agent or its authorized representative shall provide BU reasonable advance 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 BU'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 BU 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 BU'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 BU in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by BU. If the audit discloses billings or charges to which BU is not contractually entitled, BU shall pay said sum to SBBC within twenty (20) days of receipt of written demand under otherwise agreed to in writing by both parties.

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

(g) Inspector General Audits. BU 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.

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

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

With a Copy to: Director
Innovative Programs Design/Support
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

To BU: Division of Legal Affairs
Barry University
11300 Northeast Second Avenue
Miami Shores, Florida 33161

With a Copy to: Dr. Jill Farrell, Dean
Adrian Dominican School of Education
Barry University
11300 Northeast Second Avenue
Miami Shores, Florida 33161

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

2.11 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. BU 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, BU 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. BU 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 BU does not transfer the public records to SBBC. Upon completion of the Agreement, BU shall transfer, at no cost, to SBBC all public records in possession of BU or keep and maintain public records required by SBBC to perform the services required under the Agreement. If BU transfers all public records to SBBC upon completion of the Agreement, BU shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If BU keeps and maintains public records upon completion of the Agreement, BU 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.

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

2.13 **Insurance Requirements.** BU shall comply with the following insurance requirements throughout the term of this Agreement.

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

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

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

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

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

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

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

- 1) The School Board of Broward County, Florida, its members, officers, employees and agents are added as additional insured;
- 2) All liability policies are primary of all other valid and collectable coverage maintained by The School Board of Broward County, Florida; and
- 3) Certificate Holder: The School Board of Broward County, Florida, c/o EXIGIS Risk Management Services, P. O. Box 4668-ECM, New York, New York 10163-4668.

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

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

2.14 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.

2.15 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.

2.16 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.



(Corporate Seal)

FOR SBBC:

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By *Heather P. Brinkworth*
Heather P. Brinkworth, Chair

ATTEST:

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

Approved as to Form and Legal Content:

Kathelyn Jacques Adams

Digitally signed by Kathelyn Jacques-
Adams, Esq. - kathelyn.jacques-
adams@gbrowardschools.com
Reason: Barry University, Inc.
Date: 2019.05.08 08:28:50 -04'00'

Office of the General Counsel

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

FOR BU:

(Corporate Seal)

BARRY UNIVERSITY, INC.

ATTEST:

David Duder
David Duder, Secretary
-or-

John D. Murray, PhD
John D. Murray, PhD
Provost for Barry University

Witness

Witness

The Following Notarization is Required for Every Agreement Without Regard to Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.

STATE OF Florida

COUNTY OF Miami Dade

The foregoing instrument was acknowledged before me this 7 day of May, 2019 by John D. Murray of Barry University Inc. on behalf of the corporation/agency.

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

My Commission Expires:

Jasmine Trana
Signature - Notary Public

Jasmine Trana
Printed Name of Notary

(SEAL)



Notary's Commission No.

