



AGENDA REQUEST FORM

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

ITEM No.:

EE-6.

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

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

TITLE:

Recommendation to Approve Agreement - FY20-197 - Healthcareer Certification Testing

REQUESTED ACTION:

Approve the recommendation of the above agreement. Contract Term: February 23, 2020 through February 28, 2023, 3 Years; User Department: Career, Technical, Adult, & Community Education (CTACE) Award Amount: \$575,000; Awarded Vendor(s): National Healthcareer Association, Inc.; Small/Minority/Women Business Enterprise Vendor(s): None.

SUMMARY EXPLANATION AND BACKGROUND:

The National Healthcareer Association (NHA) collaborates with educational institutions nationwide with over 350,000 certified individuals. It is one (1) of the largest certification and continuing education providers. NHA works with health training institutions, hospitals, unions, and the United States Defense Department; it has approved over 2400 training/testing locations throughout the United States and in several countries. NHA is the industry certification agency that provides students in all high schools and technical schools that offer health science.

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: Safe & Supportive Environment
 Goal 3: Effective Communication

FINANCIAL IMPACT:

The estimated financial impact to the District will be \$575,000. The funding source will come from the Carl D. Perkins Secondary Grant. The financial impact amount represents an estimated contract value; however, the amount authorized will not exceed the estimated contract award amount.

EXHIBITS: (List)

(1) Executive Summary (2) Financial Analysis Worksheet (3) Agreement

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

SOURCE OF ADDITIONAL INFORMATION:

Name: Guy Barmoha	Phone: 754-321-2119
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, 3:45:10 PM

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

EXECUTIVE SUMMARY

Recommendation to Approve Agreement FY20-197 – Healthcareer Certification Testing

Introduction

Responsible: Procurement & Warehousing Services (PWS)

This request is to approve the Agreement between National Healthcareer Association, Inc. (NHA), and The School Board of Broward County, Florida (SBBC), for three (3) years, commencing February 23, 2020 through February 28, 2023. The previous agreement 58-080E started on February 23, 2017 through February 21, 2020, with an approved spending authority of \$524,860.

The spending authority being requested is \$575,000.

Goods/Services Description

Responsible: Career, Technical, Adult & Community Education (CTACE)

NHA collaborates with educational institutions nationwide with over 350,000 certified individuals. It is one (1) of the largest certification and continuing education providers. NHA works with health training institutions, hospitals, unions, and the United States Defense Department; it has approved over 2400 training/testing locations throughout the United States and in several countries. NHA is the industry certification agency that offers students in all high schools and technical schools Health Science programs, Industry Certification Assessments, and Online Practice Materials. The assessment products leading to industry certification are Certified Medical Administrative Assistant, Medical Assistant, and Electrocardiogram Technician. The evaluation plan entails data reports provided to the Career, Technical, Adult & Community Education (CTACE) staff detailing usage attempts and results for industry certification attainment. Student attainment of industry certifications will be reviewed to ensure that appropriate teacher professional development and student resources are strategically developed and planned. The research methodology includes curriculum frameworks and, of study, as delineated by The Florida Department of Education for program completion.

Procurement Method

Responsible: PWS

Rule 6A-1.012 11(b), Florida Administrative Code, states that the requirement for requesting competitive solicitations for commodities or contractual services from three (3) or more sources is hereby waived as authorized by Section 1010.04(4)(a), Florida Statutes and Purchasing Policy 3320(II), for the purchase of educational services and any type of copyrighted materials including computer software where such materials are purchased directly from the producer or publisher, the owner of the copyright, an exclusive agent within the state, a governmental agency or a recognized educational institution. NHA is the certifying agency that has provided this service to the District for more than ten (10) years. The service they provide is important to the continuous development and growth of the District.

Financial Impact

Responsible: PWS and CTACE

The spending authority being requested of \$575,000 is based on historical expenditures as detailed below:

Projected monthly expenditures	\$	15,970
Number of months		36
Estimated forecasted spend	\$	574,920
Total spend authority (rounded)	\$	575,000

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The rationale for the six (6) percent increase included in the projected monthly expenditure is to cover the anticipated growth in Health Science Industry Certification enrollment requests and examination costs. Although the average increase in program enrollment over the past two (2) years is eighteen (18) percent, the spending authority being requested is expected to cover expenses through to the expiration of the bid.

	# of students per school year	% increase
2016-2017	689	
2017-2018	793	15
2018-2019	970	22

The funding for this Bid will come from the Carl D. Perkins Secondary Grant.

The financial impact amount represents an estimated contract value; however, the amount authorized will not exceed the estimated contract award amount.

AGREEMENT

THIS AGREEMENT is made and entered into as of this 1st day of February, 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

NATIONAL HEALTHCAREER ASSOCIATION, INC.
(hereinafter referred to as "NHA"),
whose principal place of business is
11161 Overbrook Road
Leawood, Kansas 66211

WHEREAS, Rule 6A-1.012 11(b), Florida Administrative Code, states that the requirement for requesting competitive solicitations for commodities or contractual services from three or more sources is hereby waived as authorized by Section 1010.04(4)(a), Florida Statutes and SBBC Policy 3320(II), for the purchase of educational services and any type of copyrighted materials including computer software where such materials are purchased directly from the producer or publisher, the owner of the copyright, an exclusive agent within the state, a governmental agency or a recognized educational institution; and

WHEREAS, NHA, is an independent provider of educational tools, assessment, and certification programs and related products and services; and

WHEREAS, SBBC desires to purchase copyrighted materials and educational assessments from NHA; and

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 are 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 begins on February 23, 2020 and concludes on February 28, 2023.

2.02 **NHA Duties and Obligations.** NHA shall provide SBBC with preparation/exam packages. Each preparation/exam package will include an online study guide and practice assessments designed to assist in passing a certification exam and one certification exam in support of SBBC Health Science Curriculum. Purchase orders will be issued by SBBC to NHA to specifically designate the subject matter and quantity of each NHA preparation package.

2.03 **SBBC Disclosure of Education Records.**

(a) SBBC will provide NHA, the education records listed in this section for the purposes listed below:

- 1) Course registration for obtaining and maintaining an accredited professional certification.
- 2) Confirmation of exam candidate's identity
- 3) Certification upon passing professional certification exam
- 4) Unique identifier for customer support purposes
- 5) For practice test results used for remediation purposes

(b) SBBC will provide NHA, through candidate online registration, the education records listed in this section:

- 1) Student first and last name
- 2) Student email address
- 3) Student birth date
- 4) Student mailing address
- 5) Student phone number
- 6) Study material performance and usage
- 7) Exam results (pass/fail/grade)
- 8) Gender
- 9) Ethnicity
- 10) Primary language

(c) NHA is considered a "school official" with a legitimate educational interest to receive the aforementioned types of information and student education records from SBBC for the purposes listed above. Pursuant to the Family Educational Rights and Privacy Act (FERPA), 34 CFR 99.31(a) (1), these records may be provided without prior parental consent. Prior written consent of the parent or student age 18 years or older is needed for any types or purposes of disclosures of education records beyond those listed above.

(d) The requirements of this section shall supersede any use of student information as listed in NHA's privacy policies.

2.04 **NHA's Confidentiality of Education Records.**

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

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

or federal law or regulation regarding the confidentiality of student information and records;

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

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

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

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

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

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

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

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

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

11) securely erase education records from any media once any media equipment is no longer in use or is to be disposed; secure erasure 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) NHA shall, for itself, its officers, employees, agents, representatives, contractors or subcontractors, 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.

2.05 **SBBC Disclosure of Employee Information.**

(a) SBBC will provide NHA the employee information listed in this section to enable teachers to release exam codes to students who meet the criteria to take exams.

(b) SBBC will provide the following employee information to NHA:

- 1) first and last name
- 2) SBBC email address

(c) NHA will utilize employee's information to provide limited access to NHA's systems and define user roles and permissions within NHA's systems.

(d) NHA shall not use the employee records listed in this section for any purpose other than those listed above or re-disclose the records to any outside source without the prior written consent of the employee, except as required or allowable by law.

2.06 **Cost of Services.** SBBC shall issue purchase orders for each preparation/exam package. The cost for each preparation/exam package is \$186.00. The cost for just an exam is \$117.00. The cost for just a study guide with practice assessment is \$69.00. NHA will issue invoices for products rendered under this Agreement. Upon receipt of each invoice from NHA, an SBBC designated Curriculum Supervisor will validate receipt of products and authorize payment. SBBC will pay a total amount not to exceed \$575,000.00.

2.07 **Inspection of NHA's Records by SBBC.** NHA 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 NHA'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 NHA or any of NHA's payees pursuant to this Agreement. NHA'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. NHA'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) NHA's Records Defined. For the purposes of this Agreement, the term "NHA's Records" shall include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other 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 NHA's Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the latter of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to NHA pursuant to this Agreement.

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

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

(e) Failure to Permit Inspection. Failure by NHA 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 NHA'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 NHA in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by NHA. If the audit discloses billings or charges to which NHA is not contractually entitled, NHA shall pay said sum to SBBC within twenty (20) days of receipt of written demand or as otherwise agreed to in writing by both parties.

(g) Inspection of Subcontractor's Records. NHA 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 NHA 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 Payee's costs from amounts payable by SBBC to NHA pursuant to this Agreement and such excluded costs shall become the liability of NHA.

(h) **Inspector General Audits.** NHA 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.

2.08 **Personal Property.** NHA shall not be responsible for the personal property belonging to SBBC, SBBC faculty or students participating in the program.

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
The School Board of Broward County, Florida
Career, Technical, Adult and Community Education
1701 NW 23rd Avenue
Fort Lauderdale, Florida 33311

To NHA: Ashley Carlton
NHA Representative
11161 Overbrook Road
Leawood, Kansas 66211

2.10 **Background Screening.** NHA 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 NHA or its personnel providing any services under the conditions described in the previous sentence. NHA 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 NHA and its personnel. The parties agree that the failure of NHA 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. NHA 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 NHA'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. NHA 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, NHA 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. NHA 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 NHA does not transfer the public records to SBBC. Upon completion of the Agreement, NHA shall transfer, at no cost, to SBBC all public records in possession of NHA or keep and maintain public records required by SBBC to perform the services required under the Agreement. If NHA transfers all public records to SBBC upon completion of the Agreement, NHA shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If NHA keeps and maintains public records upon completion of the Agreement, NHA 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, OR 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 NHA: NHA 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 NHA, its agents, servants or employees; the equipment of NHA, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of NHA or the negligence of NHA'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 NHA, SBBC or otherwise.

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

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 **Nondiscrimination.**

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

(b) As part of such compliance, NHA shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall NHA retaliate against any person for reporting instances of such discrimination. NHA shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the SBBC's relevant marketplace. NHA understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in SBBC agreements, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

2.16 **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.

2.17 **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, if either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party thirty (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 or NHA during the term hereof upon thirty (30) calendar days' written notice to the other party of its desire to terminate this Agreement.

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.

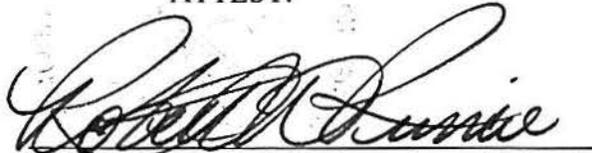
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FOR SBBC:

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:


Robert W. Runcie, Superintendent of Schools

By 
Donna P. Korn, Chair

Approved as to Form and Legal Content:



Digitally signed by Maya A. Moore
Reason: National Healthcareer
Association, Inc.
Date: 2020.01.23 14:35:17 -05'00'

Office of the General Counsel

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

FOR NHA:

(Corporate Seal)

**NATIONAL HEALTHCAREER
ASSOCIATION, INC.**

ATTEST:

By: *Tyson Schmidt*

Name TYSON SCHMIDT

Title DIRECTOR OF OPERATIONS

, Secretary

-or-
[Signature]
Witness

Karen Ilene Jarus Park
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 KANSAS

COUNTY OF JOHNSON

The foregoing instrument was acknowledged before me this 27th day of
JANUARY, 2020 by TYSON SCHMIDT of

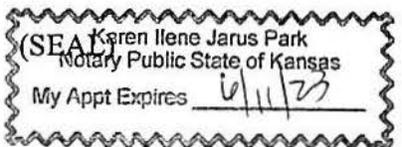
NATIONAL HEALTHCAREER ASSOC. Name of Person
Name of Corporation or Agency, on behalf of the corporation/agency.

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

My Commission Expires:

Karen Ilene Jarus Park
Signature - Notary Public

KAREN ILENE JARUS PARK
Printed Name of Notary



Notary's Commission No.