



AGENDA REQUEST FORM

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

ITEM No.:
E-3.

MEETING DATE	2020-05-19 10:05 - Regular School Board 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 and First Renewal to Agreements - 17-047N – Yearbooks and Memory Books

REQUESTED ACTION:
Approve the recommendation of the above First Amendment and First Renewal of the above Request for Proposal (RFP). Contract Term: March 22, 2017 through May 31, 2021, Four (4) Years, Two (2) Months; User Department: Office of School Performance & Accountability (OSPA); Awarded Amount: NONE; Awarded Vendor(s): Taylor Publishing Co. d/b/a Balfour; Herff Jones LLC; Jostens, Inc.; PlattSCO, Inc. d/b/a YearbookLife; Shutterfly Lifetouch, LLC; Strawbridge Studios, Inc.; Walsworth Publishing Company; Small/Minority/Women Business Enterprise Vendor(s): None.

SUMMARY EXPLANATION AND BACKGROUND:
This RFP is used by OSPA and provides a pool of qualified vendors to be utilized by the District. Each awardee has a local representative to assist the schools in producing high-quality books encapsulating the personal experiences, highlights, and trademarks of each school. The purpose of the amendment is to renew for an additional year through May 31, 2021.
These Agreements have been reviewed and approved as to form and legal content by the Office of the General Counsel.
A copy of the Original Executed Documents are available online at:
http://www.broward.k12.fl.us/supply/agenda/RFP_17-047N_YearbooksandMemoryBooks.pdf

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

FINANCIAL IMPACT:
There is no financial impact to the District as payments are made by parents/guardians.

EXHIBITS: (List)
(1) Executive Summary (2) Agreement-1 (3) Agreement-2 (4) Agreement-3 (5) Agreement-4 (6) Agreement-5 (7) Agreement-6 (8) Agreement-7 (9) Original Executed Documents

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

SOURCE OF ADDITIONAL INFORMATION:	
Name: Todd LaPace	Phone: 754-321-3810
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
5/4/2020, 3:25:57 PM

Approved In Open Board Meeting On: **MAY 19 2020**
By: *[Signature]*
School Board Chair

AGREEMENT

THIS AGREEMENT is made and entered into as of this 19th day of May, 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

TAYLOR PUBLISHING COMPANY DBA BALFOUR

(hereinafter referred to as "VENDOR"),
whose principal place of business is
1550 W. Mockingbird Lane
Dallas, TX 75235

WHEREAS, SBBC issued a Request for Proposal identified as RFP 17-047N – "Yearbooks and Memory Books for All Schools" dated October 24, 2016 (hereinafter referred to as "RFP") and amended by Addendum Number One dated October 28, 2016, Addendum Number Two dated November 9, 2016 and Addendum Number Three dated November 21, 2016, which is incorporated herein by reference for the purpose of selecting a pool of qualified vendors from which school-allied groups might select a vendor to provide services to students enrolled at a specific district school; and

WHEREAS, VENDOR offered a proposal in response to the RFP (hereinafter referred to as "Proposal") and which is incorporated herein by reference whereby VENDOR proposed to provide Yearbooks and Memory Books for all Schools; and

WHEREAS, VENDOR was awarded on March 21, 2017, with an initial contract term from March 22, 2017 and continuing through May 31, 2020; and

WHEREAS, Pursuant to the RFP, Section 2.4 – Contract Term, the parties hereby mutually agree to exercise the first of two one year renewals, to commence on June 1, 2020 and shall conclude on May 31, 2021; and

WHEREAS, Yearbooks and Memory Books are optional purchases (not mandatory) made directly from the school to VENDOR; 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 is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 - RECITALS

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

ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on June 1, 2020 and shall conclude on May 31, 2021. The term of the agreement may, by mutual agreement between SBBC and VENDOR, be extended for one additional one-year period and, if needed, 180 days beyond the expiration date of the renewal period. In addition, SBBC has the option to extend the contract beyond the initial contract period or beyond any renewal period for an additional one-hundred and eighty (180) days at a rate for services not to exceed 3%.

2.02 **Separate Contracts for Services.** The VENDOR acknowledges that this Agreement does not award or guarantee it to receive any amount of work, any specified volume of service or amount of revenue that VENDOR may derive from the provision of Yearbooks and Memory Books for All Schools or assure that the VENDOR will receive any contracts from school-allied groups for the provision of Yearbooks and Memory Books for All Schools. Rather, this Agreement is intended to establish the VENDOR as a qualified vendor with whom individual school-allied groups may enter into contracts for Yearbooks and Memory Books for All Schools upon, at a minimum, the terms and conditions described herein. VENDOR acknowledges that SBBC shall have no liability or obligation to make payment to VENDOR for any Yearbooks and Memory Books for All Schools provided to any district school students.

2.03 **Pricing for Services.** VENDOR agrees that the prices for services offered in its Proposal shall remain firm for the original term of this contract. The VENDOR may submit a request for price adjustment thirty (30) days prior to any renewal period of the Agreement. If a price adjustment is approved by SBBC's Director of Procurement and Warehousing Services for any renewal period, such adjusted price must remain in effect for the remainder of that renewal period. Price adjustment requests for any subsequent renewal or extension period shall not exceed three percent (3%). SBBC reserves the right to decline any contract renewal regardless of price considerations.

2.04. **Priority of Documents.** In the event of any conflict between the documents, the following priority of documents shall govern:

- First: This Agreement; then
- Second: Addendum Number Three dated November 21, 2016; then
- Third: Addendum Number Two dated November 9, 2016; then
- Fourth: Addendum Number One dated October 28, 2016; then
- Fifth: RFP 17-047N – “Yearbooks and Memory Books for All Schools” dated October 24, 2016; then
- Sixth: the Proposal submitted by VENDOR in response to RFP.

In case of any other doubt or difference of opinion, the decision of SBBC shall be final and binding upon both parties.

2.05 **SBBC Disclosure of Education Records.**

- (a) SBBC will provide VENDOR the education records listed in this section for the limited purpose of producing Yearbooks and Memory Books.
- (b) SBBC will provide VENDOR with the following education records:

- 1) Student's first and last name
- 2) Student picture
- 3) Grade level
- 4) Teacher name
- 5) Names of clubs and sporting activities

(c) FERPA and consent

- 1) SBBC shall obtain written consent from the parent or student age 18 or over prior to disclosing student information to VENDOR, for the limited purpose of producing Yearbooks and Memory Books for All Schools.
- 2) VENDOR is considered a "school official" with a "legitimate educational interest" to receive the education records listed in this section for the limited purpose of producing Yearbooks and Memory Books for All Schools. Pursuant to the Family Educational Rights and Privacy Act (FERPA), 34 CFR Part 99.31(a) (1), these records may be provided by SBBC without prior written consent of the parent or student age 18 or over for the limited purpose stated in this section. VENDOR may not use or disclose this information for any other purpose.

2.06 **VENDOR Confidentiality of Education Records.**

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) **VENDOR** shall, for itself, its officers, employees, agents, representatives, contractors or subcontractors, 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.

2.07 Inspection of VENDOR's Records by SBBC. **VENDOR** shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All **VENDOR's** applicable records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze and

verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify the applicable business records of VENDOR directly relating to this Agreement in order to verify the accuracy of invoices provided to SBBC. Such audit shall be no more than one (1) time per calendar year.

(a) Duration of Right to Inspect. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to VENDOR's records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to VENDOR pursuant to this Agreement.

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

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

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

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

(f) Inspection of Subcontractor's Records. If applicable, VENDOR shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by VENDOR to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payees' costs from amounts payable by SBBC to VENDOR pursuant to this Agreement and such excluded costs shall become the liability of VENDOR.

(g) Inspector General Audits. VENDOR shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.08 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: Chief, Office of School Performance and Accountability
The School Board of Broward County, Florida
610 NE 13 Avenue
Pompano Beach, FL 33060

To VENDOR: Taylor Publishing Company dba Balfour
1550 W. Mockingbird Lane
Dallas, TX 75235

2.09 **Background Screening.** VENDOR 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 VENDOR or its personnel providing any services under the conditions described in the previous sentence. VENDOR shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to VENDOR and its personnel. The parties agree that the failure of VENDOR to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. VENDOR agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from VENDOR's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

2.10 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. VENDOR shall keep and maintain public records required by SBBC to perform the services required under this Agreement. Upon request from SBBC's custodian of public records, VENDOR shall provide SBBC with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. VENDOR shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if VENDOR does not transfer the public records to SBBC. Upon completion of the Agreement, VENDOR shall transfer, at no cost, to SBBC all public records in possession of VENDOR or keep and maintain public records required by SBBC to perform the services required under the Agreement. If VENDOR transfers all public records to SBBC upon completion of the Agreement, VENDOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If VENDOR keeps and maintains public records upon completion of the Agreement, VENDOR shall meet all applicable requirements for

retaining public records. All records stored electronically must be provided to SBBC, upon request from SBBC's custodian of public records, in a format that is compatible with SBBC's information technology systems.

IF A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 754-321-1900, RECORDREQUESTS@BROWARDSCHOOLS.COM, RISK MANAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SOUTHEAST THIRD AVENUE, FORT LAUDERDALE, FLORIDA 33301.

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

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.

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

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.

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.

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 Awardee 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.

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.
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

Cancellation of Insurance. Vendors are 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.

The School Board of Broward County, Florida 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.

2.12 Nondiscrimination.

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

(b) As part of such compliance, VENDOR 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 VENDOR retaliate against any person for reporting instances of such discrimination. VENDOR 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. VENDOR understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in SBBC Agreements, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

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

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

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.

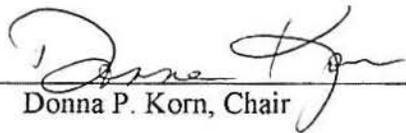
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FOR SBBC

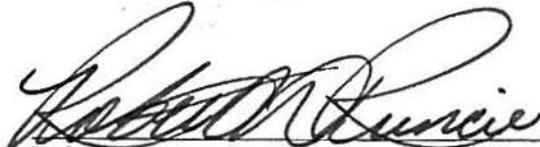
(Corporate Seal)



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 Eric

Abend



Reason: TPC 2020

Date: 2020.04.08

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Office of the General Counsel

FOR VENDOR

(Corporate Seal)

**TAYLOR PUBLISHING CO. DBA
BALFOUR**

ATTEST:

By Amn
Signature

, Secretary

Printed Name: Andriana Babikian

Title: Vendor Rep.

-or-
[Signature]
Witness

[Signature]
Witness

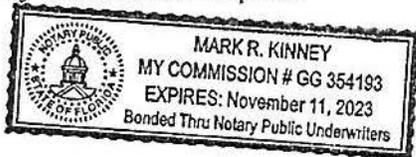
The Following Notarization is Required for Every Agreement Without Regard to Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.

STATE OF Florida

COUNTY OF Broward

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ (date) by Andriana Babikian (name of officer or agent, title of officer or agent) of Balfour publishing (name of corporation acknowledging), a Texas (state or place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me or has produced Florida Driver License (type of identification) as identification and who did/ did not first take an oath this 7 day of April, 2020.

My Commission Expires:



(SEAL)

[Signature]
Signature - Notary Public

MARK R. KINNEY
Notary's Printed Name

GG 354193
Notary's Commission No.

AGREEMENT

THIS AGREEMENT is made and entered into as of this 19th day of May, 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

HERFF JONES, LLC
(hereinafter referred to as "VENDOR"),
whose principal place of business is
4501 W. 62nd Street
Indianapolis, IN 46268

WHEREAS, SBBC issued a Request for Proposal identified as RFP 17-047N – "Yearbooks and Memory Books for All Schools" dated October 24, 2016 (hereinafter referred to as "RFP") and amended by Addendum Number One dated October 28, 2016, Addendum Number Two dated November 9, 2016 and Addendum Number Three dated November 21, 2016, which is incorporated herein by reference for the purpose of selecting a pool of qualified vendors from which school-allied groups might select a vendor to provide services to students enrolled at a specific district school; and

WHEREAS, VENDOR offered a proposal in response to the RFP (hereinafter referred to as "Proposal") and which is incorporated herein by reference, whereby VENDOR proposed to provide Yearbooks and Memory Books for all Schools; and

WHEREAS, VENDOR was awarded on March 21, 2017, with an initial contract term from March 22, 2017 and continuing through May 31, 2020; and

WHEREAS, Pursuant to the RFP, Section 2.4 – Contract Term, the parties hereby mutually agree to exercise the first of two one year renewals, to commence on June 1, 2020 and shall conclude on May 31, 2021; and

WHEREAS, Yearbooks and Memory Books are optional purchases (not mandatory) made directly from the school to VENDOR; 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 is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 - RECITALS

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

ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on June 1, 2020 and shall conclude on May 31, 2021. The term of the agreement may, by mutual agreement between SBBC and VENDOR, be extended for one additional one-year period and, if needed, 180 days beyond the expiration date of the renewal period. In addition, SBBC has the option to extend the contract beyond the initial contract period or beyond any renewal period for an additional one-hundred and eighty (180) days at a rate for services not to exceed 3%.

2.02 **Separate Contracts for Services.** The VENDOR acknowledges that this Agreement does not award or guarantee it to receive any amount of work, any specified volume of service or amount of revenue that VENDOR may derive from the provision of Yearbooks and Memory Books for All Schools or assure that the VENDOR will receive any contracts from school-allied groups for the provision of Yearbooks and Memory Books for All Schools. Rather, this Agreement is intended to establish the VENDOR as a qualified vendor with whom individual school-allied groups may enter into contracts for Yearbooks and Memory Books for All Schools upon, at a minimum, the terms and conditions described herein. VENDOR acknowledges that SBBC shall have no liability or obligation to make payment to VENDOR for any Yearbooks and Memory Books for All Schools provided to any district school students.

2.03 **Pricing for Services.** VENDOR agrees that the prices for services offered in its Proposal shall remain firm for the original term of this contract. The VENDOR may submit a request for price adjustment thirty (30) days prior to any renewal period of the Agreement. If a price adjustment is approved by SBBC's Director of Procurement and Warehousing Services for any renewal period, such adjusted price must remain in effect for the remainder of that renewal period. Price adjustment requests for any subsequent renewal or extension period shall not exceed three percent (3%). SBBC reserves the right to decline any contract renewal regardless of price considerations.

2.04. **Priority of Documents.** In the event of any conflict between the documents, the following priority of documents shall govern:

- First: This Agreement; then
- Second: Addendum Number Three dated November 21, 2016; then
- Third: Addendum Number Two dated November 9, 2016; then
- Fourth: Addendum Number One dated October 28, 2016; then
- Fifth: RFP 17-047N – “Yearbooks and Memory Books for All Schools” dated October 24, 2016; then
- Sixth: the Proposal submitted by VENDOR in response to RFP.

In case of any other doubt or difference of opinion, the decision of SBBC shall be final and binding upon both parties.

2.05 **SBBC Disclosure of Education Records.**

- (a) SBBC will provide VENDOR the education records listed in this section for the limited purpose of producing Yearbooks and Memory Books.
- (b) SBBC will provide VENDOR with the following education records:

- 1) Student's first and last name
- 2) Student picture
- 3) Grade level
- 4) Teacher name
- 5) Names of clubs and sporting activities

(c) FERPA and consent

- 1) SBBC shall obtain written consent from the parent or student age 18 or over prior to disclosing student information to VENDOR, for the limited purpose of producing Yearbooks and Memory Books for All Schools.
- 2) VENDOR is considered a "school official" with a "legitimate educational interest" to receive the education records listed in this section for the limited purpose of producing Yearbooks and Memory Books for All Schools. Pursuant to the Family Educational Rights and Privacy Act (FERPA), 34 CFR Part 99.31(a) (1), these records may be provided by SBBC without prior written consent of the parent or student age 18 or over for the limited purpose stated in this section. VENDOR may not use or disclose this information for any other purpose.

2.06 **VENDOR Confidentiality of Education Records.**

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) VENDOR shall, for itself, its officers, employees, agents, representatives, contractors or subcontractors, 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.

2.07 Inspection of VENDOR's Records by SBBC. VENDOR shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All VENDOR's applicable records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze and

verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify the applicable business records of VENDOR directly relating to this Agreement in order to verify the accuracy of invoices provided to SBBC. Such audit shall be no more than one (1) time per calendar year.

(a) Duration of Right to Inspect. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to VENDOR's records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to VENDOR pursuant to this Agreement.

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

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

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

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

(f) Inspection of Subcontractor's Records. If applicable, VENDOR shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by VENDOR to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payees' costs from amounts payable by SBBC to VENDOR pursuant to this Agreement and such excluded costs shall become the liability of VENDOR.

(g) Inspector General Audits. VENDOR shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.08 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: Chief, Office of School Performance and Accountability
The School Board of Broward County, Florida
610 NE 13 Avenue
Pompano Beach, FL 33060

To VENDOR: Herff Jones, LLC
4501 W. 62nd Street
Indianapolis, IN 46268

2.09 **Background Screening.** VENDOR 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 VENDOR or its personnel providing any services under the conditions described in the previous sentence. VENDOR shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to VENDOR and its personnel. The parties agree that the failure of VENDOR to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. VENDOR agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from VENDOR's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

2.10 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. VENDOR shall keep and maintain public records required by SBBC to perform the services required under this Agreement. Upon request from SBBC's custodian of public records, VENDOR shall provide SBBC with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. VENDOR shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if VENDOR does not transfer the public records to SBBC. Upon completion of the Agreement, VENDOR shall transfer, at no cost, to SBBC all public records in possession of VENDOR or keep and maintain public records required by SBBC to perform the services required under the Agreement. If VENDOR transfers all public records to SBBC upon completion of the Agreement, VENDOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If VENDOR keeps and maintains public records upon completion of the Agreement, VENDOR shall meet all applicable requirements for

retaining public records. All records stored electronically must be provided to SBBC, upon request from SBBC's custodian of public records, in a format that is compatible with SBBC's information technology systems.

IF A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 754-321-1900, RECORDREQUESTS@BROWARDSCHOOLS.COM, RISK MANAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SOUTHEAST THIRD AVENUE, FORT LAUDERDALE, FLORIDA 33301.

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

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.

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

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.

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.

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 Awardee 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.

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.
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

Cancellation of Insurance. Vendors are 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.

The School Board of Broward County, Florida 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.

2.12 Nondiscrimination.

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

(b) As part of such compliance, VENDOR 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 VENDOR retaliate against any person for reporting instances of such discrimination. VENDOR 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. VENDOR understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in SBBC Agreements, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

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

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

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.

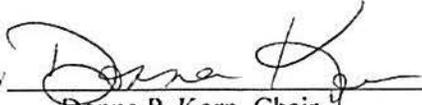
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FOR SBBC

(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 Eric
Abend
Reason: Herff Jones 2020
Date: 2020.04.06
14:44:52 -04'00'
Office of the General Counsel

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(Corporate Seal)

FOR VENDOR

ATTEST:

HERFF JONES, LLC

By [Signature]
Signature

Printed Name: Patricia Posey

Title: Corporate Representative

_____, Secretary

-or-
[Signature]
Witness

Vicky Aguirre
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 Dade

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 03/31/2020 (date) by M. Patricia Posey (name of officer or agent, title of officer or agent) of Herff Jones Yearbooks (name of corporation acknowledging), a Indiana (state or place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me or has produced FL Drivers Licence (type of identification) as identification and who did / did not first take an oath this 31 day of March, 2020.

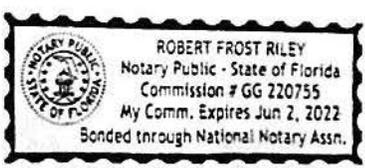
My Commission Expires:

[Signature]
Signature - Notary Public

Robert Riley
Notary's Printed Name

66 220755
Notary's Commission No.

(SEAL)



FIRST AMENDMENT TO AGREEMENT

19th THIS FIRST AMENDMENT TO AGREEMENT is made and entered into as of this day of May, 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

JOSTENS, INC.
(hereinafter referred to as "VENDOR"),
whose principal place of business is
7760 France Avenue South, Suite 400
Bloomington, MN 55435

WHEREAS, SBBC and VENDOR entered into an Agreement dated December 5, 2017 (hereafter "Agreement") for Request for Proposal 17-047-1N Yearbooks and Memory Books for All Schools hereafter "RFP", with an initial contract term from December 12, 2017, and continuing through May 31, 2020; and

WHEREAS, VENDOR is included in a pool of qualified vendors from which school-allied groups might select a vendor to provide such services to students enrolled at a specific district school; and

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

NOWHEREFORE, 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 **Term of Agreement.** Pursuant to Section 2.01 of the Agreement, the term of the Agreement is hereby extended from June 1, 2020 through May 31, 2021, unless terminated earlier pursuant to Section 3.06 of the Agreement.

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) First: This First Amendment to Agreement; then
- b) Second: The Agreement; then
- c) Third: RFP 17-047-1N – “Yearbooks and Memory Books for All Schools” dated August 21, 2017; then
- d) Fourth: the Proposal submitted by VENDOR in response to RFP.

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.

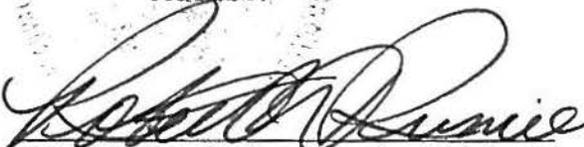
IN WITNESS WHEREOF, the Parties hereto have made and executed this First Amendment to Agreement on the date first above written.

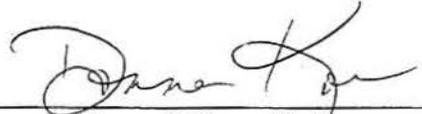
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FOR SBBC:

(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 Eric
Abend
Reason: Jostens 2020
Amend
Date: 2020.04.14 14:00:47
-04'00'
Office of the General Counsel

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

FOR VENDOR:

(Corporate Seal)

ATTEST:

, Secretary

-or-

Witness

Witness

JOSTENS, INC.

By [Signature]
Signature

Printed Name: Kelley Fernandez

Title: Sales Representative

STATE OF Florida

COUNTY OF Broward

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 12th day of April (date) by Kathleen Groth (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 has produced DRIVERS LICENSE (type of identification) as identification and who did/ did not first take an oath this 12th day of April, 2020.

My Commission Expires:

1/28/2024

[Signature]

Signature - Notary Public

Kathleen Groth

Notary's Printed Name

GG952380

Notary's Commission No.

(SEAL)



FIRST AMENDMENT TO AGREEMENT

19th THIS FIRST AMENDMENT TO AGREEMENT is made and entered into as of this day of *May*, 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

PLATTSCO, INC. DBA YEARBOOKLIFE
(hereinafter referred to as "VENDOR"),
whose principal place of business is
9900 Stirling Road, Suite 301
Cooper city, FL 33024

WHEREAS, SBBC and VENDOR entered into an Agreement dated December 5, 2017 (hereafter "Agreement") for Request for Proposal 17-047-1N Yearbooks and Memory Books for All Schools hereafter "RFP", with an initial contract term from December 12, 2017, and continuing through May 31, 2020; and

WHEREAS, VENDOR is included in a pool of qualified vendors from which school-allied groups might select a vendor to provide such services to students enrolled at a specific district school; 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:

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- b) Second: The Agreement; then
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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.

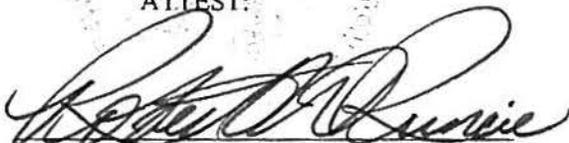
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FOR SBBC:

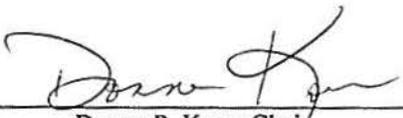
(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

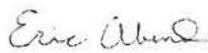
ATTEST:



Robert W. Runcie, Superintendent of Schools

By 
Donna P. Korn, Chair

Approved as to Form and Legal Content:

 Digitally signed by Eric
Abend
Reason: Platsco 2020
Date: 2020.04.06 14:36:02
-04'00'

Office of the General Counsel

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

FOR VENDOR:

(Corporate Seal)

**PLATTSCO, INC. DBA
YEARBOOKLIFE**

ATTEST:

By

Signature

Printed Name:

Title:

_____, Secretary

-or-

Witness

Witness

STATE OF Florida

COUNTY OF Bayard

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 4/1/2020 (date) by John S. Platts (name of officer or agent, title of officer or agent) of PlattSCO Inc (name of corporation acknowledging), a Florida (state or place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me or has produced FL Drivers License (type of identification) as identification and who did/ did not first take an oath this 1st day of April, 2020.

My Commission Expires:

12/06/2020

Christeen Hermina
Signature - Notary Public

Christeen Hermina
Notary's Printed Name

66453049
Notary's Commission No.

(SEAL)



AGREEMENT

THIS AGREEMENT is made and entered into as of this 19th day of May, 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

SHUTTERFLY LIFETOUCH, LLC,
successor in interest to **Lifetouch National School**
(hereinafter referred to as "VENDOR"),
whose principal place of business is
11000 Viking Drive
Eden Prairie, MN 55344

WHEREAS, SBBC issued a Request for Proposal identified as RFP FY20-151 – "School Pictures (Excludes Senior Portraits)" dated October 7, 2019 (hereinafter referred to as "RFP") and amended by Addendum Number One dated October 16, 2019 and Addendum Number Two dated October 24, 2019, which is incorporated herein by reference for the purpose of selecting a pool of qualified vendors from which school-allied groups might select a vendor to provide services to students enrolled at a specific district school; and

WHEREAS, LIFETOUCH NATIONAL SCHOOL STUDIOS, INC. changed its corporate name to LIFETOUCH NATIONAL SCHOOL STUDIOS, LLC on October 30, 2019, and was thereafter acquired by merger from SHUTTERFLY LIFETOUCH, LLC ("PHOTOGRAPHER") on December 26, 2019; and

WHEREAS, VENDOR offered a proposal in response to the RFP (hereinafter referred to as "Proposal") and which is incorporated herein by reference whereby VENDOR proposed to provide School Pictures (Excludes Senior Portraits) to school-allied groups; 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 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 shall

conclude on December 31, 2022. The term of the agreement may, by mutual agreement between SBBC and VENDOR, be extended for two additional one-year periods and, if needed, 180 days beyond the expiration date of the renewal period. SBBC's Procurement & Warehousing Services Department, will, if considering renewing, request a letter consenting to renewal from VENDOR, prior to the end of the term. Any renewal period shall be approved by an Amendment to this Agreement executed by both parties.

2.02 **Separate Contracts for Services.** The VENDOR acknowledges that this Agreement does not award or guarantee it to receive any amount of work, any specified volume of service or amount of revenue that VENDOR may derive from the provision of School Pictures (Excludes Senior Portraits) to school-allied groups or assure that the VENDOR will receive any contracts from school-allied groups for the provision of School Pictures (Excludes Senior Portraits). Rather, this Agreement is intended to establish the VENDOR as a qualified vendor with whom individual school-allied groups may enter into contracts for School Pictures (Excludes Senior Portraits) upon, at a minimum, the terms and conditions described herein. VENDOR acknowledges that SBBC shall have no liability or obligation to make payment to VENDOR for any School Pictures (Excludes Senior Portraits) provided to any district school students.

2.03 **Pricing for Services.** VENDOR agrees that the prices for services offered in its Proposal shall remain firm for the tenure of this agreement. The VENDOR may submit a request for price adjustment thirty (30) days prior to the first renewal date. If a price adjustment is approved by SBBC's Director of Procurement and Warehousing Services for any renewal period, such adjusted price must remain in effect for the remainder of that renewal period. Price adjustment requests shall not exceed three percent (3%) of the prior year pricing. SBBC reserves the right to decline any contract renewal regardless of price considerations.

2.04 **Priority of Documents.** In the event of any conflict between the documents, the following priority of documents shall govern:

- First: This Agreement; then
- Second: Addendum Number Two dated October 24, 2019; then
- Third: Addendum Number One dated October 16, 2019; then
- Fourth: RFP FY20-151 – "School Pictures (Excludes Senior Portraits)" dated October 7, 2019; then
- Fifth: The Proposal submitted by VENDOR in response to RFP.

2.05 **SBBC Disclosure of Education Records.**

(a) SBBC will provide VENDOR the education records listed in this section for the following purposes:

- 1) Distribution of student identification badges.
- 2) Facilitate the production and distribution of Yearbooks and Memory Books.

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

- 1) Student's first and last name (for yearbooks, memory books and identification badges)
- 2) Grade level (for yearbooks and memory books)
- 3) Student identification number (for identification badges)
- 4) Teacher Name (for yearbooks and memory books)

(c) FERPA and consent

- 1) SBBC shall obtain written consent from the parent or student age 18 or over prior to disclosing student information to VENDOR, for the limited purpose of producing School Pictures (Excludes Senior Portraits) for the production and distribution of Yearbooks and/or Memory Books.
- 2) VENDOR is considered a "school official" with a "legitimate educational interest" to receive the education records listed in this section for the limited purpose of distributing student identification badges. Pursuant to the Family Educational Rights and Privacy Act (FERPA), 34 CFR Part 99.31(a) (1), these records may be provided by SBBC without prior written consent of the parent or student age 18 or over for the limited purpose stated in this section. VENDOR may not use or disclose this information for any other purpose.

2.06 **VENDOR Confidentiality of Education Records.**

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) **VENDOR** shall, for itself, its officers, employees, agents, representatives, contractors or subcontractors, 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.

2.07 **Inspection of VENDOR Records by SBBC.** **VENDOR** shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All **VENDOR** applicable records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify the applicable business records of **VENDOR** directly relating to this Agreement in order to verify the accuracy of invoices provided to SBBC. Such audit shall be no more than one (1) time per calendar year.

(a) Duration of Right to Inspect. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to VENDOR records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to VENDOR pursuant to this Agreement.

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

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

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

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

(f) Inspection of Subcontractor's Records. If applicable, VENDOR shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by VENDOR to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payees' costs from amounts payable by SBBC to VENDOR pursuant to this Agreement and such excluded costs shall become the liability of VENDOR.

(g) Inspector General Audits. VENDOR shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.08 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, Office of School Performance and Accountability
The School Board of Broward County, Florida
610 NE 13 Avenue
Pompano Beach, FL 33060

To VENDOR: Glen Lewis
Shutterfly Lifetouch, LLC
11000 Viking Drive
Eden Prairie, MN 55344

2.09 **Background Screening.** VENDOR shall comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of VENDOR or its personnel providing any services under the conditions described in the previous sentence. VENDOR shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to VENDOR and its personnel. The parties agree that the failure of VENDOR to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. VENDOR agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from VENDOR's failure to comply with the requirements of this section or with Sections 1012.32 and 1012.465, Florida Statutes.

2.10 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. VENDOR shall keep and maintain public records required by SBBC to perform the services required under this Agreement. Upon request from SBBC's custodian of public records, VENDOR shall provide SBBC with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. VENDOR shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if VENDOR does not transfer the public records to SBBC. Upon completion of the Agreement, VENDOR shall transfer, at no cost, to SBBC all public records in possession of VENDOR or keep and maintain public records required by SBBC to perform the services required under the Agreement. If VENDOR transfers all public records to SBBC upon completion of the Agreement, VENDOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If VENDOR keeps and maintains public records upon completion of the Agreement, VENDOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to SBBC, upon request from SBBC's custodian of public records, in a format that is compatible with SBBC's information technology systems.

IF A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 754-321-1900,

2.11 **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, up to the limits of Section 768.28, Florida Statutes, for any damages resulting from said negligence.

(b) **By VENDOR's:** VENDOR agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by VENDOR, its agents, servants or employees; the equipment of VENDOR, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of VENDOR or the negligence of VENDOR's agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by VENDOR, SBBC or otherwise.

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

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

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

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

(d) **Acceptability of Insurance Carriers.** The insurance policies required under this Agreement shall be issued by companies qualified to do business in the State of Florida and having a rating of at least A- VI by AM Best or Aa3 by Moody's Investor Service.

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

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

(f) Required Conditions. Liability policies must include the following terms on the Certificate of Insurance:

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

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

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

2.13 Nondiscrimination.

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

(b) As part of such compliance, VENDOR 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 VENDOR retaliate against any person for reporting instances of such discrimination. VENDOR 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. VENDOR 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.

2.14 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.

2.15 **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.

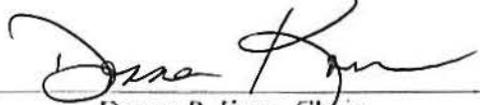
[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW]

FOR SBBC:

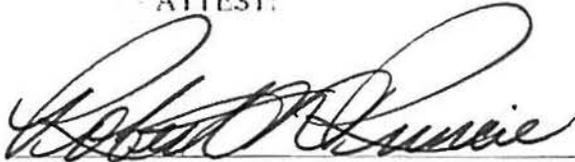
(Corporate Seal)



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 Eric
Abend
Reason: YMB 2020
Date: 2020.04.09
14:09:25 -04'00'

Office of the General Counsel

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

FOR VENDOR:

(Corporate Seal)

**SHUTTERFLY LIFETOUCH, LLC,
successor in interest to Lifetouch National
School Studios Inc.**

ATTEST:

By [Signature]
Name John Grant
Title V.P. School Sales

Secretary

[Signature]
Witness

[Signature]
Witness

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

STATE OF Minnesota

COUNTY OF Hennepin

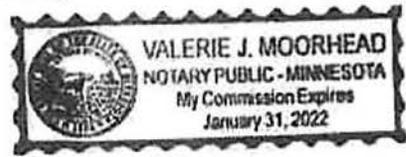
The foregoing instrument was acknowledged before me this 16th day of
March, 2020 by Johnny Grant of
Lifetouch, on behalf of the Shutterfly Lifetouch LLC
Name of Person Name of Corporation or Agency
corporation/agency. He/She is personally known to me or produced
in-person as identification and did/did not first take an oath.
Type of Identification

My Commission Expires: Click enter expiration date

[Signature]
Signature - Notary Public

Valerie Moorhead
Printed Name of Notary

(SEAL)



969915700037
Notary's Commission No.

AGREEMENT

THIS AGREEMENT is made and entered into as of this 19th day of May, 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

STRAWBRIDGE STUDIOS, INC.
(hereinafter referred to as "VENDOR"),
whose principal place of business is
3616 Hillsborough Road
Durham, NC 27705

WHEREAS, SBBC issued a Request for Proposal identified as RFP 17-047N – "Yearbooks and Memory Books for All Schools" dated October 24, 2016 (hereinafter referred to as "RFP") and amended by Addendum Number One dated October 28, 2016, Addendum Number Two dated November 9, 2016 and Addendum Number Three dated November 21, 2016, which is incorporated herein by reference for the purpose of selecting a pool of qualified vendors from which school-allied groups might select a vendor to provide services to students enrolled at a specific district school; and

WHEREAS, VENDOR offered a proposal in response to the RFP (hereinafter referred to as "Proposal") and which is incorporated herein by reference whereby VENDOR proposed to provide Yearbooks and Memory Books for all Schools; and

WHEREAS, VENDOR was awarded on March 21, 2017, with an initial contract term from March 22, 2017 and continuing through May 31, 2020; and

WHEREAS, Pursuant to the RFP, Section 2.4 – Contract Term, the parties hereby mutually agree to exercise the first of two one year renewals, to commence on June 1, 2020 and shall conclude on May 31, 2021; and

WHEREAS, Yearbooks and Memory Books are optional purchases (not mandatory) made directly from the school to VENDOR; 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 is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 - RECITALS

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

ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on June 1, 2020 and shall conclude on May 31, 2021. The term of the agreement may, by mutual agreement between SBBC and VENDOR, be extended for one additional one-year period and, if needed, 180 days beyond the expiration date of the renewal period. In addition, SBBC has the option to extend the contract beyond the initial contract period or beyond any renewal period for an additional one-hundred and eighty (180) days at a rate for services not to exceed 3%.

2.02 **Separate Contracts for Services.** The VENDOR acknowledges that this Agreement does not award or guarantee it to receive any amount of work, any specified volume of service or amount of revenue that VENDOR may derive from the provision of Yearbooks and Memory Books for All Schools or assure that the VENDOR will receive any contracts from school-allied groups for the provision of Yearbooks and Memory Books for All Schools. Rather, this Agreement is intended to establish the VENDOR as a qualified vendor with whom individual school-allied groups may enter into contracts for Yearbooks and Memory Books for All Schools upon, at a minimum, the terms and conditions described herein. VENDOR acknowledges that SBBC shall have no liability or obligation to make payment to VENDOR for any Yearbooks and Memory Books for All Schools provided to any district school students.

2.03 **Pricing for Services.** VENDOR agrees that the prices for services offered in its Proposal shall remain firm for the original term of this contract. The VENDOR may submit a request for price adjustment thirty (30) days prior to any renewal period of the Agreement. If a price adjustment is approved by SBBC's Director of Procurement and Warehousing Services for any renewal period, such adjusted price must remain in effect for the remainder of that renewal period. Price adjustment requests for any subsequent renewal or extension period shall not exceed three percent (3%). SBBC reserves the right to decline any contract renewal regardless of price considerations.

2.04. **Priority of Documents.** In the event of any conflict between the documents, the following priority of documents shall govern:

- First: This Agreement; then
- Second: Addendum Number Three dated November 21, 2016; then
- Third: Addendum Number Two dated November 9, 2016; then
- Fourth: Addendum Number One dated October 28, 2016; then
- Fifth: RFP 17-047N – “Yearbooks and Memory Books for All Schools” dated October 24, 2016; then
- Sixth: the Proposal submitted by VENDOR in response to RFP.

In case of any other doubt or difference of opinion, the decision of SBBC shall be final and binding upon both parties.

2.05 **SBBC Disclosure of Education Records.**

- (a) SBBC will provide VENDOR the education records listed in this section for the limited purpose of producing Yearbooks and Memory Books.
- (b) SBBC will provide VENDOR with the following education records:

- 1) Student's first and last name
- 2) Student picture
- 3) Grade level
- 4) Teacher name
- 5) Names of clubs and sporting activities

(c) FERPA and consent

- 1) SBBC shall obtain written consent from the parent or student age 18 or over prior to disclosing student information to VENDOR, for the limited purpose of producing Yearbooks and Memory Books for All Schools.
- 2) VENDOR is considered a "school official" with a "legitimate educational interest" to receive the education records listed in this section for the limited purpose of producing Yearbooks and Memory Books for All Schools. Pursuant to the Family Educational Rights and Privacy Act (FERPA), 34 CFR Part 99.31(a) (1), these records may be provided by SBBC without prior written consent of the parent or student age 18 or over for the limited purpose stated in this section. VENDOR may not use or disclose this information for any other purpose.

2.06 VENDOR Confidentiality of Education Records.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) VENDOR shall, for itself, its officers, employees, agents, representatives, contractors or subcontractors, 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.

2.07 Inspection of VENDOR's Records by SBBC. VENDOR shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All VENDOR's applicable records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze and

verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify the applicable business records of VENDOR directly relating to this Agreement in order to verify the accuracy of invoices provided to SBBC. Such audit shall be no more than one (1) time per calendar year.

(a) Duration of Right to Inspect. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to VENDOR's records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to VENDOR pursuant to this Agreement.

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

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

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

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

(f) Inspection of Subcontractor's Records. If applicable, VENDOR shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by VENDOR to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payees' costs from amounts payable by SBBC to VENDOR pursuant to this Agreement and such excluded costs shall become the liability of VENDOR.

(g) Inspector General Audits. VENDOR shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.08 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: Chief, Office of School Performance and Accountability
The School Board of Broward County, Florida
610 NE 13 Avenue
Pompano Beach, FL 33060

To VENDOR: Strawbridge Studios, Inc.
3616 Hillsborough Road
Durham, NC 27705

2.09 **Background Screening.** VENDOR 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 VENDOR or its personnel providing any services under the conditions described in the previous sentence. VENDOR shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to VENDOR and its personnel. The parties agree that the failure of VENDOR to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. VENDOR agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from VENDOR's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

2.10 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. VENDOR shall keep and maintain public records required by SBBC to perform the services required under this Agreement. Upon request from SBBC's custodian of public records, VENDOR shall provide SBBC with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. VENDOR shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if VENDOR does not transfer the public records to SBBC. Upon completion of the Agreement, VENDOR shall transfer, at no cost, to SBBC all public records in possession of VENDOR or keep and maintain public records required by SBBC to perform the services required under the Agreement. If VENDOR transfers all public records to SBBC upon completion of the Agreement, VENDOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If VENDOR keeps and maintains public records upon completion of the Agreement, VENDOR shall meet all applicable requirements for

retaining public records. All records stored electronically must be provided to SBBC, upon request from SBBC's custodian of public records, in a format that is compatible with SBBC's information technology systems.

IF A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 754-321-1900, RECORDREQUESTS@BROWARDSCHOOLS.COM, RISK MANAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SOUTHEAST THIRD AVENUE, FORT LAUDERDALE, FLORIDA 33301.

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

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.

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

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.

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.

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 Awardee 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.

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.
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

Cancellation of Insurance. Vendors are 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.

The School Board of Broward County, Florida 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.

2.12 Nondiscrimination.

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

(b) As part of such compliance, VENDOR 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 VENDOR retaliate against any person for reporting instances of such discrimination. VENDOR 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. VENDOR understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in SBBC Agreements, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

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

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

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.

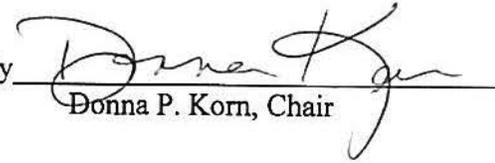
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FOR SBBC

(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 Eric
Abend
Reason: Strawbridge 2020
Date: 2020.04.15 10:45:24
-04'00'

Office of the General Counsel

FOR VENDOR

(Corporate Seal)

STRAWBRIDGE STUDIOS, INC.

ATTEST:

By Ken S.S.S.
Signature

, Secretary

Printed Name: Ken Strawbridge

Title: President

-or-

Muel Strout
Witness

Neal Lutz
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 NC

COUNTY OF Durham

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 4/14/2020 (date) by Ken Strawbridge (name of officer or agent, title of officer or agent) of Strawbridge Studios, Inc. (name of corporation acknowledging), a NC (state or place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me or has produced _____ (type of identification) as identification and who did/ did not first take an oath this 14 day of April, 2020.

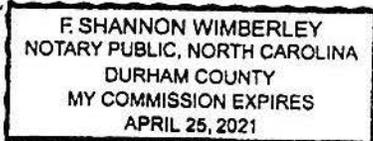
My Commission Expires: 4/25/21

F. Shannon Wimberley
Signature - Notary Public

F. Shannon Wimberley
Notary's Printed Name

200611700067
Notary's Commission No.

(SEAL)



AGREEMENT

THIS AGREEMENT is made and entered into as of this 19th day of May, 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

WALSWORTH PUBLISHING COMPANY, INC.
(hereinafter referred to as "VENDOR"),
whose principal place of business is
306 N. Kansas Avenue
Marceline, MO 64658

WHEREAS, SBBC issued a Request for Proposal identified as RFP 17-047N – "Yearbooks and Memory Books for All Schools" dated October 24, 2016 (hereinafter referred to as "RFP") and amended by Addendum Number One dated October 28, 2016, Addendum Number Two dated November 9, 2016 and Addendum Number Three dated November 21, 2016, which is incorporated herein by reference for the purpose of selecting a pool of qualified vendors from which school-allied groups might select a vendor to provide services to students enrolled at a specific district school; and

WHEREAS, VENDOR offered a proposal in response to the RFP (hereinafter referred to as "Proposal") and which is incorporated herein by reference whereby VENDOR proposed to provide Yearbooks and Memory Books for all Schools; and

WHEREAS, VENDOR was awarded on March 21, 2017, with an initial contract term from March 22, 2017 and continuing through May 31, 2020; and

WHEREAS, Pursuant to the RFP, Section 2.4 – Contract Term, the parties hereby mutually agree to exercise the first of two one year renewals, to commence on June 1, 2020 and shall conclude on May 31, 2021; and

WHEREAS, Yearbooks and Memory Books are optional purchases (not mandatory) made directly from the school to VENDOR; 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 is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 - RECITALS

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

ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on June 1, 2020 and shall conclude on May 31, 2021. The term of the agreement may, by mutual agreement between SBBC and VENDOR, be extended for one additional one-year period and, if needed, 180 days beyond the expiration date of the renewal period. In addition, SBBC has the option to extend the contract beyond the initial contract period or beyond any renewal period for an additional one-hundred and eighty (180) days at a rate for services not to exceed 3%.

2.02 **Separate Contracts for Services.** The VENDOR acknowledges that this Agreement does not award or guarantee it to receive any amount of work, any specified volume of service or amount of revenue that VENDOR may derive from the provision of Yearbooks and Memory Books for All Schools or assure that the VENDOR will receive any contracts from school-allied groups for the provision of Yearbooks and Memory Books for All Schools. Rather, this Agreement is intended to establish the VENDOR as a qualified vendor with whom individual school-allied groups may enter into contracts for Yearbooks and Memory Books for All Schools upon, at a minimum, the terms and conditions described herein. VENDOR acknowledges that SBBC shall have no liability or obligation to make payment to VENDOR for any Yearbooks and Memory Books for All Schools provided to any district school students.

2.03 **Pricing for Services.** VENDOR agrees that the prices for services offered in its Proposal shall remain firm for the original term of this contract. The VENDOR may submit a request for price adjustment thirty (30) days prior to any renewal period of the Agreement. If a price adjustment is approved by SBBC's Director of Procurement and Warehousing Services for any renewal period, such adjusted price must remain in effect for the remainder of that renewal period. Price adjustment requests for any subsequent renewal or extension period shall not exceed three percent (3%). SBBC reserves the right to decline any contract renewal regardless of price considerations.

2.04. **Priority of Documents.** In the event of any conflict between the documents, the following priority of documents shall govern:

- First: This Agreement; then
- Second: Addendum Number Three dated November 21, 2016; then
- Third: Addendum Number Two dated November 9, 2016; then
- Fourth: Addendum Number One dated October 28, 2016; then
- Fifth: RFP 17-047 – “Yearbooks and Memory Books for All Schools” dated October 24, 2016; then
- Sixth: the Proposal submitted by VENDOR in response to RFP.

In case of any other doubt or difference of opinion, the decision of SBBC shall be final and binding upon both parties.

2.05 **SBBC Disclosure of Education Records.**

- (a) SBBC will provide VENDOR the education records listed in this section for the limited purpose of producing Yearbooks and Memory Books.
- (b) SBBC will provide VENDOR with the following education records:

- 1) Student's first and last name
- 2) Student picture
- 3) Grade level
- 4) Teacher name
- 5) Names of clubs and sporting activities

(c) FERPA and consent

- 1) SBBC shall obtain written consent from the parent or student age 18 or over prior to disclosing student information to VENDOR, for the limited purpose of producing Yearbooks and Memory Books for All Schools.
- 2) VENDOR is considered a "school official" with a "legitimate educational interest" to receive the education records listed in this section for the limited purpose of producing Yearbooks and Memory Books for All Schools. Pursuant to the Family Educational Rights and Privacy Act (FERPA), 34 CFR Part 99.31(a) (1), these records may be provided by SBBC without prior written consent of the parent or student age 18 or over for the limited purpose stated in this section. VENDOR may not use or disclose this information for any other purpose.

2.06 **VENDOR Confidentiality of Education Records.**

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) VENDOR shall, for itself, its officers, employees, agents, representatives, contractors or subcontractors, 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.

2.07 Inspection of VENDOR's Records by SBBC. VENDOR shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All VENDOR's applicable records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze and

verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify the applicable business records of VENDOR directly relating to this Agreement in order to verify the accuracy of invoices provided to SBBC. Such audit shall be no more than one (1) time per calendar year.

(a) Duration of Right to Inspect. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to VENDOR's records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to VENDOR pursuant to this Agreement.

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

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

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

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

(f) Inspection of Subcontractor's Records. If applicable, VENDOR shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by VENDOR to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payees' costs from amounts payable by SBBC to VENDOR pursuant to this Agreement and such excluded costs shall become the liability of VENDOR.

(g) Inspector General Audits. VENDOR shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.08 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: Chief, Office of School Performance and Accountability
The School Board of Broward County, Florida
610 NE 13 Avenue
Pompano Beach, FL 33060

To VENDOR: Walsworth Publishing Company, Inc.
306 N. Kansas Avenue
Marceline, MO 64658

2.09 **Background Screening.** VENDOR 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 VENDOR or its personnel providing any services under the conditions described in the previous sentence. VENDOR shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to VENDOR and its personnel. The parties agree that the failure of VENDOR to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. VENDOR agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from VENDOR's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

2.10 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. VENDOR shall keep and maintain public records required by SBBC to perform the services required under this Agreement. Upon request from SBBC's custodian of public records, VENDOR shall provide SBBC with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. VENDOR shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if VENDOR does not transfer the public records to SBBC. Upon completion of the Agreement, VENDOR shall transfer, at no cost, to SBBC all public records in possession of VENDOR or keep and maintain public records required by SBBC to perform the services required under the Agreement. If VENDOR transfers all public records to SBBC upon completion of the Agreement, VENDOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If VENDOR keeps and maintains public records upon completion of the Agreement, VENDOR shall meet all applicable requirements for

retaining public records. All records stored electronically must be provided to SBBC, upon request from SBBC's custodian of public records, in a format that is compatible with SBBC's information technology systems.

IF A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 754-321-1900, RECORDREQUESTS@BROWARDSCHOOLS.COM, RISK MANAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SOUTHEAST THIRD AVENUE, FORT LAUDERDALE, FLORIDA 33301.

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

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.

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

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.

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.

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 Awardee 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.

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.
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

Cancellation of Insurance. Vendors are 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.

The School Board of Broward County, Florida 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.

2.12 Nondiscrimination.

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

(b) As part of such compliance, VENDOR 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 VENDOR retaliate against any person for reporting instances of such discrimination. VENDOR 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. VENDOR understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in SBBC Agreements, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

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

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

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.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

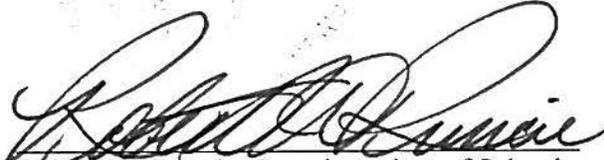
FOR SBBC

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By 
Donna P. Korn, Chair


Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

Digitally signed by Eric
Abend



Reason: WPC 2020
Date: 2020.04.14

14:08:58 -04'00'

Office of the General Counsel

FOR VENDOR

(Corporate Seal)

**WALSWORTH PUBLISHING
COMPANY, INC.**

ATTEST:

Robert L. Perkins
Walsworth Publishing, Secretary

-or-

By Robert L. Perkins
Signature

Printed Name: Robert L. Perkins

Title: Vice President, Human Resources

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 Missouri

COUNTY OF Linn

The foregoing instrument was acknowledged before me by means of physical presence
or online notarization, this 14 April 2020 (date) by
Robert Perkins (name of officer or agent, title of officer or agent) of
Walsworth Publishing Co (name of corporation acknowledging), a
Missouri (state or place of incorporation) corporation, on behalf of the
corporation. He/she is personally known to me or has produced
Drivers license (type of identification) as identification and who did/ did
not first take an oath this 14 day of April, 2020.

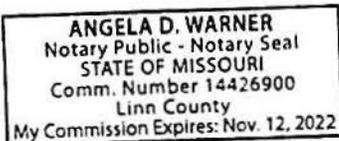
My Commission Expires:

Nov. 12, 2022

Angela D. Warner
Signature - Notary Public

Angela D. Warner
Notary's Printed Name

(SEAL)



14426900
Notary's Commission No.



AGENDA REQUEST FORM

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

MEETING DATE	Mar 21 2017 10:35AM - Regular School Board Meeting	Special Order Request	<input type="radio"/> Yes <input checked="" type="radio"/> No
ITEM No.:	AGENDA ITEM	Time	
E-5.	ITEMS		
	CATEGORY		
	E. OFFICE OF STRATEGY & OPERATIONS		
	DEPARTMENT		
	Procurement & Warehousing Services		
TITLE:			

Recommendation for Award - 17-047N - Yearbooks and Memory Books for All Schools

REQUESTED ACTION:
 Approve the recommendation to award the above Request for Proposal (RFP). Contract Term: March 22, 2017, through May 31, 2020, 3 Years, 2 Months; User Department: Office of School Performance & Accountability; Award Amount: None; Awarded Vendor(s): Taylor Publishing Co., d/b/a Balfour; Walsworth Publishing Co. Inc.; Herff Jones LLC; Lifetouch National School Studios Inc.; Strawbridge Studios Inc.; Minority/Women Business Enterprise Vendor(s): None

SUMMARY EXPLANATION AND BACKGROUND:
 The School Board of Broward County, Florida, received eight (8) proposals in response to RFP 17-047N. This RFP will be utilized by the Office of School Performance & Accountability to provide a pool of qualified vendors. Each awardee will provide a local representative to assist the schools in producing high-quality books encapsulating the personal experiences, highlights, and trademarks of each school.
 A copy of the RFP document is available online at:
http://www.broward.k12.fl.us/supply/agenda/17-047N_Yearbook_MemoryBooks_RFPwithAddendums.pdf

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

FINANCIAL IMPACT:
 There is no financial impact to the District, as payments are made by parents/guardians.

EXHIBITS: (List)
 (1) Executive Summary (2) Recommendation Tabulation (3) Memory Book Survey (4) Yearbook Survey

BOARD ACTION: <div style="font-size: 2em; font-weight: bold; margin: 5px 0;">APPROVED</div> <small>(For Official School Board Records Office Only)</small>	SOURCE OF ADDITIONAL INFORMATION:				
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">Name: Alan Strauss</td> <td style="width: 30%;">Phone: 754-321-3810</td> </tr> <tr> <td>Name: Mary C. Coker</td> <td>Phone: 754-321-0501</td> </tr> </table>	Name: Alan Strauss	Phone: 754-321-3810	Name: Mary C. Coker	Phone: 754-321-0501
Name: Alan Strauss	Phone: 754-321-3810				
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
 3/14/2017, 11:57:59 AM

 Electronic Signature

By:
 School Board Chair

EXECUTIVE SUMMARY

Recommendation for Award 17-047N – Yearbooks and Memory Books for All Schools

The Request for Proposal (RFP) 17-047N - Yearbooks and Memory Books for All Schools, will be used by the Office of School Performance & Accountability (OSPA) to provide a pool of qualified vendors for schools. Each awardee will provide a local representative to assist the schools in producing high-quality books encapsulating the personal experiences, highlights, and trademarks of each school. These books are a symbol of pride that captures each moment in an artistic fashion. All vendors recommended for award have serviced the District for many years and have developed a relationship with our schools. Also, they are aware of the quality of service expected from the District.

This request is to approve the recommendation to award RFP 17-047N - Yearbooks and Memory Books for All Schools for approximately three (3) years, from March 22, 2017, through May 31, 2020, with an option for two (2) additional one-year periods. The funding for the services procured under this RFP will come from parents/guardians and students with no financial impact to the District. However, it should be noted that all payments are collected and organized by each school.

The solicitation for this RFP ran from October 24, 2016, through November 30, 2016. One hundred eighty-five (185) vendors were notified, sixteen (16) vendors downloaded the RFP and eight (8) proposals were received prior to bid opening. The evaluation committee meeting was held on December 6, 2016, consisting of four (4) members; and in accordance with the requirements of the RFP, we are recommending the five (5) proposers listed below for award. A minimum score of seventy (70) points or higher is required to be considered for award, and these proposers have met or exceeded that threshold.

- ❖ Taylor Publishing Co., d/b/a Balfour
- ❖ Walsworth Publishing Co., Inc.
- ❖ Herff Jones LLC
- ❖ Lifetouch National School Studios Inc.
- ❖ Strawbridge Studios, Inc.

The proposers below did not meet our requirements as noted:

- ❖ Rekcute Photographic Inc., d/b/a Leonard's – evaluated by the committee but did not receive the minimum points.
- ❖ Jostens, Inc. – see details on bid rejection sheet attached.
- ❖ Yearbooklife – see details on bid rejection sheet attached.

Previous solicitations issued were RFP 11-042V and 11-043V; contract started in June 2011 and expired June 30, 2016. Based on the similarity in the scope and requirements of the RFPs, we felt it was most beneficial to combine them in an effort to improve our processes. All of the proposers currently being recommended were also awarded under the old contracts.

Survey results for the previous contract are included.



AGENDA REQUEST FORM

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

ITEM No.:

E-3.

MEETING DATE	2017-12-05 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
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Time	
------	--

Open Agenda	<input type="radio"/> Yes	<input checked="" type="radio"/> No
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TITLE:

Recommendation to Approve Agreement for Additional Vendors - 17-047-1N - Yearbook and Memory Books for All Schools

REQUESTED ACTION:

Approve the recommendation to award two (2) additional vendors. Contract Term: December 12, 2017 through May 31, 2020, 2 Years; 5 Months; User Department: Office of School Performance & Accountability; Award Amount: None; Awarded Vendor(s): Jostens, Inc. and Plattsco, Inc. d/b/a Yearbooklife; Small/Minority/Women Business Enterprise Vendor(s): None.

SUMMARY EXPLANATION AND BACKGROUND:

This request is to approve agreements based on the re-release of RFP 17-047N on August 21, 2017, to increase the pool of qualified vendors available for use throughout the District. The initial RFP was released on October 24, 2016, with the award of five (5) vendors. The addition of these vendors will provide greater variety and continuity for our schools.

A copy of the bid document is available online at: http://www.broward.k12.fl.us/supply/agenda/17-047N_YearbooksandMemoryBooks.pdf

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:

There is no financial impact to the District.

EXHIBITS: (List)

(1) Executive Summary (2) Agreements- 2 (3) Approved ARF 3-21-2017 RSBM E-5 (4) Recommendation Tabulation 3-21-2017 (5) Recommendation Tabulation 12-5-2017

BOARD ACTION:

APPROVED

(For Official School Board Records Office Only)

SOURCE OF ADDITIONAL INFORMATION:

Name: Alan Strauss

Phone: 754-321-3810

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

11/28/2017, 2:59:22 PM

Approved In Open Board Meeting On:

DEC 05 2017

Mona Ruppert
School Board Chair

Electronic Signature

Form #4189 Revised 08/04/2017

RWR/ MLW/MCC/AS:kg

EXECUTIVE SUMMARY

Recommendation to Approve Agreement 17-047-1N – Yearbooks and Memory Books for All Schools

Request for Proposal (RFP) 17-047-1N - Yearbooks and Memory Books for All Schools, was re-released on August 21, 2017, to increase the pool of qualified vendors available for use under this RFP. The Office of School Performance & Accountability utilizes this RFP, to provide a pre-approved list of vendors servicing the District. Item E-5 was presented to the School Board on March 21, 2017, for the approval of five (5) vendors based on the original release of the RFP on October 24, 2016.

This request is to approve the agreements with Jostens, Inc. and Plattsco, Inc. d/b/a Yearbooklife for two (2) years and five (5) months, from December 7, 2017 through May 31, 2020, with an option for two (2) additional one (1) year periods. The funding for the services procured under this RFP will come from parents/guardians and students with no financial impact to the District. However, it should be noted that all payments are collected and organized by each school.

The solicitation for this RFP ran from August 21, 2017 through September 22, 2017. Three hundred and sixty-five (365) vendors were notified, eight (8) vendors downloaded the RFP and two (2) proposals were received prior to bid opening. The evaluation committee meeting was held on October 3, 2017, consisting of five (5) members. The addition of the two (2) vendors being recommended will increase the qualified pool of vendors to seven (7).

- Herff Jones, LLC
- Jostens, Inc.
- Lifetouch National School Studios Inc.
- Plattsco, Inc. d/b/a Yearbooklife
- Strawbridge Studios, Inc.
- Taylor Publishing Co., d/b/a Balfour
- Walsworth Publishing Company, Inc.

Jostens, Inc. and Plattsco, Inc. d/b/a Yearbooklife have serviced the District for many years and the decision to re-release the RFP is primarily based on the request from schools. Procurement & Warehousing Services believes the addition of these vendors will provide greater variety and continuity for the District's schools.

AGREEMENT

THIS AGREEMENT is made and entered into as of this 5th day of December, 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

JOSTENS, INC.
(hereinafter referred to as "VENDOR"),
whose principal place of business is
3601 Minnesota Drive, Suite 400
Minneapolis, MN 55435

WHEREAS, SBBC issued a Request for Proposal identified as RFP 17-047-1N – "Yearbooks and Memory Books for All Schools" dated August 21, 2017 (hereinafter referred to as "RFP") which is incorporated herein by reference for the purpose of selecting a pool of qualified vendors from which school-allied groups might select a vendor to provide services to students enrolled at a specific district school; and

WHEREAS, VENDOR offered a proposal in response to the RFP (hereinafter referred to as "Proposal") and which is incorporated herein by reference whereby VENDOR proposed to provide Yearbooks **only** for All Schools; and

WHEREAS, SBBC desires to award and VENDOR desires to accept a contract that establishes standardized terms and conditions for Yearbooks for All Schools that VENDOR will offer to any school-allied groups desiring to contract with VENDOR for the provision of such services to students enrolled in one of SBBC's district schools; and

WHEREAS, Yearbooks are optional purchases (not mandatory) made directly from the school to VENDOR; and

WHEREAS, SBBC shall obtain written consent from the parent or student age 18 or over prior to disclosing student information to VENDOR, for the limited purpose of producing Yearbooks for All Schools. The information SBBC will release to VENDOR for this purpose: student's first and last name, student picture, grade level, clubs, sporting activities and teacher name; 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 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 3.06 of this Agreement, the term of this Agreement shall commence upon the approval of this Agreement by SBBC and conclude on May 31, 2020. The term of the Agreement may be extended by two (2) additional one-year periods. In addition, SBBC has the option to extend the contract beyond the initial contract period or beyond any renewal period for an additional one-hundred and eighty (180) days at a rate for services not to exceed 3%.

2.02 **Separate Contracts for Services.** The VENDOR acknowledges that this Agreement does not award or guarantee it to receive any amount of work, any specified volume of service or amount of revenue that VENDOR may derive from the provision of Yearbooks for All Schools or assure that the VENDOR will receive any contracts from school-allied groups for the provision of Yearbooks for All Schools. Rather, this Agreement is intended to establish the VENDOR as a qualified vendor with whom individual school-allied groups may enter into contracts for Yearbooks for All Schools upon, at a minimum, the terms and conditions described herein. VENDOR acknowledges that SBBC shall have no liability or obligation to make payment to VENDOR for any Yearbooks for All Schools provided to any district school students.

2.03 **Pricing for Services.** VENDOR agrees that the prices for services offered in its Proposal shall remain firm for the original term of this contract, see **Attachment A**. The VENDOR may submit a request for price adjustment thirty (30) days prior to any renewal period of the Agreement. If a price adjustment is approved by SBBC's Director of Procurement and Warehousing Services for any renewal period, such adjusted price must remain in effect for the remainder of that renewal period. Price adjustment requests for any subsequent renewal or extension period shall not exceed three percent (3%). SBBC reserves the right to decline any contract renewal regardless of price considerations.

2.04. **Priority of Documents.** In the event of any conflict between the documents, the following priority of documents shall govern:

- First: This Agreement; then
- Second: RFP 17-047-1N – “Yearbooks and Memory Books for All Schools” dated August 21, 2017; then
- Third: the Proposal submitted by VENDOR in response to RFP.

In case of any other doubt or difference of opinion, the decision of SBBC shall be final and binding upon both parties.

2.05 **Inspection of VENDOR'S Records by SBBC.** VENDOR shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All VENDOR's 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 VENDOR or any of VENDOR's payees pursuant to this Agreement. VENDOR'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. VENDOR'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) VENDOR's Records Defined. For the purposes of this Agreement, the term "VENDOR's Records" shall include, without limitation, any documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement or the *Yearbooks for All Schools* provided by VENDOR to any district school student or school-allied group.

(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 VENDOR's Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to VENDOR pursuant to this Agreement.

(c) Notice of Inspection. SBBC's agent or its authorized representative shall provide VENDOR 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 VENDOR's facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(e) Failure to Permit Inspection. Failure by VENDOR to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this Section shall constitute grounds for termination of this Agreement by SBBC for cause.

2.06 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: Chief, Office of School Performance and Accountability
The School Board of Broward County, Florida
610 NE 13 Avenue
Pompano Beach, FL 33060

To VENDOR: James Simpson, CFO
Jostens, Inc.
3601 Minnesota Drive, Suite 400,
Minneapolis, MN 55435

2.07 Background Screening. VENDOR 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 VENDOR or its personnel providing any services under the conditions described in the previous sentence. VENDOR shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to VENDOR and its personnel. The parties agree that the failure of VENDOR to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. VENDOR agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from VENDOR's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

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

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.

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

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.

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.

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 Awardee 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.

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.
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

Cancellation of Insurance. Vendors are 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.

The School Board of Broward County, Florida 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.

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, and 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 **M/WBE Commitment.** Throughout the term of the Agreement, VENDOR shall take commercially reasonable steps and use commercially reasonable resources to identify SBBC-certified M/WBE VENDORS who may be engaged to fulfill various aspects of the Agreement, including, for instance, without limitation, M/WBE VENDORS to provide office supplies, travel, printing, janitorial supplies/services, consulting services, trade services, installation and repair services, medical supplies, where feasible. VENDOR agrees to provide monthly reports and to conduct quarterly meetings with SBBC to discuss progress in meeting the SBBC's objectives regarding M/WBE participation, including dollars spent on M/WBE VENDORS for the quarter; and to continue to assess throughout the term of the Agreement new possibilities for M/WBE VENDOR participation suggested by SBBC. If at any time during the term the parties agree that it is reasonably feasible to include a specific dollar figure for M/WBE participation, the Agreement shall be amended to include the dollar participation objective.

3.06 **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.

3.07 **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.

3.08 **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.

3.09 **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.

3.10 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. VENDOR shall keep and maintain public records required by SBBC to perform the services required under this Agreement. Upon request from SBBC's custodian of public records, VENDOR shall provide SBBC with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. VENDOR shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if VENDOR does not transfer the public records to SBBC. Upon completion of the Agreement, VENDOR shall transfer, at no cost, to SBBC all public records in possession of VENDOR or keep and maintain public records required by SBBC to perform the services required under the Agreement. If VENDOR transfer all public records to SBBC upon completion of the Agreement, VENDOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If VENDOR keeps and maintains public records upon completion of the Agreement, Insert Name 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, REQUEL.BELL@BROWARDSCHOOLS.COM, RISK MANAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SOUTHEAST THIRD AVENUE, FORT LAUDERDALE, FLORIDA 33301.

3.11 **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.

3.12 **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.

3.13 **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.

3.14 **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 State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

3.15 **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.

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

3.17 **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.

3.18 **Incorporation by Reference.** Attachment A, attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

3.19 **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.

3.20 **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.

3.21 **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.

3.22 **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.

3.23 **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.

3.24 **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.

3.25 **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.

3.26 **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.

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

A. By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

B. By **VENDOR**: **VENDOR** agrees to indemnify, hold harmless and defend **SBBC**, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which **SBBC**, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by **VENDOR**, its agents, servants or employees; the equipment of **VENDOR**, its agents, servants or employees while such equipment is on premises owned or controlled by **SBBC**; or the negligence of **VENDOR** or the negligence of **VENDOR'S** agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including **SBBC's** property, and injury or death of any person whether employed by **VENDOR**, **SBBC** or otherwise.

3.28 **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.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK



(Corporate Seal)

ATTEST.

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

FOR SBBC

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By *Nora Rupert*
Nora Rupert, Chair

Approved as to Form and Legal Content:

Janette M. Smith
Digitally signed by Janette M. Smith
Date: 2017.11.17 13:15:00 -05'00'

Office of the General Counsel

FOR VENDOR

(Corporate Seal)

JOSTENS, INC.

ATTEST:

By *James Simpson*
James Simpson, CFO

, Secretary

Joely Nelson
-of
Witness

[Signature]
Witness

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

STATE OF Minnesota
COUNTY OF Hennepin

The foregoing instrument was acknowledged before me this 17th day of November, 2017 by Jim Simpson of Jostens on behalf of the corporation/agency.

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

My Commission Expires:



Joan Marie Paquette
Signature - Notary Public

JOAN MARIE PAQUETTE
Printed Name of Notary

31059637
Notary's Commission No.

Vignola\Allwork-USE\contracts\develop\1617year\170421\lifetouch

ATTACHMENT A

Prices shall remain firm throughout the term of the agreement.

FULL-COLOR YEARBOOKS

SIZE: 7^{3/4}" x 10^{1/2}"

Copies	Number of Pages Per Book															
	48	72	96	120	144	168	192	216	240	264	288	312	336	360	384	408
50-99	29.76	35.32	44.64	51.13	60.29	73.19	98.46	131.27	154.55	170.56	197.62	203.58	214.68	226.31	234.97	247.34
100-150	22.04	29.58	37.12	44.65	52.19	67.58	89.69	115.16	138.39	151.54	164.68	177.82	190.97	204.11	217.75	230.4
151-200	19.94	25.72	31.51	37.3	43.09	54.76	71.47	90.72	108.28	118.26	128.26	138.25	148.24	158.23	168.22	178.22
201-250	17.47	22.22	26.95	31.67	38.5	47.95	59.35	74.84	89	97.1	105.2	115.3	121.4	129.5	137.6	145.7
251-300	16.61	21.23	25.35	29.75	35.95	44.23	53.77	64.61	76.15	80.99	89.83	96.67	103.51	110.35	117.21	124.02
301-350	16.16	20.45	24.17	28.37	34.17	41.42	49.61	58.02	66.97	72.91	78.85	84.79	90.74	96.67	101.61	108.54
351-400	15.75	20.91	23.55	27.38	32.82	39.29	45.81	52.64	60.09	65.35	70.62	75.89	81.15	86.41	91.68	96.93
401-450	15.44	19.47	22.97	26.49	31.6	37.52	42.77	48.17	54.74	59.47	64.21	68.95	73.69	78.43	83.17	87.91
451-500	14.86	18.65	22.11	25.64	30.59	36.05	40.24	44.43	50.45	54.77	59.09	63.4	67.73	72.04	76.36	80.68
501-550	14.21	17.71	21.19	24.68	29.57	35.02	39	42.97	46.95	50.93	54.9	58.87	62.84	66.81	70.79	74.77
551-600	13.65	16.91	20.16	23.4	27.91	31.97	36.65	40.34	44.03	47.72	51.41	55.09	58.75	62.46	66.16	69.84
601-650	13.19	16.23	19.27	22.31	26.52	31.23	34.66	39.34	41.56	45	48.45	51.9	55.34	58.78	62.23	65.68
651-700	12.79	15.65	17.52	19.38	24.32	27.74	32.97	37.11	39.44	42.69	45.92	49.15	52.39	55.63	58.86	62.1
701-750	11.96	14.45	16.68	18.32	23.28	28.43	30.49	35.5	38.61	40.67	43.97	45.77	49.84	52.89	53.95	59.01
751-800	11.05	13.72	14.28	17.86	22.38	27.12	28.64	32.55	33	36.64	39.81	43.7	47.6	48.34	51.4	54.3
801-850	10.61	12.34	13.26	15.24	21.71	25.87	26.34	29.11	31.59	32.96	37.11	41.87	44.62	45.39	49.15	51.9
851-900	9.26	11.92	14.18	13.96	19.65	23.16	25.19	27.82	30.33	31.96	35.6	38.24	39.31	42.51	46.14	48.78
901-950	8.73	10.36	13.59	11.84	18.43	21.64	23.84	25.68	28.2	30.72	33.24	35.77	37.83	39.83	42.35	45.88
951-1000	7.24	9.41	12.02	10.12	17.26	19.37	21.52	23.58	26.18	28.61	32.03	34.46	35.89	37.31	41.74	43.17

FULL-COLOR YEARBOOKS

SIZE: 8 1/2" x 11"

Copies	Number of Pages Per Book															
	48	72	96	120	144	168	192	216	240	264	288	312	336	360	384	408
50-99	23.38	30.64	35.18	43.81	49.27	82.24	106.28	135.41	158.49	171.21	189.06	205.64	221.04	223.63	247.47	243.37
100-150	19.37	24.66	29.94	35.23	41.23	71.91	94.67	120.78	144.88	158.45	172.22	188.01	199.79	213.57	227.38	241.14
151-200	17.00	20.86	27.02	32.49	40.47	66.88	73.10	92.84	110.89	121.39	131.87	142.37	152.86	163.36	172.84	184.33
201-250	16.85	19.00	25.92	31.14	38.71	48.30	60.16	76.07	90.63	99.16	107.67	116.19	122.70	133.22	141.73	150.26
251-300	16.15	17.89	24.82	29.79	36.96	44.06	53.95	65.18	77.13	84.34	91.53	98.74	105.93	113.13	120.33	127.52
301-350	14.89	17.15	23.72	28.44	35.19	43.43	49.44	58.16	67.49	73.74	80.00	86.26	92.62	98.78	105.03	111.29
351-400	14.36	16.61	22.62	27.09	33.43	41.00	45.37	52.48	60.26	65.80	71.36	76.91	82.47	88.02	93.57	99.12
401-450	14.11	16.21	21.62	25.74	31.67	38.56	41.09	47.72	54.63	59.63	64.64	69.64	74.64	79.64	84.64	89.64
451-500	13.91	15.90	20.42	24.39	29.91	36.13	39.33	43.78	50.13	54.69	59.25	63.82	68.38	71.95	76.51	82.07
501-550	11.86	15.69	19.32	22.04	28.16	33.69	38.02	42.35	48.67	51.00	55.33	59.66	63.98	67.31	72.64	76.98
551-600	11.27	14.73	18.21	20.66	26.39	31.26	35.25	39.25	43.25	47.25	51.24	55.24	59.24	62.24	66.23	71.23
601-650	10.78	14.01	16.26	20.50	24.92	29.23	32.95	36.67	40.39	44.12	47.84	51.56	55.29	58.01	62.73	66.45
651-700	9.34	12.38	15.45	19.51	23.65	27.51	31.00	34.49	37.98	41.47	44.96	48.45	51.94	54.43	58.92	62.40
701-750	8.96	11.85	13.25	16.64	21.75	26.03	29.33	31.82	35.91	9.20	42.48	45.78	47.07	51.36	54.65	58.94
751-800	7.63	11.08	12.14	16.89	20.09	24.76	28.88	27.99	34.11	36.23	39.34	43.78	46.68	48.70	52.82	53.93
801-850	6.34	9.97	11.60	16.02	18.74	22.64	25.61	26.57	31.64	34.51	37.47	42.45	43.40	45.37	49.34	50.30
851-900	5.08	8.60	10.12	14.63	17.69	21.05	23.49	25.32	29.15	31.58	34.81	39.65	41.48	47.931	47.16	47.98
901-950	4.86	7.27	9.69	13.10	16.32	19.48	21.49	23.61	26.92	29.63	32.34	34.06	38.77	40.49	43.20	44.91
951-1000	3.65	6.97	9.30	11.63	14.70	17.39	20.60	22.21	24.81	27.42	31.02	33.64	36.25	38.85	40.45	43.07

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100-150	29.74	38.58	47.17	56.27	65.11	81.60	105.22	132.00	156.54	170.98	184.44	199.87	214.32	236.76	243.22	257.56
151-200	24.09	30.90	37.70	44.50	51.30	63.99	81.72	101.96	120.55	131.55	142.56	153.56	164.57	175.57	186.58	197.59
201-250	20.70	26.28	31.66	37.44	44.99	55.28	67.62	83.97	98.96	107.90	116.83	125.78	134.72	143.66	152.60	161.54
251-300	19.32	24.52	29.31	34.43	41.29	50.29	60.56	72.18	84.56	92.13	99.69	107.25	114.82	122.38	129.94	137.51
301-350	18.34	23.26	27.51	32.32	36.77	46.61	55.53	64.55	74.28	80.87	87.44	94.02	100.61	107.19	113.77	120.35
351-400	17.60	22.32	26.30	30.88	36.91	43.93	51.07	58.42	66.57	72.42	78.25	84.10	89.94	95.78	101.63	107.47
401-450	17.02	21.58	25.27	29.64	35.21	41.63	47.72	53.31	60.58	65.84	71.11	76.39	81.65	86.93	92.19	97.46
451-500	16.24	20.52	24.27	28.44	33.82	39.72	44.37	49.04	55.78	60.59	65.39	70.21	75.02	79.82	84.64	89.45
501-550	15.41	19.37	23.33	27.28	33.73	38.06	42.39	46.71	51.04	55.37	59.69	64.02	68.35	72.67	77.00	81.33
551-600	14.72	17.41	21.09	25.78	31.63	35.62	39.62	43.62	47.61	51.61	55.61	59.61	63.63	67.60	71.60	75.59
601-650	14.14	16.60	20.04	24.51	29.87	33.59	37.31	41.04	44.76	48.50	52.20	55.93	59.65	63.37	67.09	70.71
651-700	12.64	15.90	19.14	23.41	27.38	30.87	35.36	38.85	42.34	45.83	49.32	52.81	55.30	58.79	61.28	66.77
701-750	12.21	14.29	17.33	21.45	26.11	29.40	33.09	36.98	40.27	43.56	46.85	50.14	53.43	56.72	59.01	63.30
751-800	11.43	13.76	16.70	20.63	25.01	28.12	32.24	34.36	36.47	40.69	44.71	46.83	50.94	52.06	56.18	60.29
801-850	10.60	12.29	16.10	19.89	24.04	27.00	28.97	32.94	34.90	38.87	41.83	44.80	46.77	49.73	52.70	57.56
851-900	9.19	11.88	14.56	18.25	22.19	25.02	26.85	30.69	32.62	35.35	38.18	43.00	44.85	47.98	50.51	54.34
901-950	8.94	11.51	14.08	16.67	21.43	23.14	25.86	28.57	31.28	34.00	36.71	39.42	42.14	44.85	47.57	49.28
951-1000	7.96	10.17	12.68	15.14	18.75	22.36	24.96	27.57	30.18	32.79	34.39	37.00	39.61	42.22	44.83	47.43

BLACK AND WHITE YEARBOOKS

SIZE: 7 3/4" x 10 1/2"

Copies	Number of Pages Per Book															
	48	72	96	120	144	168	192	216	240	264	288	312	336	360	384	408
50-99	29.62	37.9	50.28	58.69	68.26	79.26	87.21	99.81	110.4	120.15	131.06	139.47	149.62	151.58	165.93	172.38
100-150	26.31	35.4	45.2	55.55	65.17	74.67	83.39	93.91	103.7	112.96	118.32	126.76	135.28	143.91	152.51	161.18
151-200	19.35	25.22	31.88	38.87	45.38	51.83	61.41	63.88	71.52	77.83	81.56	87.31	93.12	99.04	104.94	110.66
201-250	15.95	20.25	25.39	30.74	35.73	40.69	44.74	50.73	55.82	62.7	63	68.07	72.56	77.15	81.73	86.32
251-300	13.91	17.26	21.49	27.64	29.92	33.99	37.12	42.21	46.38	50.39	63	56.5	60.19	63.99	67.77	71.55
301-350	12.55	15.27	18.88	22.58	26.05	31.52	32.03	36.52	40.08	43.51	52.64	48.77	51.93	55.19	58.45	61.69
351-400	11.57	13.84	17.01	20.24	23.27	26.31	29.39	32.45	35.57	38.59	45.64	43.24	46.02	48.91	51.78	54.64
401-450	10.84	12.77	15.61	18.49	21.19	23.91	26.68	29.4	32.18	34.69	40.49	39.09	41.59	44.19	46.68	49.35
451-500	10.27	11.94	14.52	17.12	19.57	22.04	24.53	27.03	29.55	32.02	36.62	35.86	38.14	40.51	42.89	45.23
501-550	9.81	11.27	13.65	16.03	18.27	20.55	22.83	25.12	27.44	29.72	33.61	33.28	35.37	37.57	39.77	41.94
551-600	9.44	10.72	12.94	15.14	17.21	19.32	21.44	23.57	25.72	27.83	31.2	31.17	33.11	35.17	37.22	39.24
601-650	9.13	10.27	12.34	14.39	16.33	18.3	20.28	22.17	24.28	26.26	29.23	29.4	31.23	33.16	35.09	36.99
651-700	8.87	9.88	11.41	13.76	15.58	17.44	19.29	20.23	23.06	24.93	27.59	27.91	29.63	31.46	33.29	35.08
701-750	8.64	9.55	11.03	13.22	14.94	16.7	18.45	19.41	22.02	23.8	26.2	26.63	28.27	30.01	31.75	33.45
751-800	8.44	9.26	10.71	12.75	14.38	16.05	17.72	18.7	21.11	22.81	25.01	25.52	27.04	28.75	30.41	32.04
801-850	8.27	9.01	10.42	12.34	1.89	15.49	17.08	18.07	20.32	21.94	23.97	24.55	25.13	27.64	29.24	30.8
851-900	8.12	8.79	10.16	11.98	13.46	15	16.52	17.51	19.62	21.18	23.07	24.69	24.31	26.67	28.21	29.71
901-950	7.99	8.6	9.93	11.65	13.08	14.55	16.02	17.01	19	20.5	22.27	22.93	24.59	25.8	27.29	28.73
951-1000	8.87	8.42	9.03	11.37	12.74	14.14	15.57	16.59	18.44	19.9	20.92	22.25	23.68	25.03	26.47	28.87

BLACK AND WHITE YEARBOOKS

SIZE: 8 1/2" x 11"

Copies	Number of Pages Per Book															
	48	72	96	120	144	168	192	216	240	264	288	312	336	360	384	408
50-99	30.38	44.02	56.69	68.45	81.63	92.16	104.85	118.67	129.13	141.16	155.73	167.73	173.03	185.10	196.28	206.95
100-150	27.88	40.25	52.11	64.37	76.42	88.27	100.43	112.43	124.78	136.77	149.26	160.04	166.96	178.16	188.09	198.20
151-200	19.65	27.90	35.81	44.09	52.23	60.25	68.47	76.60	84.95	93.08	101.54	108.88	114.32	121.29	128.07	134.96
201-250	15.64	21.88	27.87	34.20	40.43	46.58	52.88	59.12	65.53	71.77	78.27	83.93	88.16	93.55	98.80	104.11
251-300	13.22	18.26	23.08	28.25	33.34	38.36	43.51	48.61	53.84	58.95	64.27	68.92	72.42	76.86	81.19	85.56
301-350	11.61	15.84	19.89	24.28	28.60	34.87	37.25	41.59	46.04	50.40	56.92	58.90	61.91	65.71	69.43	73.17
351-400	10.46	14.11	17.61	21.44	25.21	28.95	32.77	36.57	40.46	44.27	48.23	51.73	54.40	57.74	61.02	64.30
401-450	9.59	12.81	15.69	19.31	22.66	26.00	29.41	33.80	36.27	39.68	43.20	47.35	48.76	51.76	54.70	57.65
451-500	8.92	11.80	14.56	17.65	20.68	23.70	26.79	29.87	33.01	36.10	39.31	42.16	44.37	47.11	49.79	52.48
501-550	8.38	10.99	13.49	16.32	19.10	22.87	24.70	27.52	30.40	33.24	36.18	38.81	40.85	45.38	46.86	48.33
551-600	7.94	10.33	12.62	15.23	17.80	20.37	22.98	25.60	28.26	30.90	33.62	36.06	37.98	40.33	42.64	44.94
601-650	7.57	9.78	11.89	14.32	16.72	19.11	21.55	24.00	26.48	28.95	31.49	33.78	35.58	37.79	39.96	42.11
651-700	7.26	9.31	11.28	13.56	15.81	18.05	20.34	22.64	24.98	27.29	29.68	32.64	33.55	35.64	37.69	39.72
701-750	6.89	8.91	10.75	12.90	15.02	17.14	19.31	21.48	23.69	25.88	28.13	30.18	31.81	33.79	35.74	37.67
751-800	6.76	8.57	10.29	12.33	14.34	16.36	18.41	20.47	22.57	24.65	26.79	28.74	30.30	32.19	34.05	35.89
801-850	6.66	8.26	9.89	11.83	13.75	15.67	17.62	19.59	21.59	23.57	25.62	27.48	28.98	30.79	32.57	34.34
851-900	6.38	7.99	9.53	11.39	13.22	15.06	16.93	18.81	20.72	22.62	24.58	26.37	27.82	29.56	32.27	32.96
901-950	6.22	7.76	9.22	11.00	12.75	14.52	16.31	18.12	19.95	21.78	23.66	25.39	26.78	28.46	30.11	31.74
951-1000	6.08	7.54	8.94	10.65	12.34	14.03	15.76	17.50	19.26	21.03	22.84	24.50	25.85	27.48	29.08	30.65

BLACK AND WHITE YEARBOOKS

SIZE: 9" x 12"

Copies	Number of Pages Per Book															
	48	72	96	120	144	168	192	216	240	264	288	312	336	360	384	408
50-99	30.66	44.30	56.97	68.73	81.91	92.43	105.13	118.95	129.41	141.44	156.01	168.01	173.31	185.38	196.56	207.23
100-150	28.18	40.63	52.39	64.65	76.70	88.55	100.71	112.71	125.06	137.05	149.64	160.32	167.24	178.44	188.37	193.48
151-200	19.93	28.18	36.09	44.37	52.51	60.53	68.75	76.88	85.23	93.36	101.82	109.16	114.60	121.67	128.35	135.24
201-250	15.92	22.16	28.15	34.48	40.71	46.86	53.16	59.40	65.81	72.05	78.55	84.21	88.44	93.83	99.08	104.39
251-300	13.50	18.64	23.36	28.53	33.62	38.64	43.79	48.69	54.12	59.23	64.55	69.20	72.70	77.14	81.47	85.84
301-350	11.89	16.12	20.17	24.56	28.88	35.15	37.53	41.67	46.32	50.68	57.20	59.18	62.19	65.99	69.71	73.45
351-400	10.74	14.39	17.89	21.72	25.49	29.23	33.05	36.85	40.74	44.56	48.51	52.01	54.68	58.02	61.30	64.58
401-450	9.87	13.09	16.17	19.59	22.94	26.28	29.69	34.08	36.55	39.96	43.48	47.63	49.04	52.04	54.98	57.93
451-500	9.20	12.08	14.84	17.93	20.96	23.98	27.07	30.15	33.29	36.38	39.59	42.44	44.85	47.39	50.07	52.76
501-550	8.66	11.27	13.77	16.60	19.38	23.15	24.98	27.80	30.68	33.52	36.46	39.09	41.13	45.66	47.14	48.61
551-600	8.22	10.61	12.90	15.51	18.03	20.65	23.26	25.88	28.54	31.18	33.90	36.34	38.26	40.61	42.92	45.22
601-650	7.85	10.06	12.17	14.60	17.00	19.39	21.83	24.28	26.76	29.23	31.77	34.06	35.88	38.07	40.24	42.39
651-700	7.54	9.59	11.56	13.84	16.09	18.33	20.62	22.92	25.26	27.57	29.96	33.12	33.83	35.92	37.97	40.00
701-750	7.17	9.19	11.03	13.18	15.30	17.42	19.69	21.78	23.97	26.16	28.41	30.46	32.09	34.07	36.02	37.95
751-800	7.04	8.85	10.57	12.61	14.62	16.64	18.69	20.75	22.85	24.93	27.07	29.02	30.58	32.47	34.33	36.17
801-850	6.84	8.64	10.17	12.11	14.03	15.95	17.90	19.87	21.87	23.85	25.90	27.76	29.26	31.07	32.85	34.62
851-900	6.66	8.27	9.81	11.67	13.50	15.34	17.21	19.09	21.00	22.90	24.88	26.65	28.10	29.84	32.55	33.24
901-950	6.50	8.04	9.50	11.28	13.03	14.80	16.59	18.40	20.23	22.06	23.94	25.67	27.06	28.74	30.39	32.02
951-1000	6.36	7.82	9.22	10.93	12.62	14.31	16.04	17.78	19.54	21.31	23.12	24.78	26.13	27.76	29.36	30.93

AGREEMENT

THIS AGREEMENT is made and entered into as of this 5th day of December, 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

PLATTSCO, INC. DBA YEARBOOKLIFE
(hereinafter referred to as "VENDOR"),
whose principal place of business is
9710 Sterling Road, Suite 102
Cooper City, FL 33024

WHEREAS, SBBC issued a Request for Proposal identified as RFP 17-047-1N – "Yearbooks and Memory Books for All Schools" dated August 21, 2017 (hereinafter referred to as "RFP") which is incorporated herein by reference for the purpose of selecting a pool of qualified vendors from which school-allied groups might select a vendor to provide services to students enrolled at a specific district school; and

WHEREAS, VENDOR offered a proposal in response to the RFP (hereinafter referred to as "Proposal") and which is incorporated herein by reference whereby VENDOR proposed to provide Yearbooks and Memory Books for All Schools; and

WHEREAS, SBBC desires to award and VENDOR desires to accept a contract that establishes standardized terms and conditions for Yearbooks and Memory Books for All Schools that VENDOR will offer to any school-allied groups desiring to contract with VENDOR for the provision of such services to students enrolled in one of SBBC's district schools; and

WHEREAS, Yearbooks and Memory Books are optional purchases (not mandatory) made directly from the school to VENDOR; and

WHEREAS, SBBC shall obtain written consent from the parent or student age 18 or over prior to disclosing student information to VENDOR, for the limited purpose of producing Yearbooks and Memory Books for All Schools. The information SBBC will release to VENDOR for this purpose: student's first and last name, student picture, grade level, clubs, sporting activities and teacher name; 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 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 3.06 of this Agreement, the term of this Agreement shall commence upon the approval of this Agreement by SBBC and conclude on May 31, 2020. The term of the Agreement may be extended by two (2) additional one-year periods. In addition, SBBC has the option to extend the contract beyond the initial contract period or beyond any renewal period for an additional one-hundred and eighty (180) days at a rate for services not to exceed 3%.

2.02 **Separate Contracts for Services.** The VENDOR acknowledges that this Agreement does not award or guarantee it to receive any amount of work, any specified volume of service or amount of revenue that VENDOR may derive from the provision of Yearbooks and Memory Books for All Schools or assure that the VENDOR will receive any contracts from school-allied groups for the provision of Yearbooks and Memory Books for All Schools. Rather, this Agreement is intended to establish the VENDOR as a qualified vendor with whom individual school-allied groups may enter into contracts for Yearbooks and Memory Books for All Schools upon, at a minimum, the terms and conditions described herein. VENDOR acknowledges that SBBC shall have no liability or obligation to make payment to VENDOR for any Yearbooks and Memory Books for All Schools provided to any district school students.

2.03 **Pricing for Services.** VENDOR agrees that the prices for services offered in its Proposal shall remain firm for the original term of this contract, see **Attachment A**. The VENDOR may submit a request for price adjustment thirty (30) days prior to any renewal period of the Agreement. If a price adjustment is approved by SBBC's Director of Procurement and Warehousing Services for any renewal period, such adjusted price must remain in effect for the remainder of that renewal period. Price adjustment requests for any subsequent renewal or extension period shall not exceed three percent (3%). SBBC reserves the right to decline any contract renewal regardless of price considerations.

2.04. **Priority of Documents.** In the event of any conflict between the documents, the following priority of documents shall govern:

- First: This Agreement; then
- Second: RFP 17-047-1N – “Yearbooks and Memory Books for All Schools” dated August 21, 2017; then
- Third: the Proposal submitted by VENDOR in response to RFP.

In case of any other doubt or difference of opinion, the decision of SBBC shall be final and binding upon both parties.

2.05 **Inspection of VENDOR'S Records by SBBC.** VENDOR shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All VENDOR's 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 VENDOR or any of VENDOR's payees pursuant to this Agreement. VENDOR'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. VENDOR'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) VENDOR's Records Defined. For the purposes of this Agreement, the term "VENDOR's Records" shall include, without limitation, any documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement or the *Yearbooks and Memory Books for All Schools* provided by VENDOR to any district school student or school-allied group.

(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 VENDOR's Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to VENDOR pursuant to this Agreement.

(c) Notice of Inspection. SBBC's agent or its authorized representative shall provide VENDOR 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 VENDOR's facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(e) Failure to Permit Inspection. Failure by VENDOR to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this Section shall constitute grounds for termination of this Agreement by SBBC for cause.

2.06 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: Chief, Office of School Performance and Accountability
The School Board of Broward County, Florida
610 NE 13 Avenue
Pompano Beach, FL 33060

To VENDOR: John Platts, President
Plattsco, Inc. dba Yearbooklife
9710 Stirling Road, Suite 102
Cooper City, FL 33024

2.07 **Background Screening.** VENDOR 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 VENDOR or its personnel providing any services under the conditions described in the previous sentence. VENDOR shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to VENDOR and its personnel. The parties agree that the failure of VENDOR to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. VENDOR agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from VENDOR's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

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

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.

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

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.

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.

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 Awardee 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.

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.
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

Cancellation of Insurance. Vendors are 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.

The School Board of Broward County, Florida 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.

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, and 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 **M/WBE Commitment.** Throughout the term of the Agreement, VENDOR shall take commercially reasonable steps and use commercially reasonable resources to identify SBBC-certified M/WBE VENDORS who may be engaged to fulfill various aspects of the Agreement, including, for instance, without limitation, M/WBE VENDORS to provide office supplies, travel, printing, janitorial supplies/services, consulting services, trade services, installation and repair services, medical supplies, where feasible. VENDOR agrees to provide monthly reports and to conduct quarterly meetings with SBBC to discuss progress in meeting the SBBC's objectives regarding M/WBE participation, including dollars spent on M/WBE VENDORS for the quarter; and to continue to assess throughout the term of the Agreement new possibilities for M/WBE VENDOR participation suggested by SBBC. If at any time during the term the parties agree that it is reasonably feasible to include a specific dollar figure for M/WBE participation, the Agreement shall be amended to include the dollar participation objective.

3.06 **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.

3.07 **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.

3.08 **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.

3.09 **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.

3.10 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. VENDOR shall keep and maintain public records required by SBBC to perform the services required under this Agreement. Upon request from SBBC's custodian of public records, VENDOR shall provide SBBC with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. VENDOR shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if VENDOR does not transfer the public records to SBBC. Upon completion of the Agreement, VENDOR shall transfer, at no cost, to SBBC all public records in possession of VENDOR or keep and maintain public records required by SBBC to perform the services required under the Agreement. If VENDOR transfer all public records to SBBC upon completion of the Agreement, VENDOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If VENDOR keeps and maintains public records upon completion of the Agreement, Insert Name 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, REQUEL.BELL@BROWARDSCHOOLS.COM, RISK MANAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SOUTHEAST THIRD AVENUE, FORT LAUDERDALE, FLORIDA 33301.

3.11 **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.

3.12 **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.

3.13 **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.

3.14 **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 State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

3.15 **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.

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

3.17 **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.

3.18 **Incorporation by Reference.** Attachment A, attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

3.19 **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.

3.20 **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.

3.21 **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.

3.22 **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.

3.23 **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.

3.24 **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.

3.25 **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.

3.26 **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.

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

A. By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

B. By **VENDOR**: **VENDOR** agrees to indemnify, hold harmless and defend **SBBC**, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which **SBBC**, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by **VENDOR**, its agents, servants or employees; the equipment of **VENDOR**, its agents, servants or employees while such equipment is on premises owned or controlled by **SBBC**; or the negligence of **VENDOR** or the negligence of **VENDOR'S** agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including **SBBC's** property, and injury or death of any person whether employed by **VENDOR**, **SBBC** or otherwise.

3.28 **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.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

FOR SBBC

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By Nora Rupert
Nora Rupert, Chair

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

Approved as to Form and Legal Content:

Janette M. Smith Digitally signed by Janette M. Smith
Date: 2017.11.16 13:52:47 -05'00'
Office of the General Counsel

FOR VENDOR

(Corporate Seal)

**PLATTSCO, INC. DBA
YEARBOOKLIFE**

ATTEST:

By [Signature]
John Platts, President

, Secretary

[Signature]
Witness

[Signature]
Witness

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

STATE OF Florida

COUNTY OF Broward

The foregoing instrument was acknowledged before me this 6 day of
November, 2017 by John Platts of
Plattsco, Inc DBA Yearbook life on behalf of the corporation/agency.

He/She is personally known to me or produced driver license as
identifica-tion and did/did not first take an oath. Type of Identification

My Commission Expires:

[Signature]
Signature - Notary Public

Jimmy Baquedano
Printed Name of Notary

GG23235
Notary's Commission No.

(SEAL) 