

AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 20__, 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

POLK COUNTY BOARD OF COUNTY COMMISSIONERS
a political subdivision of the State of Florida
(hereinafter referred to as "PCBCC"),
whose principal place of business is
330 West Church Street, Bartow, Florida 33830

WHEREAS, PCBCC solicited a Request for Proposal #08-002-RGH, Procurement Card Services on October 5, 2007 and amended by Addendum #1 dated October 15, 2007, amended by Addendum #2 dated October 19, 2007 and amended by Addendum #3 dated October 25, 2007 which are incorporated by reference herein for the purpose of receiving proposals for Procurement Card Services (Attachment A); and

WHEREAS, Bank of America (hereinafter referred to as "Bank") responded to said RFP on November 8, 2007 (Attachment B); and

WHEREAS, PCBCC executed an agreement with Bank on January 23, 2008 (Attachment C) to provide Procurement Card Services to PCBCC and other "Participating Entities" as defined in that agreement; and

WHEREAS, said agreement stipulates that all rebates will be paid to PCBCC by the Bank and re-distributed by PCBCC; and

WHEREAS, SBBC wishes to join this agreement in accordance with the terms and conditions set forth in this agreement; 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.** The term of this Agreement shall commence from date of School Board approval and conclude on January 22, 2013 with the option to extend this agreement for five (5) additional one (1) terms, at the same terms and conditions as approved by PCBCC.

ARTICLE 2 – SPECIAL CONDITIONS (Continued)

2.02 **Payment to the Bank.** SBBC agrees to pay all charges due to Bank within 14 days of cycle closing date.

2.03 **Rebates.** All rebates earned will be paid to PCBCC on an annual basis calculated on the aggregate volume of all participating entities of this contract in accordance with Addendum to Bank of America Corporate Purchasing Card Agreement Item 2D (Attachment C).

2.04 **Calculation of Rebate.** The total rebate paid shall be calculated in accordance with the percentages listed on the Purchase Card Annual Volume Tier (excluding large ticket purchases) of the table shown on Page 4 of the Bank of America RFP submittal dated November 7, 2007 (Attachment B), attached hereto.

2.05 **Rebate Percentage Paid.** The rebate percentage paid to PCBCC for SBBC's individual volume shall be based upon the Purchase Card Annual Volume Tier (exclude large ticket purchases) of the aggregate volume and the payment terms or grace period for SBBC.

The rebate percentages paid by PCBCC to SBBC shall be based upon the Purchasing Card Annual Volume Tier (excluding large ticket purchases) for SBBC's individual volume, but not less than 1%, i.e. if the individual volume for SBBC is \$2,000,000 and SBBC pays on a seven (7) day grace period, rebate percentages paid to SBBC shall be calculated based upon the \$2,000,000 - \$2,999,999 tier and the seven (7) day grace period, or 1.05%.

2.06 **Notification by Bank.** Bank agrees to notify PCBCC's Purchasing Card Administrator of SBBC's payment terms or grace period.

2.07 **Large Ticket Transactions.** Large ticket transactions will be paid according to the Qualified Large Ticket Transaction tier of the rebate schedule on Page 4 of Bank of America's RFP submittal (Attachment B). The amount that will be paid by PCBCC to SBBC shall be the full percentage paid by Bank of America for qualified Large Ticket Transactions.

2.08 **Indemnification.** Each party agrees to be fully responsible for its acts of negligence or its agents' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

2.09 **Order of Priority.** In the event of a conflict between documents, which are incorporated herein by reference, the parties agree that the order of priority shall be as follows:

- First: This Agreement;
- Second: PCBCC executed agreement with Bank of America (Attachment C);
- Third: Addendum Number 3 [dated October 25, 2007] to this RFP (Attachment A);
- Fourth: Addendum Number 2 [dated October 19, 2007] to this RFP (Attachment A);
- Fifth: Addendum Number 1 [dated October 15, 2007] to this RFP (Attachment A);
- Sixth: RFP #08-002-RGH, Procurement Card Services on October 5, 2007 (Attachment A);
- Seventh: Proposal submitted by Bank of America in response to RFP #08-002-RGH (Attachment B)

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.

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 **Non-Discrimination.** The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

3.04 **Termination.** This Agreement may be canceled with or without cause by both parties during the term hereof upon thirty (30) days written notice to the other parties of its desire to terminate this Agreement.

3.05 **Records.** Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law.

3.06 **Entire 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.

3.07 **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.

3.08 **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.

ARTICLE 3 – GENERAL CONDITIONS (Continued)

3.09 **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. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

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

3.11 **Governing Law.** 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.

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

3.13 **Assignment.** Neither this Agreement or 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.

3.14 **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.

3.15 **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.

3.16 **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not effect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

ARTICLE 3 – GENERAL CONDITIONS (Continued)

3.17 **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 of Supply Management and Logistics
The School Board of Broward County, Florida
7720 West Oakland Park Boulevard, Suite 323
Sunrise, Florida 33351

To PCBCC: Commissioner, Chairman
Polk County Board of County Commissioners
330 West Church Street
Bartow, Florida 33830

With a Copy to: Director of Purchasing
Polk County Board of County Commissioners
2470 Clower Lane
Bartow, Florida 33830

3.18 **Captions.** The captions, section numbers, article numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience 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 effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.19 **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.

3.20 **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 with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBBC.

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

FOR SBBC

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

ATTEST:

By _____
Robin Bartleman, Chair

JAMES F. NOTTER
Superintendent of Schools

Approved as to Form and Legal Content:

School Board Attorney

FOR PCBCC

(Corporate Seal)

POLK COUNTY BOARD OF COUNTY COMMISSIONERS

ATTEST:

Richard M. Weiss, Clerk
~~Secretary~~

By _____
Sam Johnson, Chairman N. 35

-or-

Freda L. Wade
Witness FRED A. L. WADE
Marie E. Kessler
Witness MARIE E. KESSLER



Reviewed as to form and legal sufficiency

Ellen P. Witt
County Attorney's Office Date 06/15/08

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 Polk

The foregoing instrument was acknowledged before me this 9th day of July
2008 by Sam Johnson of Board of County Commissioners
Name of Person Name of person or Agency

on behalf of the corporation/agency. He/She is personally known to me or produced pk
Type of Identification
as identification and did/did not first take an oath.

My Commission Expires:

Sharon F. Ahearn
Signature - Notary Public

(SEAL)

Sharon F. Ahearn
Printed Name

Notary Commission No. _____

