

AGREEMENT

THIS AGREEMENT is made and entered into as of this 19th day of August, 2008, 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

THE UNIVERSITY OF NORTH FLORIDA BOARD OF TRUSTEES,
a public body corporate of the State of Florida
(hereinafter referred to as "UNF"),
whose principal place of business is
1 UNF Drive, Jacksonville, Florida, 32224.

WHEREAS, pursuant to a Working on Gifted Issues (WOGI) grant provided by the Florida Department of Education to the Northeast Florida Educational Consortium (NEFEC), UNF, through its Office of Research and Sponsored Programs, the administrator of the WOGI grant, desires to contract for SBBC to create an on-line course from content provided by UNF in exchange for grant funds, and

WHEREAS, The Program Development and Alignment Department of SBBC desires to create two on-line courses titled Theory and Development of Creativity For the Gifted, and Education Of Special Populations of Gifted Students.

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 3.04 of this Agreement, the term of this Agreement shall commence on August 5, 2008 and conclude on May 25, 2009.

2.02 **Quality and Completion.** Having been provided with the written content of the courses from UNF, the Program Development and Alignment Department of SBBC will create two on-line courses titled Theory and Development of Creativity for the Gifted, and Education of Special Populations of Gifted Students. Course specifics to align with course content provided by UNF. SBBC will complete and deliver both on line courses no later than May 25, 2009 in order that they may run for the Summer 2009 Broward Virtual University on-line Course Session. Such on-line courses shall be of good quality and consistent with the standards generally recognized in on-line courses.

2.03 **Payment.** UNF will disburse from grant funds the sum of \$40,000.00 to fund the initial work on the on-line courses and will disburse the sum of \$40,000.00 upon completion and delivery of the on-line courses to UNF.

2.04 **Rights.** Right, title and interest in the on-line courses shall be vested as provided by the terms of the grant, provided, however, that SBBC may offer the on-line courses through Broward Virtual University, subject to the same conditions and limitations applicable to other school districts in the State of Florida.

2.05 **Background Screening:** Notwithstanding anything else in this Section 2.05 to the contrary, UNF and SBBC acknowledge and agree that as a result of this Agreement no UNF personnel will have (a) access to SBBC school grounds, (b) direct contact with students, or (C) access or control of school funds and, as a result, UNF has no obligations to SBBC with regard to the obligations contained herein below. UNF 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 UNF or its personnel providing any services under the conditions described in the previous sentence. UNF 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 UNF and its personnel. The Parties agree that the failure of UNF 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. To the extent permitted by law, UNF 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 in UNF's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes. Nothing herein shall be construed as a waiver by SBBC or UNF of sovereign immunity or of any rights secured by Section 768.28, Florida Statutes.

2.06 **Indemnification.** To the extent permitted by applicable by law, 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. Nothing herein shall be construed as a waiver of rights or of the limits imposed by Section 768.28, Florida Statutes.

2.07 **Subordination.** This Agreement is subject and subordinate to the terms, conditions and requirements of the grant.

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 either party 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.

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 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.

3.14 **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.

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: Debra R. Friedman, Director
Program Development and Alignment
2301 N.W. 26th Street
Fort Lauderdale, Florida 33311

To: Dr. Imeh D. Ebong
The University of North Florida
Office of Research and Sponsored Programs
1 UNF Drive
Jacksonville, Florida, 32224

With a Copy to: Dr. Christine Weber
Department of Childhood Education, UNF
1 UNF Drive
Jacksonville, Florida 32224

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

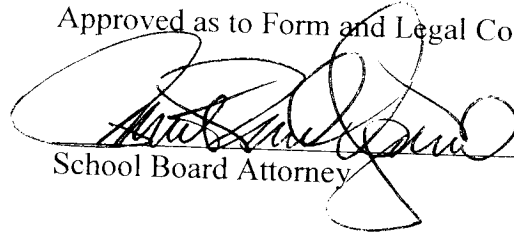
THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Robin Bartleman, Chair

James F. Notter, Superintendent of
Schools

Approved as to Form and Legal Content:



School Board Attorney

FOR UNF

(Corporate Seal)

THE UNIVERSITY OF NORTH FLORIDA
OFFICE OF RESEARCH & SPONSORED
PROGRAMS

ATTEST:

By Imeh D. Ebong
Dr. Imeh D. Ebong

, Secretary

-or-
Mary D. Stumph
Witness

Charney Cummings
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 Duval

The foregoing instrument was acknowledged before me this 24th day of July, 2008 by Imeh Ebong of UNF, on behalf of the corporation/agency.

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

My Commission Expires:

Mary D. Stumph
Signature - Notary Public

(SEAL)

NOTARY PUBLIC
MARY D. STUMPH
MY COMMISSION # DD 668594
DATE OF FLORIDA EXPIRES: May 23, 2011
Bonded Thru Budget Notary Services

Notary's Commission No. _____