

AGREEMENT

THIS AGREEMENT is made and entered into as of this ___ day of ___, 2014,
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

NOVA SOUTHEASTERN UNIVERSITY, Inc.

(Hereinafter referred to as "NSU"),
a non-profit corporation
whose principal place of business is

3301 College Avenue, Fort Lauderdale, Florida
33314.

WHEREAS, NSU has made a commitment to sponsor an enrichment Summer Program for students in the Marine Science Program at South Broward High School. This program will focus on college and career opportunities in the field of marine science; and

WHEREAS, NSU has a long-standing relationship with the SBBC that encourages opportunities for students to participate in post-secondary instruction, college and career readiness activities, and articulation to the post secondary level. The relationship offers teachers the opportunity to collaborate with faculty and teachers in curriculum development and student enrichment activities; and

WHEREAS, as part of this Agreement, NSU will host the summer program for up to twenty five (25) students which will begin on June 23, 2014 and conclude on July 3, 2014. The program will expose students to careers within the marine science industry and provide college readiness strategies. NSU will provide facilities for the nine (9) day program, the first five (5) days will be at the main campus located at 3301 College Avenue, Fort Lauderdale, FL 33314, and the next four (4) days will be at the Oceanographic Center, 8000 North Ocean Drive, Dania Beach, FL 33004. The summer program hours will be from 9:00 AM – 3:00 PM daily.

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 terminate on July 31, 2014.

2.02 **SBBC Agrees as follows:** To permit NSU, Main Campus and Oceanographic Center, to provide the facilities, for the 2014 Oceanographic Summer Program for South Broward High. The Program will begin on June 23, 2014 and conclude on July 3, 2014 and will be available for approximately twenty five (25) students attending South Broward High School's marine science program. The Program will provide students with hands-on marine science related activities/projects and college/career exploration related to all fields of the marine science industry. South Broward High School will provide the required number of teachers to oversee the students throughout the Program. The Office of Talent Development will provide stipends through Title II-A grant funds for the teachers to assist with the Program for the week and identified planning time. The students will be supervised at all times by SBBC staff from South Broward High School.

2.03 **NSU Hosting summer program:** NSU shall host the 2014 Oceanographic Summer Program for South Broward High at the NSU Main campus and the NSU Oceanographic Center in Broward County, Florida. Approximately twenty-five (25) students currently attending South Broward High School will have the opportunity to participate in this Program. There will be up to up to twenty-five (25) students during the nine (9) day term of this Program, supervised by SBBC personnel (employees) from South Broward High School. NSU will provide the appropriate NSU facilities, for the Program.

2.04 **Inspection of NSU's Records by SBBC.** NSU shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect the performance of it's obligations under this Agreement. All NSU's Records that related to this Agreement and the provision of the facilities as set forth herein, 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 (with proof of the agent's or representative's authority provided to NSU in writing) 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 NSU or any of NSU's payees pursuant to this Agreement. NSU'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. NSU'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) **NSU's Records Defined.** For the purposes of this Agreement, the term "NSU's Records" shall include, without limitations records related to this Agreement and the provision of it's obligations under this Agreement including, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement, if applicable.

b) **Duration of Right to Inspect.** SBBC shall only have the right to perform one audit during the audit period. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to NSU's Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until no later than two (2) years after the termination of this Agreement or two (2) years after the date of final payment by SBBC to NSU pursuant to this Agreement, if applicable.

c) **Notice of Inspection.** SBBC's agent or its authorized representative shall provide NSU reasonable advance notice (at least 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 NSU's facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate workspace in order to exercise the rights permitted under this section.

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

f) **Inspection of Subcontractor's Records.** NSU 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 NSU to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payee's costs from amounts payable by SBBC to NSU pursuant to this Agreement and such excluded costs shall become the liability of NSU.

g) **Overcharges and Unauthorized Charges.** If an audit conducted in accordance with this Section discloses overcharges or unauthorized charges to SBBC by NSU in excess of five (5) percent (5%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by NSU. If the audit discloses billings or charges to which NSU is not contractually entitled, NSU shall pay said sum to SBBC within twenty (20) days of receipt of written demand unless otherwise agreed to in writing by both parties. Please note if the project is federally funded, you may not be able to enforce this condition.

h) **Inspector General Audits.** NSU 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.

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

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

With a Copy to:

Director
Innovative Programs
The School Board of Broward County, Florida
600 Southeast Third Avenue, 4th Floor
Fort Lauderdale, Florida 33301

To NSU:

Dean Oceanographic Center
Nova Southeastern University, Inc.
8000 N. Ocean Dr.
Dania Beach, Florida 33004

2.06 **Background Screening:** NSU 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 NSU's personnel providing any services under the conditions described in the previous sentence and prior to any of SBBC's personnel coming onto NSU's premises in connection with this agreement. NSU 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 NSU's personnel. SBBC shall bear the cost of acquiring its background screening for its personnel 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 SBBC's personnel. The parties agree that the failure of NSU or SBBC to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling the other party to terminate immediately with no further responsibilities or duties to perform under this Agreement. Each party agrees to indemnify and hold harmless the other party, its officers, trustees, agents and employees from any liability in the form of physical or mental injury, death or property damage resulting in such party's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

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, 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 **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. 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.

3.06 **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.

3.07 **Public Records.** Pursuant to Section 119.0701, Florida Statutes, any party contracting with SBBC is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that SBBC would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost, to SBBC all public records in that party's possession upon termination of its contract with SBBC and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored electronically must be provided to SBBC in a format that is compatible with SBBC's information technology systems. 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 noncompliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

3.08 **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 Section 1002.22, Florida Statutes, or 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 Section 1002.22, 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.

3.09 **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.

3.10 **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.

3.11 **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.

3.12 **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.

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

3.14 **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.

3.15 **Incorporation by Reference.** Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

3.16 **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 effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.17 **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.

3.18 **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.

3.19 **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.

3.20 **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.

3.21 **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.

3.22 **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, and reporting requirements, shall survive the termination of this Agreement.

3.23 **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.

FOR SBBC


(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Patricia Good, Chair

Robert W. Runcie, Superintendent of Schools

 05/23/14

Approved as to Form and Legal Content:
Office of the General Counsel

FOR NOVA SOUTHEASTERN UNIVERSITY

By *Jacqueline A. Travisano*
Jacqueline A. Travisano, EVP & COO

Approved as to Legal Form

By *Pamela M. Kane* 5/27/14
Pamela M. Kane, Esq.
Panza Maurer & Maynard, P.A.
Office of General Counsel

Approved as to Business Content

By: *Ralph V. Rogers, Jr.*
Ralph V. Rogers, Jr., Ph.D, Provost and EVP Academic Affairs

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 28 day of May 2014 by Jacqueline A. Travisano, Executive Vice President and Chief Operating Officer of Nova Southeastern University, Inc., on behalf of the corporation. She is personally known to me or produced _____ as identification and did/did not first take an oath.

My Commission Expires:

Julissa Batista
Notary Public



Julissa Batista
Commission # FF077834
Expires: Feb. 13, 2018
WWW.AARONNOTARY.COM