

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

STATE OF FLORIDA, DEPARTMENT OF HEALTH
(hereinafter referred to as "DOH-Broward"),
whose principal place of business is
780 SW 24th Street
Fort Lauderdale, Florida 33315-2613

WHEREAS, it is necessary that certain Head Start children of preschool age, in number up to but not to exceed, two thousand forty (2,040) to include approximately one thousand twenty four (1,024) Medicaid children, selected and made available to the DOH-Broward by the SBBC, be examined to ascertain their dental health, and treat those children found to be in need of treatment and care, or when service is not available, provide appropriate referral for treatment; and

WHEREAS, it is necessary that certain Early Head Start children of toddler nursery age, in the number up to but not to exceed eighty (80) and Early Head Start pregnant mothers in the number up to but not to exceed ten (10) to include approximately fifty-six (56) Medicaid children and pregnant mothers, selected and made available to the DOH-Broward by the SBBC, be examined to ascertain their dental health, and treat those children and pregnant mothers found to be in need of treatment and care or when service is not available, provide appropriate referral for treatment.

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 November 1, 2014 and conclude on October 31, 2015.

2.02 **Transportation.** SBBC will provide transportation, responsible escorts, and supervision of said children to, on and from the site of examination, treatment and care, in accordance with a schedule of activities as agreed by designated representatives of the SBBC and the DOH-Broward.

2.03 **Medicaid.** SBBC will identify and certify Medicaid eligible children and report same, with proper documentation, to the DOH-Broward.

2.04 **Parental Consent.** SBBC will obtain parental consent for examination and treatment, document parental consent and provide documentation of consent to the DOH-Broward upon request.

2.05 **Dental Services.** DOH-Broward will provide preventive dental services and examination and treatment in accordance with priority of need and as set forth herein.

2.06 **Health Supplies.** DOH-Broward will provide dental health supplies (i.e. toothbrushes, toothpaste, toothbrush covers) for each eligible student during the program year.

2.07 **Emergency Services.** DOH-Broward will provide emergency and restorative dental services to eligible students as required by DOH-Broward dental personnel, to the extent of available funds.

2.08 **Patient Additions/Withdrawals.** The addition of children/pregnant mothers needing emergency services is solely at the discretion of DOH-Broward based upon eligibility and the availability of funds under this Agreement. All services and care under this Agreement will be completed no later than October 31, 2015, for Head Start students and Early Head Start students/pregnant mothers; where feasible and practical. Services will be provided in accordance with professional priorities as determined by the DOH-Broward.

2.09 **Reports, Records and Evaluations.** The DOH-Broward will maintain appropriate dental records for each eligible child that it treats. The dental records are confidential and, except as otherwise provided in s.440.13(4)c and s.455.667, F.S. such records may not be furnished to, and the condition of a patient may not be discussed with, any person other than the patient and or patient's legal representative or other health care practitioners and providers involved in the care and treatment of the patient, except upon written authorization of the patient or patient's legal representative. Statistical data will be made available to the SBBC authorized representative, as provided by law, provided that such data is abstracted in such a way so as to protect the identity of the patient. The DOH-Broward will assist the SBBC by making financial records and statistical data available for review and audit and for the preparation of financial and administrative reports required to be submitted by the SBBC. The DOH-Broward

will cooperate with the SBBC in conducting evaluations of the project's activities by appropriate personnel duly appointed by the recognized professional associations of the community.

Two (2) progress meetings will be held between representatives of the SBBC and DOH-Broward personnel involved in the program. Meetings will be scheduled in February 2015 and May 2015. Following the February meeting, current procedures will be reviewed and needed changes and adjustments for the upcoming year discussed.

2.10 Head Start Schedule of Payments. A financial report will be prepared and submitted to the SBBC by the DOH-Broward by the 15th of each month, during the term of this contract. The financial report will be considered *prima facie* evidence of expenses incurred in the conduct of the program, not to exceed the sum of one hundred thirty seven thousand one hundred sixty dollars (\$137,160). The financial report will suffice for the purpose of audit. Payment of the total not to exceed one hundred thirty seven thousand one hundred sixty (\$137,160) will be paid by the SBBC to the DOH-Broward for the program year beginning November 1, 2014 and ending October 31, 2015. The DOH-Broward will receive payment in the amount of one hundred thirty five dollars (\$135) per child (non-Medicaid eligible) being provided dental health services by DOH-Broward dental personnel. In no event will aggregate expenditures exceed the total sum of one hundred thirty seven thousand one hundred sixty dollars (\$137,160) paid in accordance with this Agreement.

2.11 Early Head Start Schedule of Payments. A financial report will be prepared and submitted to the SBBC by the DOH-Broward by the 15th of each month, during the term of this contract. The financial report will be considered *prima facie* evidence of expenses incurred in the conduct of the program, not to exceed the sum of four thousand five hundred ninety dollars (\$4,590). The financial report will suffice for the purpose of audit. Payment of the total not to exceed four thousand five hundred ninety dollars (\$4,590) will be paid by the SBBC to the DOH-Broward for the program year beginning November 1, 2014, and ending October 31, 2015. The DOH-Broward will receive payment in the amount of one hundred thirty five dollars (\$135) per child or pregnant mother (non-Medicaid eligible) being provided dental health services by DOH-Broward dental personnel. In no event will aggregate expenditures exceed the total sum of four thousand five hundred ninety dollars (\$4,590) paid in accordance with this Agreement.

2.12 Dental Health Education Supplies. DOH-Broward will distribute dental health supplies at the beginning of the 2014-2015 school year for eligible students. School program personnel will distribute dental health supplies midyear to be used during the remainder of the school year.

2.13 HIPAA Compliance. Where applicable, the SBBC and the DOH-Broward will comply with the Health Insurance Portability Accountability Act as well as all regulations promulgated thereunder (45CFR parts 160, 162, and 164). The SBBC will be responsible for the distribution of all required DOH, HIPAA Forms and will obtain the appropriate signatures thereon when needed.

2.14 **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: *Head Start/Early Head Start Director
Early Childhood Education Department
600 SE 3rd Avenue
Fort Lauderdale, Florida 33301*

To DOH-BROWARD: *Paula M. Thaqi, M.D., Director
State of Florida, Department of Health
780 SW 24th Street
Fort Lauderdale, Florida 33315-2613*

With a Copy to: *Susan Wasserman, Contract Administrator
State of Florida, Department of Health
780 SW 24th Street
Fort Lauderdale, Florida 33315-2613*

2.15 **Background Screening.** DOH-Broward confirms that DOH-Broward employees providing services under this Agreement are exempt under Section 1012.468, Florida Statutes, from background screening under Sections 1012.32 and 1012.465, Florida Statutes. Such DOH-Broward employees were required by law to undergo a level 2 background screening pursuant to Section 435.04, Florida Statutes, for licensure, certification or employment. DOH-Broward shall comply with Section 1012.468(2)(b), Florida Statutes, by providing SBBC with evidence that DOH-Broward meets the screening standards in Section 435.04, Florida Statutes, and hereby confirms that DOH-Broward completed a criminal history check of its employees within five (5) years prior to such personnel seeking access to school grounds when students are present.

2.16 **Indemnification.** To the extent permitted 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. 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.

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 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 pay the other party for all services rendered through the effective date of termination.

3.06 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.

3.07 **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.

3.08 **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.

3.09 **Public 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.

3.10 **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 to the extent permitted by law. Each such party agrees, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless to the extent permitted by law, SBBC and its officers and employees for any violation of this section, including, without limitation 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.

3.11 **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.

3.12 **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.

3.13 **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.

3.14 **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.

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

3.16 **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.

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

3.18 **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.

3.19 **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.

3.20 **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.

3.21 **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.

3.22 **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.

3.23 **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.

3.24 **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.

3.25 **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

Approved as to Form and Legal Content:


Office of the General Counsel

FOR DOH-BROWARD

(Corporate Seal)

STATE OF FLORIDA, DEPARTMENT OF HEALTH

ATTEST:

By [Signature]

_____, Secretary

-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 this 1st day of May, 2014 by Dr. Paula Thaqi of

Name of Person

Florida Department of Health-Broward on behalf of the corporation/agency.
Name of Corporation or Agency

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

My Commission Expires:

[Signature]
Signature - Notary Public

Lisa Castello
Printed Name of Notary

FF013975
Notary's Commission No.

(SEAL)  LISA CASTELLO
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF013975
Expires 5/1/2017