

AGREEMENT

THIS AGREEMENT is made and entered into as of this 18 day of January, 2005, by
and

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

PUBLIC CONSULTING GROUP

(Hereinafter referred to as "Company"),
a foreign corporation for profit, whose principal place of business is
1653 Mahan Center Boulevard
Tallahassee, Florida 32308

WHEREAS, SBBC issued a request for proposal, identified as RFP 23-031E, Exceptional Student Education (ESE) Electronic Management System dated April 25, 2002, and amended by Addendum No. 1, dated May 2, 2002; Addendum No. 2, dated May 8, 2002; Addendum No. 3, dated June 25, 2002 (herein referred to collectively as "RFP"), which is incorporated by reference herein, for the purpose of receiving proposals that will support an electronic IEP (Individualized Education Plan), report the collection of data, and maximize Medicaid reimbursement and,

WHEREAS, SBBC issued a request for proposal, identified as RFP 20-300N, Cost Recovery Services for Medicaid Fee for Service Program dated October 11, 1999 and amended by Addendum No. 1, dated October 28, 1999, which is incorporated by reference herein, for the purpose of receiving proposals for the selection of a cost recovery agent with expertise in the Florida Medicaid Certified School Match program who will develop and efficiently implement procedures for Medicaid reimbursement and,

WHEREAS, SBBC executed an agreement with PCG on August 23, 2000 to provide the professional services covered under RFP 20-300N, and renewed the contract with PCG on December 17, 2002 and December 9, 2003 and,

WHEREAS, SBBC awarded PCG on October 15, 2002 to provide the services covered under RFP 23-031E for the contract term beginning October 16, 2002 through August 31, 2005 and,

WHEREAS, SBBC requires PCG to continue to provide Medicaid billing services procured under RFP 20-300N and,

WHEREAS, SBBC needs to continue to provide PCG with data to be converted into a propriety format, which is a component of the customized web based application used to document the ESE process required in RFP 23-031E.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein, and the sum stated in Attachment A, attached hereto, other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 - SPECIAL CONDITIONS

1.01 **Term:** The term of this Agreement (hereafter as "Agreement") including Attachment A, will be effective February 1, 2005 and shall terminate on August 31, 2005 unless terminated earlier pursuant in Section 1.04 or as renewed under the Terms and Conditions stated in RFP 23-031E.

1.02 **Scope:** The purpose of this Agreement, incorporated herein including Attachments A, Terms and Conditions is to provide SBBC and its staff with the collecting, monitoring and assessing of SBBC's fee for service programs, ensuring maximum reimbursement within state and federal guidelines.

1.03 **Deliverables.** Awardee will deliver each completed Deliverable on the appropriate Milestone Date, as set forth in Attachment A. Upon delivery, SBBC shall have ten (10) working days to accept or reject (hereinafter referred to as "ACCEPTANCE PERIOD") the Deliverable, using reasonable discretion, based on the requirements identified in the Statement of Work, (Attachment A) and for the Deliverables listed in Attachment A. For the purposes of this Agreement, a working day shall be any day that SBBC administration is open and conducting business. If SBBC notifies Awardee that it has reasonably rejected the Deliverable, SBBC shall provide written notice, within such ten (10) day period, specifying the basis of the deficiency. Awardee shall have a reasonable period to cure such deficiency and redeliver the Deliverable for an additional ACCEPTANCE PERIOD. If a cure will result in a delay to a project Deliverable, Awardee will work with SBBC to provide a revised project work plan. If SBBC fails to reject any Deliverable within the ACCEPTANCE PERIOD, in writing, specifying the deficiency, SBBC shall be deemed to have accepted such Deliverable as of the tenth day of the ACCEPTANCE PERIOD. Upon acceptance of a Deliverable, all services associated with such Deliverable shall be deemed accepted and Awardee shall have no further obligation with respect to an accepted Deliverable. Awardee shall invoice SBBC upon delivery of each Deliverable. The fees for an accepted Deliverable shall be due and payable upon the date the Deliverable is accepted or deemed to be accepted. Invoices for each Deliverable are payable net thirty (30) days from invoice date.

1.04 **Termination.** This Agreement may be canceled by SBBC without cause and for convenience during the term thereof upon thirty (30) days written notice to Awardee of SBBC'S desire to terminate this Agreement. Upon such termination, SBBC shall pay Awardee for all services rendered through the effective date of termination.

ARTICLE 1 - SPECIAL CONDITIONS (Continued)

1.05 **Copyright Infringement.** Awardee warrants, to the best of its knowledge, that SBBC's authorized use of the deliverables described herein shall not infringe any third party's valid U.S. patent or copyright existing as of the effective date of this Agreement. In the event that it is determined by a final action of a court of competent jurisdiction that SBBC's authorized use of said deliverables is infringing on a third party's right, then, at

Awardee's sole option and discretion, Awardee shall use commercially reasonable efforts to: (a) obtain for SBBC the right to continue using the deliverables; or (b) replace or modify the deliverables so that they become non-infringing and retain substantial functional equivalency. If neither (a) nor (b) is available or commercially feasible, Awardee shall have the right to terminate SBBC's right to use the affected portion of the deliverables as applicable, prorated over a three year period from the effective date.

A. Awardee shall hold harmless and defend SBBC against any and all suits based on any claim that the use of the deliverables by SBBC under this Agreement infringes on any United States patent right or copyright, provided Awardee is promptly notified in writing of any such suit or claim against SBBC, and further provided that SBBC permits Awardee to defend, compromise, or settle the same, and gives Awardee all available information, reasonable assistance, and authority to enable Awardee to do so. This indemnity shall not apply to any infringement arising out of: the alteration or modification of the deliverables by SBBC; or (ii) any use of the deliverables which is not authorized herein.

B. Exclusion. Notwithstanding the foregoing, Awardee shall have no obligation to indemnify SBBC under this Section to the extent any claim of intellectual property infringement is based upon or arising out of (i) any modification or alteration to the deliverables not made by Licensor, in the event such infringement would have been avoided but for such modification or alteration, (ii) SBBC's continuance of allegedly infringing activity after being notified thereof, (iii) SBBC's failure to use corrections or enhancements made available by Awardee, and/or (iv) use of the deliverables not in accordance with the applicable end user documentation or outside the scope of the license granted under this Agreement.

C. Sole Remedy. The foregoing remedies constitute SBBC's sole and exclusive remedies, and Awardee's entire liability, with respect to intellectual property infringement.

ARTICLE 1 - SPECIAL CONDITIONS (Continued)

1.06 Indemnification.

A. By SBBC: SBBC agrees to be fully responsible for its acts of negligence or its agent's 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 Awardee: Awardee 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 cost, court costs and all other sums which SBBC, its agents, servants and employees must pay or become obligated to pay on account of any, all and every claim or demand, or assertion liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by Awardee, its agents, servants or employees; the equipment of Awardee, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of Awardee 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 Awardee, SBBC or otherwise.

1.07 Priority of Documents.

In the event of a conflict between the provisions contained in the provision documents, the following priority of documents shall be applied:

- First: This Agreement and its attachments
- Second: The RFP
- Third: Any addenda to this Agreement

ARTICLE 2 - GENERAL CONDITIONS

2.01 No Waiver of Sovereign Immunity. Nothing contained in this Agreement, including but not limited to the Indemnification section of Article 2, is intended to serve as a waiver of sovereign immunity by any agency to which sovereign immunity may be applicable.

2.02 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 manner arising out of any contract.

ARTICLE 2 - GENERAL CONDITIONS (continued)

2.03 **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.

2.04 **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 award of attorney's fees for non-compliance with that law.

2.05 **Entire Agreement.** This document and the attachments hereto 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. Any additional terms in any purchase order or other ordering document are expressly rejected by Awardee.

2.06 **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.

2.07 **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 express 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.

2.08 **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 a subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

2.09 **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.

ARTICLE 2 – GENERAL CONDITIONS (continued)

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

2.11 **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.

2.12 **Place of Performance.** All obligations of SBBC under terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

2.13 **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.

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: Director, SSS/ESE Operations
The School Board of Broward County, Florida
600 SE 3rd Avenue
FT. Lauderdale, Florida 33301

To Public Consulting Group: Mr. Chris Connor
1653 Mahan Center Boulevard
Tallahassee, Florida 32308

ARTICLE 2 - GENERAL CONDITIONS (continued)

2.15 **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, no in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

2.16 **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.

2.17 **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 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

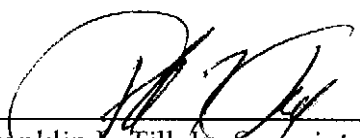
(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By


Stephanie Arma Kraft, Chair


Franklin L. Till, Jr., Superintendent of
Schools

Approved as to Form:


School Board Attorney

FOR PUBLIC CONSULTING GROUP

(Corporate Seal)

Public Consulting Group, Inc.

ATTEST:

By *William S. Mosakowski*
Name and Title

Secretary

-or-
Witness *[Signature]*

Witness *[Signature]*

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

STATE OF Massachusetts

COUNTY OF Suffolk

The foregoing instrument was acknowledged before me this 30th day of December, 2004 by William S. Mosakowski of

Public Consulting Group, Inc., on behalf of the corporation.

She is personally known to me or produced Mass Drivers license as identification and did not first take an oath. Type of Identification

My Commission Expires:
July 4, 2008

Kathryn F. Vassallo
Signature - Notary Public

Kathryn F. Vassallo
Printed Name of Notary

(SEAL)

unknown
Notary's Commission No.

TERMS AND CONDITIONS

1. **Scope of Work, Statement of Work:** The Scope of Work, Statement of Work may be amended as mutually agreed upon by both Parties, in writing, and approved with the same formality herewith. Statement of work as follows:

PCG will provide to SBBC monthly the following:

- EasyTRAC ® is used by SBBC to track health related services for ESE students.
- PCG identifies Medicaid eligible students via data matching according to the prescribed state process.
- PCG selects Medicaid eligible services for Medicaid eligible students.
- PCG conducts pre-billing edits for submission to Medicaid.
- PCG submits claims to the State of Florida and reconciles accounts receivable.
- PCG provides support to SBBC during audits and makes any adjustments as needed.
- PCG assists in set-up and training of users.
- PCG provides assistance with PDA set-up and maintenance.
- PCG provides other services manually agreed to by both parties (Cost and Scope maybe negotiated separately).
- PCG assists in the initial rate setting process for existing FFS services (new services or subsequent rate setting exercises will be negotiated separately).
- Other goods and services in this Agreement will be negotiated separately between SBBC and PCG.

PCG requires the following files on a monthly basis from SBBC:

- SBBC will provide to PCG monthly the following:
 - Student demographic file
 - Services file
 - Schools file
 - SPG file
 - Comments file
 - Transportation file
- PCG obtains Medicaid eligibility information from the Medicaid intermediary on a monthly basis.
- PCG processes and submits claims on behalf of SBBC for Medicaid reimbursement.
- PCG processes transportation trip logs on a quarterly basis from SBBC transportation department to submit for claiming.
- PCG obtains Medication dispensing information on a monthly basis in hard copy format.

2. **Deliverables:** The deliverables for this project consists of a Disbursement of Funds Report sent to SBBC within one week of Medicaid reimbursement being received.

TERMS AND CONDITIONS (Continued)

3. **Invoicing:** All invoices shall be submitted monthly, based on deliverables, and accepted by SBBC as complete.

4. **Price:** The total cost to SBBC for the services listed will be \$12,000 per month during the original term of RFP 23-031E and its renewal periods.

5. **Payment:** SBBC does not pay interest charges for past due invoices. SBBC agrees to make every reasonable attempt to pay a correct invoice within thirty (30) days of receipt of the invoice. Additionally, no "administration fee" shall be permitted, nor will any such fees be paid by SBBC. Any payments not received by Awardee within 90 days of invoice date will result in suspension of services and deliverables until at such time that payment is received. The original invoice and duplicate copy shall be submitted to The School Board of Broward County, Florida, Accounts Payable Department, 7720 West Oakland Park Boulevard, Sunrise, Florida 33351. Another copy of the invoice shall be submitted to Director, SSS/ESE Operations, Fort Lauderdale, Florida 33301.

6. **Acceptance.** Referred to herein as "Acceptance", shall be acceptance of all deliverables in the statement of work in excellent working conditions.