

CONTRACT FOR SERVICES

THIS CONTRACT FOR SERVICES (“CONTRACT”) IS MADE AND ENTERED INTO THIS _____ DAY OF _____ 2011, BETWEEN THE SCHOOL BOARD OF ST. LUCIE COUNTY, FLORIDA, LOCATED AT 4204 OKEECHOBEE ROAD, FORT PIERCE, FL 34947 (“SBSLC”), HOUGHTON MIFFLIN HARCOURT PUBLISHING COMPANY, A FOREIGN PROFIT CORPORATION, LOCATED AT 222 BERKELEY ST, BOSTON, MA, 02116 (THE “CONTRACTOR”), AND MARY HUFFSTETTER, AN INDIVIDUAL, WITH A PRINCIPAL PLACE OF EMPLOYMENT AT 4204 OKEECHOBEE ROAD, FORT PIERCE, FL 34947 (“EMPLOYEE”).

Whereas, the Contractor and SBSLC entered into that certain Purchase Agreement dated March 22, 2011 (“Purchase Agreement”) for the purchase of certain products and services to support the SBSLC’s initiatives for (1) early childhood education (age three to third grade); (2) science, technology, engineering, and math, and (3) closing the “digital divide” by cloud computing; and

Whereas, pursuant to the Year 1-5 Pro-Forma Invoices located at Appendix A, Exhibit 1 to the Purchase Agreement, the Contractor agreed to fund a Pre-K & Teacher Certification Support and Training personnel position (“Early Childhood Program Administrator Position” or “Position”) as an in-kind contribution; and

Whereas, the individual serving in the Position would be responsible for coordinating and managing the implementation of early childhood initiatives in collaboration with the Early Childhood Coalition, Head Start, the SBSLC curriculum supervisors, and the SBSLC Title I VPK coordinator; and

Whereas, Employee desires to serve in the Position, to perform the administrative duties and responsibilities of the Position, and to contract with the SBSLC to provide such service and performance; and

Whereas, the Employee shall commence employment with the SBSLC in the Position effective July 1, 2011; and

Whereas, Employee shall be an at-will employee of SBSLC, shall not be considered “Instructional Personnel,” Administrative Personnel,” an “Educational Support Employee,” or a “Manager” within the meaning of these terms as used in Chapter 1012, Florida Statutes, and none of the parties intends anything contained in this Contract to alter or affect the at-will relationship; and

Whereas, as a result of this Contract, Contractor and SBSLC share certain responsibilities as to Employee for the services that Employee performs for SBSLC as more particularly defined in the terms of this Contract.

Now therefore, for and in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the parties do mutually agree as follows:

1. Services and Payment.

- a. During the term of this Contract, Employee shall provide to the SBSLC the services that are subject of this Contract, and are determined by the SBSLC from time to time in a job description for the Position. Employee shall be subject to and comply with all conditions of employment set forth in applicable SBSLC policies and procedures. SBSLC and the Contractor agree that the Employee shall for all purposes be considered an employee of SBSLC and not Contractor and nothing in this Contract shall be construed to create an employment relationship between Contractor and the Employee.
- b. Employee shall receive from SBSLC a salary and benefits approved by the SBSLC at such intervals as the parties may agree, but not less than monthly.
- c. SBSLC is responsible for the timely payment of wages to Employee based on SBSLC's standard payroll schedule. Such payments will be made regardless of whether payments have been made by the Contractor to SBSLC for the services rendered pursuant to this Contract. SBSLC will remit to proper authorities all amounts deducted and withheld from Employee salary.
- d. Unless applicable state law otherwise requires, SBSLC will secure and maintain coverage for workers' compensation and employee benefits for Employee. SBSLC agrees to pay the Employee's terminal payout per School Board Policy.
- e. Employee shall be reimbursed for mileage, lodging, meals, and other such expenses related to the Position as Florida law and School Board Policy permits for reimbursement of public employees and officers, so long as Employee complies with all laws and School Board Policy concerning reimbursement.
- f. The Contractor shall be responsible to pay to SBSLC any and all actual salary, benefits and expenses incurred by SBSLC to fund the Position, as provided in this Contract, for each of the corresponding fiscal years:
 - Fee for 2011-2012 fiscal year: An estimated total of \$95,765.44, which is intended to compensate SBSLC for the base salary (\$80,000), payroll taxes (FRS (4.91% - \$3,928) and social security (7.65% - \$6,120)), and employee benefits (healthcare (\$221.56 per paycheck - \$5,317.44 annual) and cafeteria benefits (\$400 annual) associated with the Position.
 - Fee for 2012-2013 fiscal year: To be determined and agreed by May 31st 2012, based on the actual salary, payroll taxes, benefits and expenses for the Position incurred by SBSLC

- Fee for 2013-2014 fiscal year: To be determined and agreed by May 31st 2013, based on the actual salary, payroll taxes, benefits and expenses for the Position incurred by SBSLC
 - Fee for 2014-2015 fiscal year: To be determined and agreed by May 31st 2014, based on the actual salary, payroll taxes, benefits and expenses for the Position incurred by SBSLC
 - Fee for 2015-2016 fiscal year: To be determined and agreed by May 31st 2015, based on the actual salary, payroll taxes, benefits and expenses for the Position incurred by SBSLC
- g. Contractor agrees to pay for Employee's participation in such seminars as are approved by SBSLC: professional dues and subscriptions that SBSLC deems necessary for Employee's continuation and participation in national, regional, state and local associations and organization necessary and desirable for Employee's continued professional participation, growth, and advancement and for the good for the SBSLC.
- h. The Contractor will pay the salary, benefits, and expenses of the Position as specified in Section 1.f. in four (4) equal payments each year on Oct. 1st, Jan. 1st, April 1st and June 30th of each fiscal year noted above for the duration of the Contract. With each such payment, the Contractor shall reimburse SBSLC for all actual expenses paid by SBSLC for the Position at time of payment calculation. Contractor will require an invoice in reasonable detail each quarter, showing payments made to or on behalf of the Employee during the quarter. An invoice will be required thirty (30) days prior to the payment date to allow for processing.
- i. On or before August 15 each year, SBSLC shall submit a final invoice to Contractor for the previous fiscal year showing a final adjustment for the variance between the costs actually paid to SBSLC for the Position under the Contract and actual costs incurred by the SBSLC for the Position. If the amount due to the SBSLC is higher than the amount paid, the Contractor shall remit such funds to the Contractor within thirty (30) days of receipt of invoice. If the amount due to the SBSLC is less than the amount paid, then the SBSLC shall remit such funds to the Contractor within thirty (30) days of final invoice.
- j. Contractor agrees that this Contract shall be a net agreement for SBSLC and that Contractor shall be responsible for all costs and expenses of every nature and kind whatsoever relating to SBSLC's employment of Employee to provide the services under this Contract.
- k. Contractor has no authority or right to direct the day-to-day business affairs of the SBSLC or to make any business decisions on behalf of the SBSLC.
- l. The SBSLC and Employee hereby acknowledge and agree that Employee's duties, as of the signing of this Contract, qualify her as an exempt executive pursuant to the Fair Labor Standards Act (FLSA). If at any time following the date of this Contract,

Employee believes her duties have materially changed such that the exemption no longer applies to her, it shall be Employee's duty to advise SBSLC of the changes and provide SBSLC with all documents and information necessary to evaluate her FLSA exemption status.

2. Term of Agreement. The term of this Contract shall be for a term of five (5) years from July 1, 2011 to June 30, 2016, subject to the provisions of Section 6.

3. Non-discrimination. The Contractor and SBSLC covenant and agree that they shall not discriminate against any employee or applicant for employment to be employed in the performance of the Contract with respect to hiring, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of age, sex, or disability (except where based on a bona fide occupational qualification); or because of marital status, race, color, religion, national origin, or ancestry.

4. SBSLC Project Coordinator - Dr. Owen Roberts, Associate Superintendent, Curriculum and Accountability, is designated as the Project Coordinator for SBSLC. The Project Coordinator shall be SBSLC's representative in connection with the Contractor's performance under this Contract. SBSLC has complete discretion in either delegating this responsibility to another designee of the SBSLC or choosing someone other than Dr. Roberts to performance this responsibility at any time during the term of this Contract.

5. Contractor Supervisor – Andrew McElvain – Senior Vice President – Finance –Enterprise Solutions Group is designated as the Contractor Supervisor for the Contractor. The Contractor Supervisor is fully authorized to act on behalf of the Contractor in connection with the Contract. Mr. McElvain and Contractor reserve the right to delegate this authorization to appropriate members of Contractor's business as required or needed.

6. Termination

- a. If the Purchase Agreement is terminated by Contractor or SBSLC, this Contract will also terminate as of the same date.
- b. The Contractor shall solely be responsible for the pro-rata portion of the actual expenses for the Position until the effective date of termination.
- c. Employee is an at-will employee of SBSLC and, as such, either Employee or SBLSC may terminate this Contract, as to the obligations between them only, in accordance with the laws of the State of Florida governing at-will employment. Employee shall not be considered "Instructional Personnel," Administrative Personnel," an "Educational Support Employee," or a "Manager" within the meaning of these terms as used in Chapter 1012, Florida Statutes.

7. Public Records and Confidentiality.

- a. The parties shall allow public access to all documents, papers, letters, and other materials that are subject to the provisions of Chapter 119, Florida Statutes, and made or received in conjunction with this Contract.
- b. The parties acknowledge that as a result of the relationship under this Contract, that the parties, their agents, or employees may be given access to or acquire information which may be confidential to the respective parties. Any and all such information obtained by any party, its agents, or employees shall be deemed confidential. All parties agree to hold such information in strict confidence and to not disclose such information or use such information for any purpose whatsoever other than the provision of services under this Contract. Each party agrees to advise its employees and agents of this obligation to keep such information confidential and to obtain their agreement to do so.

8. Interpretation; Venue. This Contract shall be interpreted as a whole unit, and section headings are for convenience only. All interpretations shall be governed by the laws of the State of Florida. Each party has had ample opportunity to seek the advice of legal counsel prior to entering this Contract, which shall not be construed against the party responsible for drafting the instrument. In the event it is necessary for either party to initiate legal action regarding this Contract, venue shall be in the Nineteenth Judicial Circuit, in and for St. Lucie County, Florida, for claims under state law, and in the Southern District of Florida for claims justiciable in federal court.

9. Audit. The Contractor agrees that until the expiration of five (5) years after expenditure of funds under this Contract, the SBSLC and any of its duly authorized representatives shall have access to and the right to examine any and all directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this Contract. All required records shall be maintained until an audit is completed and all questions arising from such audit are resolved, or until five (5) years after completion of all work under this Contract.

10. Entire Agreement. This Contract constitutes the entire understanding and agreement between the parties. Any modifications or amendments to this Contract must be in writing signed by a duly authorized agent or representative of all parties. Specifically, any contrary, inconsistent, or additional terms incorporated in any other documents will be of no force or affect whatsoever.

11. Notices. All notices and other communications required or permitted under this Contract shall be served in person, by US Mail, or Federal Express or equivalent carrier at the following address:

If to Contractor:

Houghton Mifflin Harcourt Publishing Company
Attn: General Counsel
222 Berkeley Street
Boston, Massachusetts 02116

If to SBSLC:

School Board St. Lucie County
Attn: Dr. Owen Roberts
4204 Okeechobee Road
Fort Pierce, Florida 34947

If to Employee:

Mary Huffstetter
4204 Okeechobee Road
Fort Pierce, Florida 34947

12. General.

- a. This Contract shall be binding upon the parties hereto their heirs, administrators, successors and assigns. No party without prior written consent of the other parties shall assign this Contract.
- b. Should any term, warranty, covenant, condition or provision of this Contract (or any portion thereof) be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remainder of this Contract shall not in any way be affected or impaired thereby, and the balance of the Contract shall remain in full force and effect and stand as if the unenforceable part did not exist.
- c. The failure by either party to insist upon strict performance of any of the provisions contained herein shall in no way be construed as a waiver of any provision or of the right of such party thereafter to enforce each and every provision of this Contract.
- d. Each party acknowledges that it has not been induced to enter into this Contract by any representation or warranty not set forth in this Contract. This Contract sets forth all the promises, covenants, conditions, agreements, and understanding between the parties hereto and supersedes all prior and contemporaneous agreements, understanding, inducement, or conditions, expressed or implied, oral or written, except as contained herein.
- e. This Contract and any amendments may be executed in counterparts each of which shall be deemed an original, but all of which together will constitute one and the same instrument.
- f. The article and paragraph headings contained in this Contract are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Contract.

- g. All pronouns shall be deemed to refer to the masculine, feminine, neuter, singular, or plural, as the identity of the party or parties or their personal representatives, successors and assigns may require.
- h. The parties hereto will execute and deliver such further instruments and do such further acts and things as may be reasonably required to carry out the intent and purposes of this Contract.
- i. The Contractor is an independent contractor and is not an employee or agent of the SBSLC. Nothing in this Contract shall be interpreted to establish any relationship other than that of an independent contractor between the SBSLC, on the one hand, and the Contractor and its employees, agents, or subcontractors, on the other, during or after the performance of this Contract.
- j. The Employee shall not be a beneficiary of the rights and obligations established under this Contract between the Contractor and the SBSLC, and she shall have no right to enforce or seek enforcement of such rights and obligations established between the other parties. All rights and remedies of the Employee under this Contract shall be as an exempt, at-will employee of the SBSLC and in no other capacity.
- k. This Contract is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns subject to the express provisions hereof relating to successors and assigns and no other person shall have any right, interest or claims hereunder or be entitled to any benefits under or on account of this Contract as a third-party beneficiary or otherwise.
- l. The parties hereto represent and warrant that the execution and delivery of this Contract has been duly authorized by all necessary corporate action.

* * *

IN WITNESS WHEREOF the parties have executed this Contract as of the day and year set forth beneath each signature.

Houghton Mifflin Harcourt Publishing Company (“Contractor”)

By: _____ Witness: _____

Printed name: _____ Witness: _____

Title: _____ Date: _____

The School Board of St. Lucie County (“School Board”)

By: _____ Witness: _____

Printed name: Kathryn Hensley Witness: _____

Title: Chairman Date: _____

ATTEST:

Michael Lannon, Superintendent
and Ex Officio Secretary

Mary Huffstetter (“Employee”)

_____ Witness: _____
Mary Huffstetter, Individually

Date: _____ Witness: _____