

# **FINAL DRAFT**

June 23, 2005

**AGREEMENT**

**BY AND BETWEEN**

**THE SCHOOL DISTRICT OF PALM BEACH COUNTY**

**AND**

**COMMUNITY EDUCATION PARTNERS, INC.**

**TO PROVIDE AN**

**ALTERNATIVE EDUCATION PROGRAM**

## **AGREEMENT**

This AGREEMENT ("Agreement"), entered into this 29<sup>th</sup> day of June, 2005, between the Palm Beach County School Board ("Board"), a political subdivision of the State of Florida, having its principal place of business at 3300 Forest Hill Boulevard, West Palm Beach Florida 33406, and Community Education Partners, Inc. ("CEP"), a Delaware corporation, having its principal place of business at 2636 Elm Hill Pike, Suite 500, Nashville, Tennessee 37214.

### **RECITALS**

WHEREAS, the "Board" is the governing body of the School District ("School District") and is charged with the duty of providing adequate public schools and is authorized to supervise all matters pertaining to the public schools in "Palm Beach County"; and

WHEREAS, school safety, low academic achievement and significant drop out rates are critical issues that face the Board; and

WHEREAS, low-performing students who violate the School District's Student Code of Conduct make schools unsafe, interfere with a teacher's ability to teach and maintain control in the classroom, prevent other students from obtaining a quality education and often have academic deficiencies; and

WHEREAS, CEP is the sole provider of its unique educational program and the CEP Partnership Program offers the promise of improved school safety and improved educational outcomes for these students who are disruptive and may be performing below grade level; and

WHEREAS, the Board desires to negotiate this agreement and to make adjustments to its policies and procedures in order to implement the CEP educational program at one or more sites in Palm Beach County.

NOW, THEREFORE, for the consideration set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, mutually agree as follows:

### **I. DEFINITION OF TERMS**

Unless the context otherwise requires, the following capitalized terms shall have the meanings set forth below for the purposes of this Agreement.

"Academic and Operations Model" means all academic content and performance objectives, manuals, software, policies, procedures, strategies and systems developed by CEP or used by CEP relating to the provision of Services under the terms of this Agreement.

"Accountability" means the measures of program quality and effectiveness used to evaluate CEP's delivery of educational services pursuant to this Agreement.

"ADA" means the Americans with Disabilities Act of 1990, as amended.

"Agreement" means this Agreement by and between the Board and CEP regarding the provision by CEP of the Partnership Program for the School District.

"AIP" means an Academic Improvement Plan for any student, K-12, who may not be meeting state or district proficiencies in reading, writing, math or science. The plan should specifically state the nature of the student's academic deficiency, and the instructional strategies the teacher will use with the student.

"Assigned" means a student that can be located and can be Enrolled within fourteen (14) calendar days of CEP having received the student's name and information provided by the School District to CEP.

"Assignment" means the number of days a Student will be enrolled in the CEP Program, which initially shall be for 180 days of attendance and until the next semester break.

"CEP" means Community Education Partners, Inc., a Delaware corporation, or any other related entities, whether for profit or not-for-profit, formed for the purpose of developing, constructing, operating, maintaining or holding the assets of CEP Schools, including, but not limited to a successor entity that acquires through a corporate reorganization substantially all of CEP's assets and liabilities, provided that such related entities do not own or control any businesses which would conflict with the purposes of this Agreement.

"CEP Classroom Orientation" means the orientation class that each Student completes at CEP as part of the enrollment process.

"CEP School" means a Facility or the Facilities designated by CEP at which the Services are performed.

"CEP School Guidelines" means the rules and procedures Students observe within the CEP Program.

"Daily Attendance Report" means CEP's official list of the names and Student identification numbers of the Students Enrolled in and counted as present, excluding excused absences, at the CEP School at a specific time of each day as determined by CEP in accordance with state and local board of education policies.

"Educational Software" means the software developed or licensed by CEP for use by Students in the classroom of a CEP School, including documentation, updates, revisions and related materials and accompanying security devices.

"Enrolled" means the status a Student reaches at CEP when that Student has completed all enrollment procedures and paperwork at the CEP School and has actively begun the CEP Classroom Orientation. A Student maintains the status of "Enrolled" during the Student's Assignment at CEP.

"Enrollment" means the Student capacity of CEP's Facilities for which CEP will be paid, as specified in Section 6.1, regardless of the actual number of students enrolled.

"ESL" means English as a second language.

"ESOL" means English for speakers of other languages.

"Excused absence" means an absence due to a student's illness, a medical appointment, a death in the family, the observance of a religious holiday, or other individual student absences beyond the control of the parent or student as determined and approved by the principal or the principal's designee. Students who are engaged in a school-approved educational activity, which constitutes a part of the instructional program for the student, are counted in attendance.

"Facility" or "Facilities" means the CEP School location(s) and building(s) in which Services are provided by CEP pursuant hereto.

"504 Plan" means an educational plan written for an individual with disabilities, qualified under Section 504 of the 1973 Vocational Rehabilitation Act.

"Funding Sources" means funding which may be available from additional sources other than the School District, including but not limited to, grants by federal, state and local government authorities and agencies and privately funded programs, institutions and foundations.

"IDEA" means Individuals with Disabilities Education Act of 1997.

"IEP" means an Individualized Education Program as that term is defined in the IDEA.

"Learning Community" means a cluster of five classrooms (of 110 middle school students or 125 high school students) surrounding a commons area.

"Limited English Proficiency" or "LEP" means a Student, classified by the School District, as developing English language proficiency.

"Monthly Payments" means the dollar amounts due for any period as specified in Section 6.1 hereof.

"Partnership Program" or "CEP Partnership Program" or "CEP Program" means the alternative education program, as established, managed and operated by CEP pursuant to the terms hereof.

"Payments" means the amounts paid by the School District to CEP for the provision of services under Article III of this Agreement.

"Related Services" means the services to be provided by the School District to Students with one or more disabilities.

"Renewal Term" means the extension period of this Agreement upon the expiration of the Initial Term or any Renewal Term pursuant to Paragraph 2.2 of this Agreement.

"School Board" or "Board" means the governing board of the School District.

"School Calendar" means the CEP school operating calendar, which is the same as the School District operating calendar including all holidays, teacher preparation days, teacher professional development days and teacher service days.

"School District" or "District" means the School District of Palm Beach County.

"School Year" means that number of instructional days in the School District's calendar.

"Services" means the services provided by CEP to the School District under the terms of this Agreement related to the establishment, management and operation of the CEP Partnership Program.

"Software" means the software developed or licensed by CEP and used in connection with the operation of a CEP School, in object code form, including documentation, updates, revisions, and related materials and any accompanying security devices.

"SRI-I" means Scholastic Reading Inventory Interactive or such other assessment tools as the School District may from time to time adopt for reading assessment.

"STAR Mathematics" means mathematics assessment tool for students in grades 1-12 or such other assessment tools as the School District may from time to time adopt for mathematics assessment.

"Student" or "Students" means Enrolled students who meet the population criteria defined under Paragraph 4.1.A. of this Agreement and who have completed the enrollment process set forth in Paragraph 3.2.A. and 4.1.B. of this Agreement.

"Student Code of Conduct" means the School District of Palm Beach County Code of Conduct to be used by CEP to govern the behavior of Students Enrolled in and attending a CEP School.

"Student Day" means each calendar day or part thereof during which a Student attends a CEP School.

"Superintendent" means the Superintendent of Schools for the School District or his or her designee.

## II. TERM

2.1 Term. The Term of this Agreement shall commence on the date first above written and end on June 30, ~~2007~~ 2011 ("Initial Term"). This agreement is subject to termination under the terms and conditions set forth herein. Further, this Agreement is specifically subject to and conditioned upon approval by the Board in its adopted budget during the term of this Agreement of sufficient funds designated by the Board or Superintendent to specifically meet its obligations under this Agreement. Failure to include such funds in its adopted budget shall constitute termination of this Agreement as of the last day of the last School Year for which funding is approved, and shall be considered to be a termination for convenience.

2.2 Renewal. This Agreement shall automatically renew for one successive term of five (5) School Years ("Renewal Term") unless either party shall give written notice to the other of termination by January 1 of the last School Year of the existing Term. During the Renewal Term, this Agreement is subject to termination under the terms and conditions set forth herein.

## III. CEP'S SERVICES AND COVENANTS

3.1 Provision of Services. Upon the terms and subject to the conditions set forth in this Agreement, CEP agrees to provide the Services to the School District for the Enrollment of each School Year of this Agreement based on the following phase-in schedule:

Month	Learning Communities		Enrollment
	Middle	High	
January 2006	1	1	235 students
February 2006	1	1	235 students
March 2006	1	1	235 students

April 2006	1	1	235 students
May 2006	1	1	235 students

For each School Year after the initial phase-in School Year, the Enrollment shall be 705, with 3 middle school learning communities containing 110 students each and 3 high school learning communities containing 125 students each.

3.2 Specific Duties and Obligations of CEP. CEP shall provide the following Services with regard to the Students placed in the CEP Partnership Program:

- A. Enrollment Procedures. CEP shall work with the School District to develop the enrollment procedures to be used by the School District and CEP in enrolling students in the CEP Program.
  1. Each Student shall remain enrolled at the School District’s sending school until such time as the Student has completed enrollment at the CEP School.
  2. The School District shall review all records, transcripts and IEP, LEP or 504 Plans to reasonably ensure that placement in a CEP Program is consistent with the enrollment criteria set forth in this Agreement and is in the best interest of and is appropriate for each prospective Student, provided, however, that all students assigned by the School District to the eligibility pool pursuant to Section 4.1, below, are eligible for enrollment in the CEP Program. The final decision on which students will be assigned to the CEP School shall be made by the Superintendent, consistent with the enrollment criteria set forth in this agreement.
  3. For each Student enrolling in the CEP Program, a diagnostic assessment in reading and math basic skills will be completed at admission using SRI-I and STAR mathematics assessment software which is consistent with the requirements for other Alternative Educational Programs in the School District. CEP shall provide the technology to support SRI as well as the software, licenses and training.
  4. CEP shall maintain student records utilizing electronic or other data systems which are congruent with those required or developed by the School District to conform to state and federal laws, rules or regulations. CEP will collaborate with the School District to design “real time” data format for reporting electronic data.
  5. CEP and School District agree that new CEP Students can be enrolled in the CEP Program on any day of the school week, but new CEP Students

will only be admitted to a CEP School for purposes of orientation on one designated day each week.

B. Basic Academic Programs.

1. CEP will provide a standards-based core curriculum focusing on progress toward Student mastery of the essential knowledge and skills in English, language arts and mathematics.
2. CEP will offer the core courses in English language arts/reading, mathematics, science and social science/history required for grade promotion or graduation. CEP will utilize the state course code directory titles and numbers for all courses offered for credit recovery, promotion or graduation. Both parties agree that the CEP Program may not include all of the electives that would be available in a comprehensive middle or high school program.
3. The CEP Program is provided through an open entry/end of semester return.
4. CEP will accept Limited English Proficient students. Instruction will be provided by ESOL endorsed or ESOL certified teachers or coverage (60 hour) teachers so as to be in accordance with the terms of the Federal Consent Decree.

C. Comprehensive Academic and Behavior Programs.

1. CEP will offer social/life skills instruction to Students Enrolled in the CEP Program.
2. Certification by CEP, where applicable, of completion of course work shall be accepted by the School District for transfer of credits earned or courses passed aligned with Sunshine State Standards and as meeting School District promotion and/or graduation requirements and shall be reflected on the Student's School District transcript.
  - a. For each Student who completes all requirements for high school graduation during his or her Assignment at CEP, or any extended enrollment period beyond the Assignment, CEP will certify that all requirements have been met consistent with Florida Statutes and School District Policy while Enrolled in the CEP Program and the School District will accept such certification.

D. Additional Programs.



1. CEP provides a behavior intervention program for Students as part of the CEP Program.
  2. CEP will follow the District Student Code of Conduct at each CEP School and develop the CEP School Guidelines governing CEP procedures for each CEP School.
  3. CEP will administer state and local tests in compliance with applicable state and local laws, rules, and regulations.
  3. CEP shall follow the same grading scale utilized by the School District.
- E. Staffing. CEP will at all times provide sufficiently trained professional staff for the proper instruction and supervision of Students in the CEP Schools. CEP will perform criminal background checks in accordance with Florida law on all prospective employees who perform duties or services pursuant to this Agreement. The School District will provide the fingerprinting services for each individual who will be employed in Palm Beach County. (See true and correct copy of contract attached as Exhibit "A.") CEP will pay the School District for these services as rendered, with CEP having the option of passing this expense to the applicant. Within 7 days of CEP's submission of an individual's name to the School District for a background check and fingerprinting, the School District will provide CEP's Human Resources Department with a copy of the background check report for CEP's use in making a hiring decision.
- F. Equipment. CEP will provide all computers, software, telecommunications equipment, furniture, fixtures or any other supplies or equipment necessary to provide the Services pursuant to this Agreement.
- G. Recreation Program. CEP shall provide adequate equipment and supplies in the Facilities for a recreational program.
- H. Administrative Services. CEP shall maintain records on Student attendance, courses offered, number of Students served, courses completed, and Student report cards. Enrollment and attendance shall be accounted for by CEP's established system and shall be deemed acceptable by the School District. CEP shall establish the instructional hour of the school day to record absences in order to determine attendance for all grades using accepted attendance accounting procedures, as promulgated by the State of Florida and in effect as of the date of this Agreement. The School District will include CEP on its internal mail distribution route for purposes of direct communication between CEP and the School District related to CEP's provision of the Services. CEP shall have limited

access to the School District's student databases only for information related to the Students assigned to CEP, as more fully set forth in the attached Exhibit "B."

- I. Records. CEP shall keep proper and complete books, records, and accounts with respect to the operation of the CEP Facilities and all subcontracts thereof and shall permit the School District and its designees, upon written notice to the Chief Financial Officer of CEP, to inspect the same at all reasonable hours and to take away paper copies thereof. Under no circumstances shall CEP be required to provide any records related to its other operations outside of the School District except in the event of litigation between the parties pursuant to the normal court process or in other instances required by law. No license or other right to use the Software shall be implied from or deemed to have been granted by the foregoing inspection and hard (paper) copying rights. The School District will provide to CEP any existing electronic or other student records in its possession which pertain to any students who are assigned to a CEP School, or to students who are included in the longitudinal tracking program defined in Paragraph 7.4, including attendance records, academic records, disciplinary records, IEPs and previous or current standardized or other test scores. This information will be provided electronically in a file format usable by CEP and transferred to an information repository agreed to by the parties prior to the student's attendance at a CEP School. The School District hereby designates employees of CEP as having a legitimate educational interest such that they are entitled to access to education records under 20 U.S.C. §1232g, the Family Education Rights and Privacy Act. To the extent CEP will come into possession of Student records and information, and to the extent that CEP will be involved in the survey, analysis, or evaluation of Students incidental to this Agreement, CEP agrees to comply with all requirements of the Family Education Rights and Privacy Act and any other state or federal law regarding privacy and confidentiality of records. CEP will adhere to all federal, state and local laws governing confidentiality of student information for any Student and all other matters as more fully set forth in Exhibit "B".
  
- J. Professional Development. CEP will provide an orientation training that includes information on CEP's program, policies and procedures to appropriate School District staff and administrators, including staff and administrators at each School District sending school, who are directly or indirectly involved with the referral process, the assignment/placement of students in the CEP Program, the verification of grades and credits received, and the student's transition back to his/her School District school assignment at the request of the school district.

In-service points will be recorded by the School District for all certified personnel at CEP. The School District will accept CEP approved points earned from previously approved master in-service components.

Any in-service training program required by law or the School District will be provided by the School District to the appropriate CEP personnel consistent with School District procedures.

### 3.3 General Duties and Covenants.

- A. Standards. Instruction shall include the essential knowledge and skills necessary to achieve course completion or course credits aligned to the state standards.
- B. Grade Level Skills. The parties acknowledge and agree that grade level reading and math skills will be determined by software which is aligned with the School District curriculum and/or the required basic skills tests in reading and math.
- C. Hours. The Services contemplated in this Agreement will be mutually agreed to by the School District and CEP in accordance with State requirements, and will be established by the calendar of the CEP Program. The start and end of each school day will be determined by the School District.
- D. Disciplinary Standards. Students Enrolled in the CEP Program will be subject to the following disciplinary standards:
  - 1. Any Student who engages in criminal activity while enrolled in the CEP Program and in attendance at a CEP School will be reported to the School District and the local police agency for appropriate legal action and will be subject, at a minimum, to disciplinary consequences from CEP. Every incident will be documented by the appropriate school administrator or his/her designee.
  - 2. Any Student may be suspended for three or less days for behavior infractions. ESE and 504 students may not be suspended beyond 10 days per school year for behavior that is a manifestation of their disability. Prior to the 11<sup>th</sup> day of suspension, a manifestation determination hearing must take place in accordance with School Board Policies 5.189 and 5.1891.
  - 3. Any Student may be recommended for expulsion under the School District policy with notification and written approval from the Director of Alternative Education. These students will be suspended while waiting for Director of Alternative Education written approval. Suspension will not be more than ten days before District disciplinary team holds a hearing.
- E. Conformance with Performance Requirements. CEP shall provide the Services and shall operate, maintain and manage the CEP Program in compliance with all applicable federal and state constitutional requirements and federal, state and

local laws, statutes, ordinances, rules and regulations, and School District policies and procedures, including, without limitation, all federal, state and local laws prohibiting discrimination on the basis of disability, race, creed, color, gender, religion, sexual orientation, national origin, or ancestry, and shall provide for enrollment and hiring in a nondiscriminatory manner.

- F. Performance of Other Duties. Except as specifically set forth herein, CEP shall not be required to perform or provide any other services, programs, duties or obligations. All other services necessary, appropriate or otherwise available to students Enrolled in a School District school shall be provided or made available to students Enrolled in the CEP Program at School District's sole cost and expense.

#### **IV. SCHOOL DISTRICT'S OBLIGATIONS AND COVENANTS**

4.1 Student Identification and Assignment. School District agrees to identify and assign to an eligibility pool, students whose academic status or disruptive behavior, as defined in 4.1.A., make them eligible for transfer to the CEP Program. School District will assign a sufficient number of students to the eligibility pool to meet the Enrollment specified in Section 3.1 hereof. School District agrees that CEP will be paid the Monthly Payment for the Enrollment in accordance with Section 6.1, regardless of the actual number of students enrolled in the Program.

- A. Consistent with established School District policies and procedures and the School District Student Code of Conduct, the parties agree that each student assigned to the eligibility pool shall be in grade levels six (6) through twelve (12) at the time of enrollment, primarily between the ages of twelve (12) and sixteen (16), and be on a standard diploma track. In addition, enrollment in CEP is subject to compliance with the provisions of Florida Statutes concerning school entry health examinations and immunizations.

Students assigned to the CEP Program shall have one or more of the exhibited behaviors or academic tendencies, including, but not limited to:

1. Excessive truancy, skipping classes and/or tardiness to classes.
2. Leaving campus without permission.
3. Repeated discipline write-ups for creating and leading other students in behavior problems in classrooms, halls, on school grounds and at school events.
4. Repeated violations of the School District's Code of Student Conduct and Discipline.

5. Involvement with tobacco or illegal drugs at school.
  6. Aggressive, threatening behavior towards other students, teachers or school staff.
  7. Involvement in a school conflict where students have needed to be separated.
  8. Having to repeat grades.
  9. Needing credits to catch up with their cohort group and being in danger of not graduating with their cohort group.
  10. Performing below grade level in basic skills in reading and math.
  11. Scoring low on the FCAT and needing remediation skills.
  12. Having low GPAs and being in the bottom 25% of their class.
- B. The School District will develop the enrollment procedures to be used by the School District and CEP in assigning and enrolling students in the CEP Program. The School District will establish the enrollment procedures within at least sixty (60) days prior to the initiation of this contract and shall include, but not be limited to the following:
1. School District has the authority to assign students to the CEP Program according to the provisions of the School District's Student Code of Conduct.
  2. Each Student shall remain enrolled at the School District sending school until such time as the Student has completed the enrollment procedures for the CEP Program that have been agreed to by the School District and CEP. The School District agrees to approve all placements and to transfer a copy of the file for each student assigned to CEP prior to the sending school's release of any student from attendance at the sending school.
  3. Enrollment in the CEP Partnership School will be considered a "within" district transfer, not a drop from the School District roll, with each student continued on the School District roll in a designated CEP active attendance status that is maintained at the sending school or by the Alternative Education Office or other appropriate office designated by the School District. Since CEP Students will remain on the School District roll, CEP is authorized to utilize standard School District forms for student reporting such as report cards and transcripts.

- C. An ongoing communication system, to be used during the entire term of this Agreement, will be established between the School District's sending schools and CEP's School(s) and will include:
1. The temporary assignment of a small office space to the CEP operations staff (principal and secretary) in a School District Department of Alternative Education building while the school building is being built.
  2. The School District shall identify a staff member from the Department of Alternative Education whose responsibility, during the enrollment phase-in School Year, will be the coordination of the CEP contract, and whose duties and authority as a point of contact will include, but not be limited to:
    - a. reviewing the provisions of the contract with CEP after the signing of this Agreement;
    - b. assist with identification, assignment and enrollment of students in the CEP Program; and
    - c. assist with supervision and direction of the enrollment process.
  3. In order to mutually help and support the Partnership Program, the School District agrees to provide sufficient staff assistance and training to CEP personnel during the phase-in School Year of this Agreement in the following areas:
    - a. the School District's data collection and storage system(s);
    - b. the School District's academic system; and
    - c. the School District's attendance system.
  4. In order to meet the Enrollment deadlines specified in Sections 3.1 and 6.1, each sending school that refers students to the CEP program should appoint a site-based administrator to be the contact person for enrollment in the CEP program. Each site-based administrator will receive in-service training from CEP on the enrollment criteria, the enrollment process, and the CEP Program.
  5. CEP will advise each appointed site-based administrator, key School District staff, and the School District representative regarding the ongoing status of enrollment at the district and site level.

4.2 Textbooks and Instructional Materials. CEP agrees to utilize those textbooks/resources adopted by the School District that correspond to the same course code numbers. The School District agrees to provide the initial set of textbooks and associated teacher resources for each classroom. CEP will reimburse the School District for any lost or damaged non-consumable instructional materials including textbooks for full cost in accordance with School District Policy.

4.3 E-Rate Funding. The School District understands and agrees that CEP will be applying as a private consortium for funding for E-rate eligible products and services to which it is entitled as part of normal school operation. The district is not responsible or liable for CEP's use of E-rate funds, as outlined by the Schools and Libraries Division.

4.4 Food Services. The School District shall be responsible for providing all food services for students served by CEP including food delivery to the eating areas. The School District shall be responsible for the procurement, installation, maintenance and replacement of all stationary and non-stationary equipment necessary to make the food service operation fully functional. School District Food Services staff shall be responsible for cleaning the kitchen, equipment and food preparation areas. They shall not be responsible for cleaning any snack or other areas. The School District shall be responsible for collecting breakfast and lunch fees, and for maintaining all free or reduced lunch forms. The School District agrees that, for the purposes of providing food service, students assigned to the CEP School will be considered the same as any other student enrolled in the School District. Universal Feeding status will be applied for if the school meets the qualifications at the discretion of the School District.

4.5 Transportation. The School District will provide, at its expense, transportation for eligible students assigned to the CEP School. The School District reserves the right to adjust school hours for efficiency.

4.6 School Resource Officers. CEP will contract with the school district to provide, at the expense of the district, two armed school resource officers for this CEP School who will report to the CEP school administrator. The exact terms and conditions of the engagement shall be set forth in Exhibit C of the contract. Additionally, CEP will provide two unarmed contract security officers at CEP's expense.

4.7 Staff Retreats; Planning Sessions; School Board Briefing. In order to create an ongoing partnership between the School District and CEP, School District agrees to invite CEP to present program upon request to district stakeholders. The School District and CEP also agree that the Principal or designee of the CEP School should attend General Principal Meetings held by the School District and other appropriate district meetings, such as curriculum meetings, student services meetings and guidance meetings.

4.8 School District Staff Orientation. The School District will invite the following School District staff to attend the orientation conducted by CEP, relating to the CEP Program and related services, policies and procedures: (i) selected staff at all middle and high schools in the School

District that are involved in assigning students to the CEP Program, including the principal, assistant principals, counselors, special education teachers, and other key staff; (ii) area superintendents or other personnel as designated by the Superintendent.

4.9 School District Support. The School District, at its discretion, will assist CEP in establishing and maintaining community support for the Partnership Program, in any legislative efforts relative to funding sources or issues that may arise relative to the Partnership Program, or in any other initiatives that will strengthen and support the Partnership Program.

## V. FACILITIES

5.1 Provision of Facilities. The School District will provide the facilities necessary for CEP to provide services. The facility to be provided by the District will be designed and constructed in accordance with CEP's program requirements as incorporated in the grant application to the extent that these requirements do not conflict with the current versions of District's Master Specifications and Design Guidelines (subject to CEP's receipt and review of said guidelines and subject to the requirements of CEP's unique facility design.). The parties agree that CEP will be responsible for all tenant-related building support services including; electric, gas, water, sewer, trash removal, janitorial, and non-journeyman skill level ordinary building repair and maintenance services. The District shall be responsible for all major building structural maintenance, and repairs including all roof, foundation, HVAC, building structural issues and all non-ordinary repairs that require journeyman skill level repair services.

Security systems will be installed and maintained by the District. The system will be designed to support the CEP operations plan and the District will supply the security system according to CEP's specifications, utilizing typical components from the District's pre-approved resources. After-hours monitoring of the security system will be performed by the District. CEP will bear the cost of monitoring and of false alarms caused by CEP employees.

The School District agrees that the CEP program will operate two (2) learning communities with the necessary support personnel in the permanent site during the 2005-06 school year. The School District agrees to build a new facility for the CEP Program at the Indian Ridge site with enough permanent space completed to house two learning communities and enough permanent or temporary space for the needed administrative and ancillary staff. The School District agrees to have a fully-completed facility to accommodate six (6) learning communities in the CEP Program at such other date as the parties hereto shall agree..

At the termination of this agreement, all furniture, fixtures and equipment shall become the property of the School District, only after the School District reimburses CEP for the unamortized cost of such furniture, fixtures and equipment based on the amortization schedule shown in Exhibit "D." The District shall have the right to select or reject any of the items of furniture, fixtures and equipment not fully reimbursed and CEP shall retain ownership of all items the District does not select.



5.2 School District's Right to Utilize Following the termination of this Agreement, the School District shall have the right to utilize all paid for furniture, fixtures and equipment and the facility itself in any manner it chooses without any additional obligation to CEP.

**VI. COMPENSATION; METHOD OF PAYMENT**

6.1 Compensation. For and in consideration of the provision by CEP of the Services as set forth in this Agreement, the School District shall pay to CEP the Total Monthly Payments as set forth below, subject to adjustment for increases in staff salaries as specified in 6.1.1 and 6.1.2 below.

**ENROLLMENT FEE AND PAYMENT SCHEDULE**

	<b><u>Enrollment Fee Per Student*</u></b>	<b><u>Total Monthly Payment to CEP*</u></b>	
		<b><u>Month/ Students</u></b>	<b><u>Amount</u></b>
<b>Phase-In School</b> Year of Agreement Jan 06 - May 06 – TBD	\$10,013	235	\$235,306 per month
<b>First</b> Year of Agreement Aug 06 - May 07	\$10,313	705	\$727,067
<b>Second</b> Year of Agreement Aug 07 - May 08	\$10,623	705	\$748,851
<b>Third</b> Year of Agreement Aug 08 - May 09	\$10,941	705	\$771,341
<b>Fourth</b> Year of Agreement Aug 09 - May 10	\$11,270	705	\$794,465
<b>Fifth</b> Year of Agreement Aug 10 - May 11	\$11,608	705	\$818,294

**\*subject to adjustment as detailed in Sections 6.1.1 and 6.1.2.**

**\*subject to adjustment based on Class Size Reduction provisions.**

During the phase-in School Year, the Monthly Payments will be calculated by dividing the Enrollment Fee per Student for the phase-in School Year of Agreement by ten (10) to arrive at the monthly per Student Enrollment Fee. Next, the monthly per Student Enrollment Fee will be multiplied by the Enrollment for that month of the phase-in School Year, beginning with the opening of the first CEP School. For each School Year after the phase-in School Year, the Monthly Payments will be calculated by multiplying the per Student Enrollment Fee for the School Year by the Enrollment for the School Year and dividing that figure by ten (10).

6.1.1 **Staffing Adjustment.** Recognizing that the Enrollment Fee per Student is highly influenced by CEP employee compensation levels, the parties have agreed to salary targets and salary maximums for CEP staff in writing. The initial enrollment fee is based on salary targets and a prescribed staffing pattern that dictates the number of personnel by job category. The School District agrees to reimburse CEP for certain excess salary and fringe benefit costs. Should the total actual employee compensation (salaries and fringe benefits), limited to the scheduled maximums and staffing pattern agreed to by the parties, exceed the total aggregate compensation (salaries and fringe benefits) targets for the initial phase in school year (2005-06) or first full school year (2006-07), then CEP shall be entitled to an additional reimbursement equal to such excess. For the Phase in aggregate compensation shall be those agreed to in writing by the parties. For the subsequent year (2006-07) of the contract, the amounts of the individual salary targets, the salary maximums and the total aggregate compensation shall be increased by the percentage determined in 6.1.2. Should CEP request such additional reimbursement, the excess. Upon verification, the School District agrees to make reimbursement within 30 days. Reimbursement by the School District is limited to agreed upon scheduled maximums per position and to only payroll periods within the respective contract period. Nothing in this paragraph should be interpreted to restrict CEP's staffing decisions within its sole discretion.

6.1.2 **Annual Increase in the Enrollment Fee.** The Enrollment Fee per Student shall be increased each year by three percent (3%).

6. **Summer Program.** Students assigned to CEP during any School Year may be eligible to participate in School District Summer Programs, if such programs are offered and are appropriate for the Student at School District discretion.

6.3 **Extended School Year for ESE Students.** Any Student whose IEP determines the need for an extended School Year will receive services from the School District. This determination shall be made with the Area Team Leader, or designee, in attendance at the IEP meeting, if the student is enrolled at the CEP school.

6.4 **Extended School Year for ESOL Students.** Any Student whose LEP Plan determines the need for an extended School Year will receive services from the School District. This determination shall be made with the LEP Team if the student is enrolled at the CEP school.

6.5 Billing. On or about the tenth day of each calendar month during the School Year, CEP shall submit to the School District an invoice for the Monthly Payment for that month. Payment of the invoice by the School District is due by the last business day of the month following the invoiced month.

## **VII. ASSIGNMENT; RETURN TO DISTRICT**

7.1 Assignment. The parties agree that the initial Assignment for each Student assigned to a CEP Program shall be for 180 days of attendance and until the next semester break. For any particular Student, the Assignment may be extended, as mutually determined by the School District and/or the Student's parents and CEP to be in the best interest of the Student. Students who have completed their Assignment and whose reading and/or math grade level is determined by the diagnostic assessment, in accordance with Paragraph 3.2.A, to be three (3) or more years below appropriate grade level, will be Enrolled in the CEP Program for an additional mutually determined period or until the student is functioning within two (2) grade levels of his or her age-appropriate grade level, whichever occurs first.

7.2 Student Return to School District School. Students whose academic functioning at the end of an Assignment is at the age-appropriate grade level in reading and math, as determined by the agreed-to diagnostic assessment in accordance with Paragraph 3.2.A, and who exhibit appropriate behavior, may be reassigned by the School District to a School District program for the beginning of the next school semester. With the School District's consent, a Student's Assignment may be extended if the Student's parent/legal guardian requests or grants permission for the Student to continue in the CEP Program.

7.3 Transition Program. The School District and CEP shall mutually agree upon a transition program to support and monitor each student's return to a School District school, and shall transition each student pursuant to the transition program established by the School District and CEP.

7.4 Longitudinal Tracking Program. The School District and CEP agree that a longitudinal tracking program will be developed by CEP and the School District and will be implemented by the School District for those students who have returned from the CEP Program to a School District school. The School District agrees to implement the longitudinal tracking program and to provide CEP the Student's records for the school year prior to enrollment at CEP and the Student's records after his or her return to the School District school, including each Student's rate of attendance, academic performance records on all tests administered by the School District, the number of classes passed/credits earned and the promotion/graduation record.

In accordance with Exhibit B, the School District agrees to provide CEP with access to the School District's electronic database in order to implement the longitudinal tracking program including a mutually agreed upon control group of students for comparative purposes. The School District hereby designates employees of CEP as having a legitimate educational interest

such that they are entitled to access to education records under 20 U.S.C. §1232g, the Family Education Rights and Privacy Act. To the extent CEP will come into possession of Student records and information, and to the extent that CEP will be involved in the survey, analysis, or evaluation of Students incidental to this Agreement, CEP agrees to comply with all requirements of the Family Education Rights and Privacy Act.

## **VIII. OTHER SPECIFIC TERMS AND CONDITIONS**

8.1 Parent, Guardian or Kinship Caregivers Consent. Notwithstanding the access to Students' records as provided for in Sections 3.2.I and 7.4 of this Agreement, the School District will assist CEP in obtaining the written consent of Students' parents, guardians, or kinship caregivers for student participation in the CEP Program; release of student records including each student's prior rate of attendance, grade level when referred to the Partnership Program, number of times retained, academic performance record on all tests administered by the School District, and the number of classes passed/credits earned; emergency medical care, drug testing, student participation in media releases; and any other matter for which consent is required.

8.2 Campus Identification. The School District shall ensure the CEP Program and/or the CEP Facilities are assigned the necessary campus numbers or other identification codes used by the State of Florida for reporting or other purposes. In addition, the School District will ensure that the Facilities are appropriately classified under State code as a disciplinary alternative education program.

8.3 Truancy. CEP will develop a truancy plan in partnership with the School District that follows the School District and state guidelines. CEP will follow truancy court procedures on Students under 16 years of age with notification to the Director of Alternative Education and will involve School Based Teams when appropriate.

8.4 Transferring Students. Within any school program there are students who do not perform adequately or attend regularly at an assigned school. To assure that the CEP Program capacity is utilized completely, the following methods will be used to transfer Students from the CEP Program

- A. The School District policy for truancy of Students younger than 16 years of age will be followed in the CEP Program. Students who fail to respond to this truancy policy/procedure will be removed from CEP enrollment with written approval from the Director of Alternative Education thereby creating available space for another student who may be successful.
- B. When Students cannot be located and the Student's whereabouts cannot be determined, CEP will notify the Director of Alternative Education. CEP will provide documentation relative to their attempts to locate the student's

whereabouts. No student will be withdrawn without written approval from the Director of Alternative Education.

- C. The School District and CEP acknowledge and agree that CEP may not be successful in furthering the academic performance of all Students Enrolled in the CEP Program. Accordingly, the School District and CEP agree that they will work together to establish acceptable levels of success. The School District and CEP further acknowledge and agree that they shall develop a process for which those Students who are not benefited by the enrollment in the CEP Program (as mutually determined by the School District and CEP) shall be transferred to another educational setting. The Student will be held on the CEP Program roll until such time as placement is completed. The School District will keep a record of Students sent to other settings. All procedures regarding students with disabilities will be followed. In the area of student's disabilities, an IEP will be conducted to determine another appropriate program location. No student will be withdrawn without the written approval of the Director of Alternative Education.
- D. Students who are 16 years of age and older who develop chronic absentee problems (as defined by State statutes and regulations) and are no longer benefiting from the CEP Program will be reported to the Director of Alternative Education. CEP will hold the absences on the attendance records in the same manner as the School District until "dropout" status is given. No student will be withdrawn or reported as "dropout" without the written approval of the Director of Alternative Education.
- E. CEP will notify the School District when a Student is in the juvenile justice system and a space becomes available for another Student. On return to the School District, the Student may return to the CEP Program with the concurrence of the School District.
- F. When a student is referred to the CEP Program but is not enrolled, CEP will notify the Director of Alternative Education and collaborate with the School District to ascertain the whereabouts of the student and enrollment of the student at another location. The student will not be on the CEP Program roll and will not count against attendance.

8.5 Students with Disabilities. The parties agree that the School District may place special education students, as defined by the IDEA, and students receiving rehabilitation services under Section 504 of the Rehabilitation Act, to the CEP Program as appropriate under the students' IEP or 504 Accommodation Plan. In determining placement of students with disabilities at a CEP school, the School District is cognizant that CEP students requiring special education services shall be on a standard diploma track, served in regular classrooms and provided CEP's established program provided to non-disabled Students. Only students with disabilities who are on the standard diploma track will be eligible for placement at CEP. Students with disabilities

whose IEP or 504 Plan requires any special programs or services or specialized interventions that cannot be met by CEP's established program provided to non-disabled students will not be assigned to CEP. In all instances, the IEP Committee must determine that the CEP Program provided to non-disabled students is appropriate for implementation for each student's IEP. Where required by a student's IEP or 504 Plan, the School District will be responsible for providing transportation to the CEP Facilities and any Related Services identified in the Plans. For Students with disabilities, advancement will be consistent with the Student's IEP.

8.6 Independent Contractor. CEP shall be an independent contractor and, subject to the terms of this Agreement, shall have the sole right to supervise, manage, operate, control and direct the performance of the Services under this Agreement. Unless agreed otherwise in writing by CEP and the School District, the personnel and staff of CEP are employees of CEP. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create the relationship of an employer – employee or of a principal – agent, or to otherwise create any liability for the School District whatsoever with respect to the liabilities and obligations of CEP or any other party. Unless agreed otherwise, CEP shall be solely responsible for (and the School District shall have no obligation with respect to) payment of all federal income, FICA and other taxes owed or claimed to be owed by CEP arising out of CEP's association with the School District pursuant to this Agreement, and CEP shall indemnify, defend and hold the School District harmless from and against any and all losses, damages, claims, costs, penalties, liabilities and expenses howsoever arising or incurred or otherwise with respect to any such taxes.

A. Employee Personnel Files. CEP will maintain employee personnel files and, upon written request, CEP shall provide the School District with copies of the relevant portions of such employee personnel files as required by Florida law.

8.7 License. CEP hereby grants to the School District a royalty-free, non-exclusive, non – transferable license to use the Educational Software solely for use by Students in the classroom of a CEP School during the Term hereof. No license to any other Software is granted by this Agreement and no other license to the Educational Software is granted by this Agreement, either expressly or by implication. Neither the Educational Software nor any other Software may be copied by the School District or its Students, employees, officers or directors, and the School District shall take all reasonable action necessary to assist CEP in preventing the copying, pirating, bootlegging or any other unauthorized use of the Educational Software or any other Software by the School District, its students, employees, officers or directors. The parties acknowledge and agree that title to, ownership of, and all rights in patents, copyrights and trade secrets in all of the Software, Educational Software and any copy or part of such Software or Educational Software shall not transfer to the School District and shall remain in CEP and/or CEP's licensors. This Agreement is not a sale of the original or any subsequent copies of the Software or Educational Software. The School District shall own its data files except to the extent any Software or Educational Software is embedded therein. The transfer of specified daily management data from CEP's proprietary data base "" is expressly prohibited by this Agreement.

CEP will indemnify and hold harmless, the District from all costs, expenses and losses (including reasonable attorneys' fees and costs) incurred by the District in defending any claim of infringement by a third party against the District involving the District's use of the Software and Educational Software in compliance with this Agreement. If CEP uses any design, device, materials or works covered by letters, service mark, trademark, patent, copyright or any other intellectual property right, it is mutually agreed and understood without exception that the proposal prices will include all royalties of costs arising from the use of such design, device, or materials in any way involved in the work.

Subject to the limits set forth in Florida Statutes 768.28, the District will indemnify and hold harmless CEP from all costs, expenses and losses (including reasonable attorneys' fees and costs) incurred by CEP in defending any claim of infringement by a third party against CEP involving CEP's use of the District's assessment software in compliance with this Agreement.

## **IX. ACCOUNTABILITY STANDARDS AND MEASURES**

9.1 Measuring Success. It is expressly acknowledged by the parties that most of the Students assigned to a CEP School are functioning below grade level in reading and math, are frequently enrolled in a grade level significantly higher than their level of achievement, and are not likely to pass their state test. Accordingly, all accountability standards will be based on comparing CEP students to a mutually agreed upon control group. Students who are functioning two or more years below grade level will benefit from an Assignment in the Partnership Program that allows them to improve their reading and math skills so that they can improve their performance on tests and so that they can achieve course credit or grade promotion. The parties further acknowledge that it is reasonable that one of the goals of the Partnership Program is that Students make progress toward improving their reading or math skills and that the Partnership Program is designed so that (i) the Student who is functioning two (2) or more years below grade level makes progress toward achieving grade level in reading and math, (ii) the Student makes progress toward achieving grade level through courses passed or credits earned, and (iii) the Student does not drop out of school.

9.2\* Accountability Measures. Student performance will be assessed by comparing CEP students to a mutually agreed upon control group according to the criteria listed below. The mutually agreed upon control group must be matched according to a combination of the following factors to be agreed upon between the parties:

1. Both groups enter a non-traditional program between January 1 – 10, 2006. The students will be tested as they enter the program and as they leave. Students eligible for referral are in grades 6-12, have been referred for violations of the code of student conduct and are also academically low-performing (i.e., low performers on state skills tests, reading two or more years below grade level, have been retained one or more times in grade and are not on track to graduate with their kindergarten cohort).
2. Gender match

3. From the same community environment
4. Race/Ethnic group
5. Free/reduced lunch status
6. Age to grade
7. Current year repeaters are matched for FCAT scores
8. FCAT scores are the same in reading and math
9. Attendance patterns the same
10. Enrolled in a comprehension or core academic program
11. LEP students are matched to LEP students
12. ESE students are matched to ESE students
13. Behavior infractions and number agree
14. Numbers will be same
15. The control group must be selected at the time the student enters CEP

The performance criteria are as follows:

Jan 06 to June 06

1. The average gain in SRI Lexiles for student enrolled from January 10, 2006, to May 31, 2006, will be statistically higher for students in the CEP program than for students in the mutually agreed upon control group.
2. The average gain in STAR Math scale score for student enrolled from January 10, 2006, to May 31, 2006, will be statistically higher for students in the CEP program than for students in the mutually agreed upon control group.
3. The percent of students absent 9 or more days for students enrolled from January 10, 2006, to May 31, 2006, will be statistically lower for students in the CEP program than students in the mutually agreed upon control group.

Aug 06 to June 07

4. The percent of students demonstrating learning gains in reading as reported in the School Accountability Report will be statistically higher for students in the CEP program than students in the mutually agreed upon control group.
5. The percent of students demonstrating learning gains in math as reported in the School Accountability Report will be statistically higher for students in the CEP program than students in the mutually agreed upon control group.



6. The percent of students demonstrating learning gains in reading of the lowest 25% as reported in the School Accountability Report will be statistically higher for students in the CEP program than students in the mutually agreed upon control group.
7. The percent of students demonstrating reading proficiency (meeting high standards) as reported in the School Accountability Report will be statistically higher for students in the CEP program than students in the mutually agreed upon control group.
8. The percent of students demonstrating math proficiency (meeting high standards) as reported in the School Accountability Report will be statistically higher for students in the CEP program than students in the mutually agreed upon control group.
9. The percent of students demonstrating writing proficiency (meeting high standards) as reported in the School Accountability Report will be statistically higher for students in the CEP program than students in the mutually agreed upon control group.
10. The percent of students absent 18 or more days for students enrolled from first day of school to the last day of school for SY2007 will be statistically lower for students in the CEP program than students in the mutually agreed upon control group.
11. The average number of L2 and 3 discipline referrals will be statistically lower for students returning to a comprehensive secondary school after exiting from CEP program for the first 45 days of enrollment compared to matched control groups for the first 45 days of enrollment of the 04-05 school year.

\* The Accountability Measures set forth above are subject to further negotiation and refinement between the parties including potential adjustments in Enrollment Fees based on performance of CEP. Beginning with the 2006-2007 School Year, the parties do agree that entitlement to 3.75% of the Enrollment Fee shall be based upon CEP's satisfactorily meeting the Accountability measures selected.

9.3 Reports. Prior to the start of the phase-in School Year, CEP and the School District will reach a mutually acceptable agreement regarding the publication of any results, evaluation reports or information relating to the Partnership Program. At a minimum, the agreement will establish that each party seeking to publish such material will provide a draft to the other party prior to publication for the other party's consent, clarification and/or comment.

## **X. OTHER GENERAL TERMS**

10.1 Notice. All notices and correspondence by either party concerning delivery of the Services or other contract matters shall be in writing and directed as follows:

To CEP: Randle Richardson, Chief Executive Officer  
Community Education Partners, Inc.  
2636 Elm Hill Pike, Suite 500  
Nashville, Tennessee 37214

For School District: Arthur C. Johnson, Ph.D.  
Superintendent of Schools  
School District of Palm Beach County  
3360 Forest Hill Boulevard  
West Palm Beach, FL 33406

10.2 Challenges to the Legality of this Agreement. Should any claim, demand, or suit be filed against the District that arises out of any claim that this Agreement or any part thereof is in violation of law, or of any constitutional provision, statute, law, or rule binding upon the District, the District agrees to promptly notify CEP and shall actively seek its assistance and participation in the defense of such claim.

10.3 Indemnity and Insurance. The School District shall require that its future contractors and shall request that its existing contractors, if any, providing transportation, food and security services to a CEP School, shall name CEP and its facilities coordinator as additional insureds under their respective commercial general liability and automobile liability insurance policies, as applicable, for personal injury and property damage; and, if such services are provided directly by the School District rather than by contracted service, then CEP and its facilities coordinator shall be named as an additional insured under corresponding School District insurance policies. Certificates of insurance evidencing the required coverages shall be submitted to CEP at the address set forth in Paragraph 10.1 at least ten (10) days before work is begun and at least ten (10) days before each renewal term.

If such services are provided directly by the School District, the parties recognize that the School District of Palm Beach County, Florida is self-insured under the provisions of F.S. 768.28 and meets all requirements of said statute. The District will provide a certificate of insurance outlining this coverage to CEP, in lieu of making these entities additional insureds.

The School District recognizes that it is liable for certain tortious acts of its agents, officers, employees and invitees, and agrees to be responsible for all claims, liability, losses, and/or causes of action that may arise from any of its negligent acts or omissions due to the acts of its agents, servants, or employees to the extent and limits provided in Section 768.28, Florida Statutes, the State of Florida's partial waiver of Sovereign Immunity; provided, however, that this provision shall not be construed as a waiver of any right or defense that the SCHOOL BOARD has under said statute.

CEP shall defend, indemnify and hold the School District, its trustees, officers, employees and agents, harmless from all claims, allegations, losses, expenses, liabilities and costs, arising out of CEP's performance of services under the contract, provided that such claims, allegations, losses,

expenses, liabilities and costs, result from the conduct or alleged conduct of CEP, its employees, agents or assigns, whether or not such claims, allegations, losses, expenses, liabilities and costs, are also partly due to the conduct of the School District, its employees, agents or assigns.

CEP represents and agrees that it shall provide and maintain insurance as required by the School District and as agreed to by the parties hereto, as follows:

- A. Workers Compensation and Employers Liability.
  - (1) Workers Compensation: Statutory Limits
  - (2) Employers Liability: \$100,000 Each Accident – Bodily Injury by Accident; \$100,000 Each Employee – Bodily Injury by Disease; and \$500,000 Policy Limit – Bodily Injury or Disease.
  - (3) Other States coverage and Endorsement.
  
- B. General Liability Insurance.
  - (1) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; \$1,000,000 advertising injury; \$2,000,000 general aggregate and \$1,000,000 aggregate for products and completed operations.
  - (2) Coverage: Premises operations; blanket contractual liability, civil rights violations, personal injury liability (employee exclusion deleted); products and completed operations; independent contractors, employees and volunteers as additional insureds; cross liability; and broad form property damage (including completed operations).
  - (3) A per location policy aggregate will apply.
  
- C. Automobile Liability.
  - (1) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
  - (2) Coverage: Owned, non-owned, and hired vehicles.
  
- D. Umbrella Liability.
  - (1) Limit of Liability: \$5,000,000 per occurrence combined single limit for bodily injury (including death), property damage liability, professional

liability, automobile liability and Employer's Liability excess of the underlying primary policies.

- E. Professional Liability Insurance.
- (1) Individuals and Professional Corporations: \$1,000,000 each occurrence; \$3,000,000 annual aggregate.
  - (2) Professional Liability Insurance is written on an "occurrence" basis.
  - (3) Coverage applies to the Education Services provided by CEP and includes the Corporation and its employees.
- F. Evidence of Insurance Coverage. Certificates of insurance evidencing the required coverage shall be submitted to the School District administrator at the address set forth in Paragraph 10.1 and to the District's Risk Manager at least ten (10) days before work is begun and at least ten (10) days before each renewal term.
- G. Additional Insured Status. The School District will be added as an additional insured for the General Liability and Professional Liability policies under a Blanket Additional Insured Endorsement on the referenced policies.

## **XI. TERMINATION**

11.1 Material Default. Except as otherwise provided in Paragraph 11.3, if either party refuses or fails to perform any of its obligations hereunder, the other party shall give written notice of such material default specifying with particularity the nature of such default. If the defaulting party fails or refuses to cure such material default within ~~30~~ 90 days, which shall include days during the summer of receipt of written notice, the other party may terminate this Agreement in writing, which termination will become effective at the end of the current school year.

11.2 Mutual Agreement. The Agreement may be terminated prior to expiration of any term by mutual written agreement of the parties hereto, which agreement shall state the effective termination date and any other conditions of said termination.

11.3 Takeover for Health, Safety or Welfare. Notwithstanding any other provision of this Agreement, if the School District reasonably believes that the health, safety or welfare of its students is materially threatened because of the actions or omissions of CEP, the School District may immediately take control of and operate the facility with its own forces, utilize the service of such of the CEP employees that it chooses or close the facility. In this event, the School District shall be free, for the remainder of the then current school year, to use any and all software subject to the terms of Section 8.7), furniture, fixtures, equipment and facilities necessary to continue the education of the students.

11.4 Effect of Termination. Upon the effective date of the termination of the Agreement:

- A. CEP shall stop work under the Agreement;
- B. CEP shall place no further orders to subcontractors except as may be necessary for completion of the work not terminated;
- C. CEP shall terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination; and
- D. In the event of a Termination for Material Default, CEP shall be entitled to be paid for all services rendered during the period for cure provided in paragraph 11.1. above
- E. In the event of a Takeover for Health, Safety or Welfare, pursuant to paragraph 11.3 above, CEP shall be entitled to be paid only for services satisfactorily rendered prior to the Takeover.
- F. In the event of Termination or a Takeover pursuant to 11.3, CEP shall immediately turn over to the School District all student files and records and shall, within thirty (30) days, turn over to the School District all other records of the operation of the school.
- G. The School District will pay to CEP within ninety (90) days of the date of termination the amount referred to in the last paragraph of Paragraph 5.1. and any other sums then due and owing.

11.5 No Services After Termination. The parties further acknowledge and agree that in the event this Agreement shall terminate prior to the completion of any Students' Assignment in the CEP Program, CEP shall be under no obligation to provide Services with respect to such Students beyond the termination date, or any extension thereof.

11.6 Protest of Termination or Takeover. Should CEP determine that it wishes to protest the termination or takeover, prior to commencing any lawsuit or other legal action, CEP agrees that, as a condition precedent to bringing any such lawsuit or other legal action, it must first exhaust the Alternative Dispute Resolution (ADR) procedures established in this Agreement. The termination or takeover shall remain in effect during the pendency of the ADR proceeding or any subsequent litigation, provided however, should CEP prevail in the ADR proceedings, lawsuit or other legal action such that the School District's termination for Material Default or Takeover determination is found to be improper, CEP shall be paid for such time period in accordance with the provisions of Section 6.1 commencing from the effective date of the Termination or Takeover through the end of the school year in which the Termination or Takeover occurred. CEP's failure to exhaust or failure to fully comply with the terms and requirements of the ADR procedures. shall result in the School District's action being final and binding on the parties.

## **XII. MISCELLANEOUS**

12.1. The parties recognize that certain of the provisions relating to pricing, number of students enrolled, service delivery model, compensation and facilities as set forth in this Agreement are based upon assumptions regarding the impact and implementation of Florida Statutes §1003.03, establishing maximum class size. To the extent that §1003.03, as interpreted from time to time by the Florida Department of Education, the courts or any other body having legal authority to interpret and/or enforce this legislation requires material modification or adjustment to those provisions, the parties agree that they will negotiate and agree on appropriate amendments in order to comply with the Statute including, if applicable, an adjustment in the compensation due CEP under this agreement.

12.2 Illegal Activities. CEP shall not knowingly share with any School District director, officer or employee, and no School District director, officer or employee shall accept, any portion of the compensation or fees paid by the School District for the Services, except in accordance with the law. CEP shall not induce, by any means, any person employed in the completion of work under this Agreement to give up any part of the compensation to which he or she is entitled. Further, CEP shall not at any time accept or receive any form of payment, fee, compensation, or benefit of any kind whatsoever, including, but not limited to, referral or finder's fees, goods, or services offered by hospitals, physicians, psychologists, or any other recommended health care provider, for a recommendation or referral of a Student to another agency or health care provider.

12.3 Additional Funding. The School District may consider including the CEP School in any competitive grant applications submitted by the School District that apply to schools serving populations similar to the CEP School and to use these funds to provide extra services for these students in addition to the services covered by this contract.

12.4 Authority. CEP, in performing its duties and obligations under this Agreement, shall have power and authority, consistent with federal and State law and subject to the other terms and conditions of this Agreement and the oversight of the School District as provided herein, to take such actions as may be necessary or desirable to properly and efficiently operate the CEP Partnership Program on behalf of the School District.

12.5 Assignment. CEP reserves the right to subcontract any and all services (e.g., janitorial services) not related to classroom education and school management specified in this Agreement to the School District and/or to public or private subcontractors, as permitted by law. This Agreement shall not be assigned by either party without the prior written consent of the other party, provided that CEP may, without consent of the School District, delegate the performance of non-educational policies but not responsibility for such duties and obligations of CEP, not related to classroom education and school management as specifically set forth herein.

12.6 Confidentiality. The School District recognizes that CEP deems its policies, procedures, documents and other information provided to the School District by CEP as “confidential” and the School District agrees that, to the extent allowed by law, it shall not release or disclose the contents of any such policy, procedure, document or other information to third parties without the express written consent of CEP. The School District acknowledges that CEP’s policies, manuals, Software, and Educational Software, expressly including its Academic and Operations Model, are proprietary and protected by copyright, trademark and other applicable laws, rules or regulations relating to intellectual property rights. Further, the School District agrees that it shall not reveal any of CEP’s trade secrets or misappropriate such for its own use. CEP understands and agrees that any confidentiality is governed by Chapter 119, Florida’s Public Records Act. CEP further understands and agrees that Florida’s Public Records Act, in Fla. Stat. Chapter 119 and Fla. Const. Art. 1, § 24(a), is broadly construed in favor of public access, and any exemptions for proprietary business information such as trade secrets are narrowly construed, pursuant to *Krischer v. D’Amato*, 674 So. 2d 909, 911 (Fla. 4<sup>th</sup> DCA 1996) and *Southern Bell Telephone and Telegraph Co. v. Beard*, 597 So. 2d 873, 876 (Fla. 1<sup>st</sup> DCA 1992).

Subsequent to the termination of this Agreement, the School District shall be entitled to use any of the physical facilities including, without limitation, the building(s) housing the CEP program, and the furniture, fixtures and equipment utilized by CEP for its program in any manner deemed advisable by the School District in its sole discretion (to the extent the District reimburses CEP for the unamortized cost specified in Section 5.1) and CEP agrees that it will not claim that any such use constitutes any violation of its rights under trademark or copyright or any other invasion of intellectual property rights, nor shall CEP be entitled to any payment for such use. In addition, until the end of the academic year during which any Takeover for Health, Safety or Welfare or any Termination of this Agreement for Material Default or Cause, where, in the sole discretion of the School District it is necessary for the uninterrupted education of the students then assigned to CEP, the School District shall be entitled, at no cost, to use any and all of CEP’s manuals, Software, Educational Software, Academic and Operations Model and any other educational materials at the CEP site.

12.7 Severability. If any provision, section, subsection, paragraph, sentence, clause or phrase of this Agreement, or the application of same to any person or set of circumstances, is held to be invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions continue in full force and effect.

12.8 Force Majeure. Neither party shall be liable if the performance of any part or all of this contract is prevented, delayed, hindered or otherwise made impracticable or impossible by reason of any strike, flood, riot, fire, explosion, war, act of God, sabotage, accident or any other casualty or cause beyond either party’s control, and which cannot be overcome by reasonable diligence and without unusual expense.

12.9 No Waiver. No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision. No delay in acting with regard to any breach of any provision shall be construed to be a waiver of any such breach.

12.10 Authorization of Agreement. Each party represents and warrants to the other that execution of this Agreement has been duly authorized and that this Agreement constitutes a valid and enforceable obligation of such party according to its terms and in accordance with the laws of the State of Florida.

12.11 Section Headings. The headings of sections contained in this Agreement are for convenience only, and they shall not, expressly or by implication, limit, define, extend or construe the terms or provisions of the sections of this Agreement.

12.12 Governing Law. This Agreement shall be construed in accordance with the laws of the State of Florida. Any dispute with respect to this agreement is subject to the Laws of Florida, venue in Palm Beach County, Florida. Each party shall be responsible for its own attorney's fees and costs incurred as a result or any action or proceeding under this agreement.

12.13 Dispute Resolution. Prior to commencing litigation, and as a condition precedent to such commencement, the parties shall first attempt to resolve any disagreements and disputes relating or arising out of this Agreement by first implementing the dispute resolution process outlined below.

STEP 1: Informal discussion shall commence between school level representatives of CEP and the Director of Alternative Education for the School District regarding the particular issue(s) in question. If the matter is not resolved at Step 1, either party may elect to forward the issue(s) to the next step.

STEP 2: The grieving party will provide written notice to the other party which will include identifying the dispute, suggesting a proposed resolution and providing reasons to justify the party's position. The other party will respond in writing within 15 calendar days either accepting the resolution of the dispute or offering alternative solutions to the dispute. If the matter is not resolved within 30 days of first notice, either party may elect to move forward to the next step.

STEP 3: A meeting will be held between a Regional CEP representative who shall possess authority to bind CEP to any resolution and the School Board's representative to discuss the issue(s) and resolution of same, and any proposed modification or amendments to the terms and conditions of the contract. If the matter is not resolved at Step 3, within thirty calendar days of the meeting, either party may elect mediation. If the parties cannot agree on a mediator, then a Florida board certified civil mediator will be selected through a neutral mediation service. The parties shall share the cost of mediation equally. Representatives of CEP at the national level and the designee of the Superintendent of the School District must be in attendance at the mediation.



Upon resolution of a dispute, a responsible person from both parties will develop a joint written explanation setting forth the resolution. If this process does not result in a resolution, either party may pursue all legal and equitable remedies.

12.14 Triplicate Originals. This Agreement is executed in three (3) counterparts, each of which shall be deemed an original and have the full force and effect as an original, but all of which shall constitute but one and the same instrument.

12.15 Incorporation by Reference. This instrument, together with the instruments heretofore incorporated by reference, contains the entire Agreement between the parties relating to the rights herein granted and the obligations herein assumed, and supersedes all previous communications, representations or agreements, either written or oral, between them, and not incorporated herein. No waiver, alteration or modification of any of the provisions of this Agreement shall be binding on any party unless in writing and signed by the party against whom enforcement of such waiver, alteration or modification is sought.

12.16 Any covenant, representation, warranty, term or provision of this Agreement which, in order to be effective, must survive the termination of this Agreement, shall survive any such termination.

(signature page to follow)

EXECUTED in triplicate originals on the \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

**SCHOOL BOARD**

By: \_\_\_\_\_  
Mr. Thomas Lynch, Chairperson

By: \_\_\_\_\_  
Dr. Arthur Johnson, Superintendent

Reviewed and Approved as to Legal Form And Sufficiency Only:

By: \_\_\_\_\_

**COMMUNITY EDUCATION PARTNERS, INC.**

By: \_\_\_\_\_  
Randle Richardson, Chief Executive Officer

**EXHIBIT A**

Addendum, Concerning Fingerprinting,  
to the Agreement Between the School Board of  
Palm Beach County (“School Board”) and  
\_\_\_\_\_ (“Provider”)

The parties have entered into an Agreement (“Agreement”) dated \_\_\_\_\_ for the Provider to provide certain services to the School District. The parties wish to amend the Agreement based upon the terms and conditions contained herein. The following language is hereby incorporated into the Agreement:

All individuals who are employed by Provider in Palm Beach County and any other CEP employees who will have direct contact with students will undergo a background check and fingerprinting by the School District’s Police Department, at the sole cost of Provider, which has the option of passing this expense to the applicant. Provider shall not begin providing services contemplated by this Agreement until Provider receives notice of clearance by the School District. The School Board, nor its members, officers, employees, or agents, shall not be liable under any legal theory for any kind of claim whatsoever for the rejection of Provider (or discontinuation of Provider’s services) on the basis of these compliance obligations. Provider agrees that neither the Provider, nor any employee, agent or representative of the Provider who has been convicted or who is currently under investigation for a crime delineated in Florida Statutes § 435.04 will be employed by Provider in Palm Beach County.

The parties acknowledge that the terms of this Addendum supersede any inconsistent terms in the existing contract.

**IN WITNESS WHEREOF**, the parties hereto have executed this Addendum:

[ *Provider* ]

The School Board of Palm Beach County

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT B**

**ADDENDUM, Concerning Student Information, to the Contract  
("the Contract") dated \_\_\_\_\_, between The School Board of Palm Beach and  
\_\_\_\_\_ [vendor/partner].**

Pursuant to School Board Policy 5.50, receipt of which is acknowledged by the vendor's/partner's signature below, the School District hereby designates \_\_\_\_\_ [vendor/partner] ("the Party") as an "other school official" for purposes of receiving limited personally-identifiable student information under FLA. STAT. § 1002.22(3)(d)2 because the School District recognizes the Party has legitimate educational interests in receiving this information in order to carry out the Party's responsibilities for the school or District under the Contract. (All other terms of the Contract remain the same.)

As a condition precedent to receiving confidential student information, the Party warrants and agrees that the Party:

- will limit the use of, or access to, confidential student information to the limited scope of information actually needed to complete the services under contract, including data needed to implement the longitudinal tracking program outlined in Section 7.4. The District has determined that the Party has a legitimate educational interest in receiving only the following fields of student data [*for example: name, grade-level, school attending, etc.; add more spaces as necessary to cover the minimum scope of data actually deemed needed*]: Student Name, Date of Birth, ID number, Social Security Number, Address (including apartment number), City, State, Zip, Gender, Race, Grade Level, Sending School Name, Reason for Referral, Parent/Guardian Name, Parent Guardian Office Phone, Parent/Guardian Home Phone; Parent/Guardian Cell Phone, Limited English Proficiency Student and Special Education Student; and
- will limit the access to student information to its employees and/or agents who actually have a legitimate educational interest in the information (i.e., they legitimately need to access the information in order to carry out their responsibilities under the Contract); and
- shall avoid, and shall instruct applicable employees/agents to avoid, accessing personally-identifiable student information except for the legitimate purposes recognized under this Addendum, and shall require that all employees/agents accessing the data must be trained in, and sign an acknowledgement regarding, the confidentiality requirements; and
- will comply with the requirements of Fla. Admin. Code Rule 6A-1.0955(6)(g), that student information shall not be disclosed by the Party in any form to any party other than appropriate school officials or the Party's employees/agents to the extent allowed herein (even if the document is first redacted to remove personally-identifiable information), without the prior written consent of the adult student or the parent/guardian, as appropriate; and
- shall maintain any confidential student information in secure data processing facilities or in securely locked cabinets, and the Party shall monitor the security and safekeeping of the confidential data; and
- will dispose of all information disclosed to it by the School District (and any copies thereof), after the purpose for which the information is disclosed has been served, or five years after the receipt of the information (whichever is sooner), by shredding paper documents finely enough to prevent possible recovery of information, and by totally erasing and over-writing (or physically destroying) any electronic media such as computer files, tapes, or diskettes, or physically destroyed.

The parties acknowledge that the terms contained in this Addendum supersede any inconsistent terms in the Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum:

[Legal name of the Party]

The School Board of Palm Beach County

By: \_\_\_\_\_  
[Person having authority to enter legally-binding agreements on behalf of the Party]

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT C**

**Uniformed Armed School Resource Officer  
Operating Concepts  
And Duties**

**Memorandum of Understanding  
For The School District of Palm Beach County and  
Community Education Partners**

**Overview**

Uniformed armed School Resource Officers (SROs) play a vital role in the day-to-day operations of CEP partnership schools. These officers work in many roles, and have become an integral part of our operations to help get at-risk students back on track. In addition to providing armed police services for our operations, these officers act as role models and mentors for our students. The operations plan for this campus utilizes two uniformed, armed School Resource Officers assigned daily in a law enforcement role. The following is submitted to outline their roles and responsibilities on this campus and delineate proposed duties.

*Security Operations*

Our uniformed armed SROs provide security to our daily school operations. These officers work each school day in our buildings to enforce the law, and deter crime. They deter and interdict those who would harm our students, staff, or property, and they act as role models and mentors for students on our campuses. When necessary these officers write citations, perform arrests, and all other duties as sworn police officers in the State of Florida. It is proposed that these officers be trained School Resource Officers assigned by The School District of Palm Beach County to work at the CEP Partnership campus. Their presence makes an outstanding contribution to the security of our daily operations. Many students and staff members have benefited from similar officer assignments at our other campuses. Their incidental functions as role models, and voluntary participation as mentors for our students has been an unanticipated benefit of our relationship. The great level of safety that they provide is an integral part of the CEP experience.

*Major Duties Responsibilities and Post Duties*

CEP's uniformed SROs are an integral part of the campus security team. Their vigilance, ability to work on a team, and attention to detail are vital to the accomplishment of one of our school's highest priorities, "Student and Staff safety". Additionally, these officers represent CEP to our students, their families, our district customers, communities and court systems; therefore, they must know our program. They must also believe in and contribute to our mission of helping low performing, disruptive kids get back on track.

AB

JAR 5/10/0

### *Reporting and Supervision*

These officers report to the School Principal or designated Campus Security Coordinator. Professional Supervision is the responsibility of the School District designated SRO supervisor. Reports of campus discipline activity is maintained internally at the school in accordance with procedures as established in school operating guidelines, separate from district requirements. However, those incidents that require SRO intervention and crimes that require reporting by state law are reported through normal district processes for documentation purposes.

### *Qualifications*

#### Basic Qualifications

- Qualified as Florida Law Enforcement Officer
- Computer literate
- Effective Oral and Written Communication Skills
- Training and/or experience in Juvenile Probation, Law Enforcement with at-risk students
- Valid Florida Driver's License

#### **Preferred Qualifications:**

- Experience in a school environment
- Bilingual (English/Spanish)

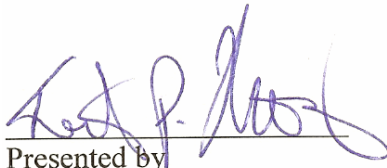
To accomplish the assigned tasks our officers are required to perform many functions to support the school operating model including the items listed below:

- Demonstrate ability to work well with disruptive, low performing students
- Respond to incidents with the campus security team
- Perform physical interventions including restraints when in accordance with Florida statutes
- Perform the final level of behavior intervention in CEP's hierarchy of consequences for criminal behavior up to and including arrest.
- Demonstrate ability to work well in a multi-discipline team environment
- Demonstrate ability to work well with the community
- Properly detain and process, anyone accused of criminal activity
- Perform student counseling and indoctrination as requested
- When requested, perform student searches where probable cause exists
- Maintain school external perimeter security
- Maintain vigilance and perform interdictions as necessary to maintain school safety
- Perform duties as required to assist in community / school safe corridor program
- Properly represent CEP with community members and groups
- Serve as armed member of Emergency Response Team to campus security threats
- In conjunction with the Security and Facilities Director, help design and implement campus emergency plan
- Perform vehicle searches on school property, when requested if probable cause exists.

*AD*

*JAR 5/10/11*

- Serve as credible witness in court as required
- Perform all other law enforcement duties as required by CEP Security Coordinator and School Police



Presented by  
Kenneth P. Thomas  
VP Operations Services  
Community Education Partners



Accepted by  
James P. Kelly  
Chief of School Police



## EXHIBIT D

### Amortization Period for Furniture, Fixtures and Equipment

	<u>Life</u>
Desks, Chairs and Other Classroom Furniture	15 years
Office Furniture	15 years
Copiers, Facsimile and Other Electronic Business Equipment	10 years
Security Scanning and Communication Equipment	10 years
Personal Computers (PC, Monitor, Printers and peripherals)	3 years
Cabling	15 years
All Other Information Technology Equipment (including Servers, Switches, etc.)	10 years

**METHOD: STRAIGHT LINE DEPRECIATION**