

**AGREEMENT BETWEEN  
THE SCHOOL BOARD OF PALM BEACH COUNTY  
AND  
EMBRY-RIDDLE AERONAUTICAL UNIVERSITY**

THIS AGREEMENT made and entered into on the 1st day of July, 2007 (“Effective Date”) by and between the School Board of Palm Beach County, a school district within the State of Florida (hereinafter referred to as the DISTRICT), and Embry-Riddle Aeronautical University, a not-for-profit entity organized and existing under the laws of the State of Florida (hereinafter referred to as ERAU), to conduct work of mutual interest, which will be identified in a Statement of Work and Budget, attached hereto and identified as Attachments A and B, respectively.

ERAU and DISTRICT shall be referred to individually as “Party” and collectively as “Parties.”

**WHEREAS**, the Parties desire to contract with one another to provide for the establishment of the Boynton Aerospace Science Academy (BASA), in which ERAU employs ERAU faculty to teach ERAU courses at schools or locations of the DISTRICT’s choosing.

**NOW THEREFORE**, in consideration of the mutual promises herein made, it is agreed between the Parties hereto as follows:

**1. Scope of Services**

- 1.1 The Parties agree to identify, define, develop, and implement activities, as described in the Statement of Work, attached hereto as Attachment A and incorporated herein by this reference.
- 1.2 The Parties designated representatives shall have the right, by written instruction, to request changes in or additions to the Statement of Work through a written instrument authorized and executed with the same formality as this Agreement.

**2. Total Amount Allotted**

- 2.1 The Parties will negotiate the total amount allotted to ERAU for work under this Agreement annually and affix the resulting amounts to this Agreement as a Budget, attached hereto as Attachment B and incorporated herein by this reference.

**3. Invoicing and Verification of Costs**

- 3.1 ERAU shall submit invoices to the DISTRICT, and the DISTRICT shall pay ERAU for its performance of the services in accordance with the terms set forth in Attachments A and B.

Invoices shall be submitted to:  
School District of PBC  
Department of Choice Programs  
C/O Mary R Vreeland, Director  
3300 Forest Hill Blvd., Suite C-124  
West Palm Beach, FL 33406

Payment shall be remitted to:  
Mr. Steven M. Banner  
Special Projects Accountant  
Embry-Riddle Aeronautical University  
600 S. Clyde Morris Blvd.  
Daytona Beach, FL 32114-3900

#### **4. Payment**

- 4.1 The DISTRICT will make payment for each academic year in accordance with Attachment B and any addenda to this Agreement entered into by both Parties.
- 4.2 Payments for verified invoices for each academic school year will be due as follows:

First business day in August	40% of payments due for ASY
First business day in January	30% of payments due for ASY
First business day in May	30% of payments due for ASY

#### **5. Term**

- 5.1 This Agreement shall commence upon the Effective Date and shall automatically renew each year on the anniversary of the Effective Date until June 30, 2010, unless terminated earlier as provided in this Agreement or extended by the Parties in writing.

#### **6. Confidential Information**

- 6.1 The Parties agree that during the course of this Agreement, the Parties may disclose to each other certain Confidential Information. Confidential information would include cost and budget information, courseware, insights into future plans by either Party, or other information that would expand the financial accountability of either Party beyond that required by the law and its internal procedures, or that would reveal that information to the public media, competitors, and/or other school districts negotiating similar programs with ERAU. Subject to and only to the extent permitted by Chapter 119, Florida Statutes, any Party receiving Confidential Information shall hold such information in strictest confidence, shall not transfer by any means the said information to any third Parties without prior written consent of the disclosing Party, and shall not use or reproduce the said information for any purpose other than as reasonably required for the performance of the Agreement.
- 6.2 Subject to and only to the extent permitted by Chapter 119, Florida Statutes, each Party hereto shall at all times take all reasonable precautions which are necessary, useful or desirable in order to prevent the disclosure or unauthorized use of Confidential Information of the other Party, and shall allow access to and disclosure of such information only to those of its employees as is specifically required for the purpose for which it is provided, and shall take responsible steps to ensure that all



such employees are made aware of and comply with the receiving Party's obligations hereunder.

- 6.3 The foregoing obligations of confidentiality, use and non-disclosure shall not apply to any information provided by the disclosing Party to the extent that the receiving Party can prove that:
- 6.3.1. Such information has been developed independently by one Party and was lawfully in its possession prior to the receipt thereof;
  - 6.3.2. Such information lawfully is or became public knowledge through no breach of this Agreement by the receiving Party;
  - 6.3.3. Such information is lawfully provided to the receiving Party without restriction by a third party; or
  - 6.3.4. Such information is required to be disclosed by law.
- 6.4 ERAU shall execute the Addendum Concerning Student Information, which is attached hereto as Attachment C, and incorporated herein by this reference.

## **7. Limitation of Liability**

- 7.1. In no event shall any Party hereto be liable to the other Party for consequential, indirect, incidental, exemplary, punitive or special damages. The Party's liability arising out of or in connection with this Agreement shall be limited to actual demonstratable direct damages. These limitations will apply for all claims, including without limitation, contract, warranty, indemnity, tort (including delict and negligence), and strict liability howsoever caused or incurred for any reason whatsoever.

## **8. Termination**

- 8.1. In addition to any other provision in this Agreement allowing a Party to exercise termination rights or other recourses available at law or in equity, a non-defaulting Party may terminate this Agreement in whole or in part, to the extent that the other Party fails to perform any of its material obligations under the Agreement and does not cure such failure within ninety (90) days after delivery of a default notice, specifying the failure.
- 8.2 A material breach shall include, but not be limited to, the following:
- 8.2.1 A Party becomes bankrupt or makes an assignment for the benefit of creditors, or a receiver is appointed to its business, or voluntary or involuntary petition in bankruptcy is filed, or proceedings for the reorganization of the other Party are instituted.
  - 8.2.2 A Party is in breach of its obligations vis-à-vis a Party's Confidential Information.

8.2.3 A Party fails to perform such duties specified in Attachment A.

- 8.3 DISTRICT may terminate this Agreement at the end of the then-current fiscal period without incurring any form of termination liability when DISTRICT is unable to secure or allocate sufficient funds in its operating budget to fulfill its financial obligations under the Agreement for the following fiscal year (“Termination for Non-appropriation”). Following Termination for Non-appropriation, DISTRICT will not be obligated for payments for any fiscal period after the effective date of termination for Non-appropriation. DISTRICT will give ERAU written notice of any termination for Non-appropriation at least 30 days before the effective date of termination.

## **9. Review and Withdrawal**

- 9.1 If either Party determines, in its own discretion, that continued participation of the program is inimical or contrary to its general interests, it may provide a 120-day notice of withdrawal to the other Party.
- 9.2 By mutual agreement, the Parties may withdraw from the program at the end of the ongoing semester, even if that semester will end earlier than 120 days from notice of the mutual agreement to withdraw.
- 9.3 If ERAU or both Parties together choose to withdraw from the Aviation Institute BASA, the DISTRICT’S final payment to ERAU will be the last regularly scheduled payment prior to date of the notice to withdraw. If the DISTRICT unilaterally chooses to withdraw from the BASA, the final payment to ERAU will be the next regularly scheduled payment after the date of the notice to withdraw.
- 9.4 In the case of withdrawal by ERAU, ERAU will grant the DISTRICT free use of all ERAU proprietary courseware from the date of termination through the next complete academic school year (fall and spring semesters). ERAU also will release all BASA personnel from any contractual obligations to ERAU that would prevent them from continuing to work as employees of the DISTRICT. The intent of these provisions will be to allow the DISTRICT to launch a successor program to the BASA without interruption or inconvenience to its students. Should the DISTRICT choose to launch the successor program with an outside contractor, the courseware provisions in this paragraph will be void.

## **10. Notices**

- 10.1 No notice or communication pertaining to this Agreement, except as provided in Paragraph 3 herein, shall be deemed to have been duly given by the Parties, unless addressed as follows or to such other address, individual or telecopy number as may be designated by notice given by a Party to the other Party from time to time:



For ERAU: Dr. Christina Frederick-Recascino  
Embry-Riddle Aeronautical University  
600 S. Clyde Morris Boulevard  
Daytona Beach, Florida 32114-3900  
Phone: (386) 226-7037  
Fax: (386) 226-6299

For DISTRICT: The Department of Choice Programs & School Choice  
C/O Mary R. Vreeland, Director  
3300 Forest Hill Blvd., Suite C-124  
West Palm Beach, FL 33406  
Phone: (561) 434-7371

- 10.2 Any such notice, request, requirement, approval, permission, consent or other communication in connection with this Agreement shall be given in writing and, if delivered by hand shall have been so delivered, or of by registered mail shall be deemed to have been received by the addressee on the day on which it shall have been received, or if faxed, shall be deemed to have been received by the addressee upon electronic acknowledgement.

## **11. Relationship of the Parties**

- 11.1 The Parties hereto shall act as independent contractors and nothing herein contained shall be construed as creating any other relationship between the DISTRICT and ERAU, nor shall it be construed as creating any relationship with the other Party's employees. Each Party agrees that none of its employees is an employee or agent of the other Party. No Party hereto shall, without the prior written consent of the other Party, enter into any contract or commitment in the name of or on behalf of the other Party or bind the other Party in any manner whatsoever.

## **12. Compliance with Laws**

- 12.1 The Parties shall comply with any laws, rules, and regulations in force in the location where the Program is performed, as well as codes of conduct, if any, concerning security and safety of its employees or representatives.
- 12.2 ERAU shall, as hereinafter set forth, provide the required fingerprinting documentation and security clearances as necessary to meet DISTRICT's requirements. ERAU shall execute the Addendum Concerning Fingerprinting, which is attached hereto as Attachment D, and incorporated herein by this reference.
- 12.3 At all times relevant hereto, ERAU shall maintain all appropriate occupational and professional licenses as necessary to fulfill its obligations under this Agreement.

### **13. Standards of Conduct**

- 13.1 The Parties recognize that the standards of deportment and conduct for faculty and students in the BASA must be appropriate to the requirements of a professional education program and the Federal, State, and local laws applicable to public education in the DISTRICT. The Parties further agree that the more stringent of the standards of deportment and conduct established for the DISTRICT in general and in the ERAU Student Handbook will govern behaviors in the BASA. Disciplinary actions will be handled in accordance with procedures laid down for Boynton Beach High School students in general. ERAU retains the right to bar students manifesting persistent or serious discipline problems from taking courses subsequent to the one in which they are enrolled at a particular time.

### **14. Dispute Resolution**

- 14.1 Any dispute arising out of or relating to this Agreement shall first be brought to the level of attention of ERAU's Department Chair, Aeronautical Science and the BASA school principal for resolution, and if they are unable to resolve such dispute then the matter shall be referred to Dr. Christina Frederick-Recascino, Associate Provost of ERAU, and Dr. Martha Mickler, Assistant Superintendent for Curriculum and Learning. If they are unable to agree, the dispute shall be finally settled under the Rules of the American Arbitration Association.
- 14.2 The Contract shall be construed in accordance with the laws of the State of Florida.

### **15. Force Majeure**

- 15.1 No Party shall be liable for any failure to perform its obligations in connection with any action described in this Agreement, if such failure results from any act of God, riot, war, civil unrest, flood, earthquake, or other cause beyond such Party's reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a Party's financial condition or negligence). Except as expressly provided otherwise in Agreement, dates and times by which any Party is required to perform and obligations under this Agreement and the Statement of Work shall be postponed automatically to the extent and for the period of time that such Party is prevented from meeting such obligation by reason of any cause beyond its reasonable control, provided the Party prevented from performing its obligations notifies the other Party immediately of the commencement and nature of such cause and the probable consequences thereof with appropriate details, and provides further that such Party will use reasonable efforts to comply with its obligations in a timely manner utilizing to such end all resources reasonably required in the circumstances, including obtaining supplies or services from other sources if same are available.



## **16. Confidentiality of Agreement/Publicity**

- 16.1 Subject to and only to the extent permitted by Chapter 119, Florida Statutes, the Parties shall secure each other's prior written approval before any information relating to this Agreement is released to anyone other than employees of any of the Parties requiring the information for the performance of their duties with respect to the matters contemplated in this Agreement, and which have agreed to be bound by confidentiality undertakings.

## **17. Assignment**

- 17.1 The Parties acknowledge that this Agreement has been entered in consideration of the Parties mutual confidence in each other and the Parties are unwilling to proceed on the basis set out in this Agreement with any other person save and except as expressly provided herein. Consequently neither this Agreement nor any of the respective rights or obligations of the Parties hereunder or benefit or advantage received, may be assigned, given, sold, bargained sublet, or otherwise disposed of, in whole or in part, by either Party without the prior written consent of the other Party, which shall not be unreasonably withheld or unduly delayed.

## **18. Complete Agreement**

- 18.1 This Agreement supersedes all previous agreements between the Parties related to the subject matter hereof and represents the entire understanding between the DISTRICT and ERAU in relation to the subject matter dealt with herein.
- 18.2 This Agreement shall not be amended or modified, and no waiver of any provision shall be effective, unless set forth in a written instrument authorized and executed with the same formality as this Agreement.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized officers or representatives.

**For Embry-Riddle Aeronautical University**

By: \_\_\_\_\_ Date \_\_\_\_\_  
Christina Frederick-Recascino  
Acting Provost

**For The School Board of Palm Beach County**

By: \_\_\_\_\_ Date \_\_\_\_\_  
William G. Graham, Chairman

By: \_\_\_\_\_ Date \_\_\_\_\_  
Arthur C. Johnson, Ph.D., Superintendent

Reviewed and Approved for  
form and legal sufficiency-  
Office of Chief Counsel

By: 4/3/07  
Date: [Signature]