

CONTRACT REVIEW CHECKLIST

Consistency with Law and School Board Policy:

Comments

Consistent with School Board Policy	YES
Consistent with Florida, federal and local laws	YES

Contract Terms:

Comments

Term (Duration of Contract)	From date of execution until end of applicable grant; Please refer to Section I(C).
Termination Clause	Board reserves the right to terminate at any time and for any reason upon giving 30 days notice to the other party; Board may terminate for cause upon giving 5 days notice to other party; Please refer to Section I(D).
Insurance /Liability Issues/ Indemnification	Risk Management should review and approve all insurance clauses. Insurance: Please refer to Section III(7). Indemnification: Please refer to Section III(28).
Regulatory issues	N/A
Confidentiality Provision	Please refer to Section III(19).
Warranties	N/A
Labor Issues	The Labor Relations Department should review any issues.
Disclaimers	N/A
Governing Law & Venue	Governing Law: Florida; Venue: Palm Beach County; please refer to Section I(E).

Business Principles:

Comments

Sound Business Principles	Yes.
Reasonableness of Fees	Please refer to Section III(22).
Payment Terms --Lump sum, installments --Payment Due dates --Late fees	Please refer to Section III(22).

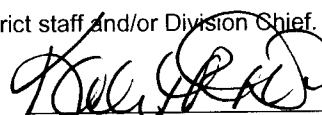
Other Issues:

Comments

Conflict of Interest Disclosures	None
Non-Negotiable Issues	None
Miscellaneous Issues	
Appropriate Departmental Sign-off	

Special Considerations: _____

The issues noted above were explained to the appropriate District staff and/or Division Chief. YES NO


 By: Attorney (Name and Date) 5-2-07



THE SCHOOL DISTRICT OF PALM BEACH COUNTY
Request for Document Approval by Legal Services

DIRECTIONS: Allow two weeks for review and approval. **DO NOT** use "ASAP" for a required date. A specific due date is required. Your document may be returned for failure to complete the information below.

Date Submitted 03 / 14 / 2007 Number of Copies Submitted 1

Name of Document Agreement between the School Board of Palm Beach County and SES Providers

School/Department Submitting Supplemental Educational Services

Contact Person Judith Klinek, Director Telephone (561) 963 - 3876 PX 43876

Date Required 03 / 21 / 2007 (DO NOT use "ASAP" - a specific date is required)

Is this a continuation/duplication of prior document? Yes No

If any changes, are they marked? _____

Is substance of document acceptable to your Assistant Superintendent or Director? Yes No

Are permits required? Yes No

Have required permits been obtained? Yes No N/A

Do you wish to pick up document? Yes No Pony? Yes No

Comments:

RECEIVED
MAR 19 2007
BY LEGAL SERVICES

Judith Klinek
SIGNATURE OF DEPARTMENT HEAD OR AREA EXECUTIVE

3/15/07
DATE

Attorney Assigned [Signature]

Date of completion by Attorney 5/4/07

Kalinthia Dillard

From: Judith Cartwright
Sent: Wednesday, May 02, 2007 3:31 PM
To: Kalinthia Dillard
Subject: SES Contract--again
Attachments: TAP Notes from District Conference Call 5 2 20072.doc

This came in just a few minutes ago. We will have to change everything in the contract that says ISP (Individualized Student Plan) to Student Learning Plan. Is this going to be yet another problem? (So sorry for all these changes!) I've attached the TAP per your request.

Thank you for your patience and assistance.

-----Original Message-----

From: Butler, Mary Jo [mailto:MaryJo.Butler@FLDOE.ORG]
Sent: Wednesday, May 02, 2007 2:46 PM
To: SES-CONTACTS-L@LSERV.FLDOE.ORG
Subject: Important Update

Following the USDE review in April, we have decided to change the name of the PDPA to **Student Learning Plan (SLP)**. We have discussed changing the name for almost a year and considered several options. However, after USDE staff interviewed parents, it became clear that we needed to change the name of the contract between the parent, district, and provider. USDE staff interviewed parents in three districts asking lots of questions. Many addressed whether the parent was involved in developing a student learning plan. If the parents had signed a student learning plan, etc... Almost every parent denied knowing anything about their child's learning plan - and all three districts could provide copies of PDPAs signed by the parents in the room.

Therefore, we believe that calling the PDPA a Student Learning Plan may be easier for parents to understand (at least we hope so). This is even more critical since USDE staff will be conducting a full NCLB monitoring visit in Florida next year.

I hope this is not too confusing and I sincerely apologize for any confusion this may have caused. It actually surprised me that so many parents professed not to have any knowledge of their child's learning plan. We probably all need to make focused efforts to ensure parents' understanding of the process, and that includes providers.

We plan to get something out more official soon but wanted to address some questions that we received regarding the application.

If you have questions or need additional information, please let me know.

Thank you for your understanding!!!!

Mary Jo Butler
Chief
Bureau of Public School Options
Florida Department of Education
325 West Gaines Street, room 316
Tallahassee, FL 32399
Phone: (850) 245-0479
Fax: (850) 245-0705
Web: www.firn.edu/doe/flbpso

5/2/2007



THE SCHOOL DISTRICT OF PALM BEACH COUNTY

**Agreement between the
School Board of Palm Beach County, Florida
and _____**

(Provider)

THIS AGREEMENT is entered into by and between the SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, hereinafter referred to as "Board" and _____ hereinafter referred to as "Provider."

WHEREAS, Provider desires to enter into this Agreement with Board, for the purpose of providing Supplemental Educational Services (SES) in compliance with applicable law, including but not limited to No Child Left Behind Act of 2001 (NCLB); and

WHEREAS, Provider desires to enter into this Agreement with respect to its services to Board, upon the terms and conditions hereinafter set forth; and

WHEREAS, Provider is specially trained and possesses the necessary skills, experience, education, competency, and licenses or credentials to perform the required services; and

WHEREAS, Provider has been approved by the State of Florida Department of Education and has met the qualifications to be certified as an SES Provider; and

WHEREAS, Provider, if selected by the Parents of Eligible Students, is willing to provide the required services; and

WHEREAS, Provider is financially sound and otherwise capable of fulfilling its requirements to Board, Eligible Students, and Parents during the term of this Agreement; and

WHEREAS, Provider shall provide instruction that is secular, neutral, and non-ideological; and

WHEREAS, No Child Left Behind Act of 2001, Section 1116, 20 U.S.C. 6316(e)(3) provides that the Agreement between the Board and the Provider must:

- a. Require the Board to develop, in consultation with Parents and the Provider chosen by the Parents, a statement of specific achievement goals for the student described in the Student Learning Plan (SLP), how student progress will be measured, and a timetable for improving achievement; and in the case of a student with disabilities, is consistent with student's Individual Educational Plan (IEP);
- b. Require a description of how the student's Parent(s) and teacher(s) will be regularly informed of the student's progress;
- c. Require a provision for the termination of the Agreement if Provider is unable to meet the goals and timetables required;
- d. Require provisions with respect to making payments to Provider by Board; and
- e. Prohibit Provider from disclosing to the public the identity of any student eligible for, or receiving SES without the written permission of the Parent of such student.

WHEREAS, No Child Left Behind Act of 2001, Section 1116, 20 U.S.C. 6316(e)(8) requires the Board, through a provider, to continue to provide SES to Eligible Students who are receiving such services until the end of the school year in which such services were first received. Board's cost shall not exceed the per student allocation;

NOW THEREFORE, for and in consideration of the mutual benefits accruing to both parties to this Agreement, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Board hereby retains Provider for the purpose of providing SES to Eligible Students.

I. PROVIDER AND BOARD MUTUALLY AGREE AS FOLLOWS:

A. RECITALS

The foregoing recitals are true and correct and incorporated herein by this reference.

B. DEFINITIONS

1. ELIGIBLE STUDENTS

Students are eligible to receive SES if they are enrolled in free or reduced-price meals, and the school in which they are enrolled has been identified as in need of improvement for three or more consecutive years according to NCLB.

2. PARENT

For the purpose of this Agreement, a "Parent" is the natural or adoptive parent, legal guardian, or a surrogate parent as determined in a legal proceeding.

3. PROVIDER

For the purpose of this Agreement, a "Provider" is the party contracting with the Board, as specifically defined on page 1. The Provider may be a non-profit entity, a for-profit entity, or a local educational agency (LEA).

4. STUDENT LEARNING PLAN (SLP)

The "SLP" shall be developed by Provider in consultation with Parents for each Eligible Student whose Parent elects to receive SES. Providers must use assessment/diagnostic instruments to identify students' academic deficiencies in order to develop an SLP that will specifically address a student's individual academic needs. The SLP must include the pre-assessment results, as well as a timetable that focuses on steps for improving the student's achievement, a timeline for provision of services and achievement of goals, and the process for informing teachers and Parents regarding the student's progress. This Agreement must be signed by all parties before services can begin. Changes in any student's SLP may only be made with the written consent of the Parent in consultation with Provider and approved by Board. Provider, Board or Parent may request a review of a student's SLP. Provider shall obtain written authorization from Board before terminating any SLP.

C. TERM

The term of this Agreement shall commence when the Board affixes signatures on page 9 of Agreement, and shall end when the applicable grant ends.

D. TERMINATION

Board reserves the right to terminate this Agreement at any time and for any reason, upon giving thirty (30) days notice to the other party. If said Agreement should be terminated for convenience as provided herein, Board shall be relieved of all obligations under said Agreement and Board shall only be required to pay that amount of the Agreement actually performed to the date of termination with no payment due for unperformed work or lost profits. In the event Board determines that Provider's services are not being performed as agreed upon, Provider shall be deemed to be in default and Board reserves the right to cancel this Agreement with five (5) days notice and to withhold all monies due to Provider until such time as Board, in its sole discretion, shall determine whether to have the services of the Agreement completed by others or to cease obtaining the services. In the event that Board determines to have the Agreement completed by others, Provider shall be liable for any costs of completion in excess of that called for in this Agreement. In the event that Board determines not to have the Agreement completed by others, Provider shall be paid for the services that it satisfactorily performed prior to the termination but, in no event, shall Provider be paid for any work not actually performed or for lost profits.

In the event that it is determined that a termination for cause was unjustified, the termination shall be deemed a termination for convenience, and Provider shall be entitled to payment only for work actually performed prior to the termination and to any additional sums.

This Agreement terminates automatically upon payment of the total amount for SES or at the close of business on the specified ending date of the applicable grant.

E. GOVERNING LAW AND VENUE

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.

F. DISPUTES

Disputes between Board and Provider concerning the meaning, requirements or performance of this Agreement shall be submitted in writing and delivered in person or by certified mail to the Department of Supplemental Educational Services, 3300 Forest Hill Boulevard, Suite C-124, West Palm Beach, FL 33406. The determination of Board shall be made by the Superintendent's designee, and shall be made in writing and shall be binding for both parties.

G. AMENDMENT

This Agreement may be amended only with the mutual consent of the parties. All amendments must be in writing and must be approved by Board.

H. SEVERABILITY CLAUSE

If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement shall be severable and remain in effect.

I. ASSIGNMENT

Neither Provider nor Board may assign or transfer any interest in this Agreement without the prior written consent of the other party.

II. BOARD RESPONSIBILITIES

1. Annually, Board will provide notification to Parents of Eligible Students prior to and after the start of the school year. Notification shall advise Parents of the availability of SES, contact information for State-approved Providers, a brief description of the services, qualification and demonstrated effectiveness of each Provider, and shall include the enrollment form, clear instructions, and timeline for the selection of Providers and commencement of services.

2. Board will assist Parents, if requested by them, in obtaining additional information regarding the State-approved Providers available to serve their child(ren).

3. Board will host Provider Fairs inviting all contracted Providers and eligible families for the purpose of facilitating the Parents' selections of a Provider.

4. Board will create a streamlined Parent enrollment and Provider selection process for Supplemental Educational Services and ensure that the process enables Eligible Students to begin receiving SES no later than October 15 of each school year.

5. Supplemental Educational Services enrollment forms will be made freely available to the Parents of Eligible Students and Providers prior to and after the start of the school year. Providers may not "pre-populate" forms.

6. Board will notify Provider of the Eligible Student's name, school, address, and telephone number(s) of record, and allow Provider to initiate contact with the student's Parents for the provision of SES, once Parents select a Provider for their child(ren). State-approved SES Providers will be able to provide services to Eligible Students no later than October 15 of each school year contingent upon their receipt of their District-approved student enrollment lists at least 20 calendar days prior to the start date. In the event that the contract with a State-approved Provider is signed less than 20 days prior to October 15, Provider shall be afforded no less than 20 days from the date the contract was executed to begin delivering services.

7. Board will hold open student enrollment for SES unless or until it has obtained a written election to receive or reject services from Parents, or until the per-student allocation is exhausted. If current funds are insufficient to serve all Eligible Students, Board will prioritize supplemental educational services to the lowest-achieving students, and will develop a process for offering such services.

8. Board, using the same policies applied to other organizations that have access to school sites, shall provide access to school facilities to Providers that wish to use these sites for SES, at the authority of the principal, and if available.

9. Board agrees to pay Provider for educational services only. Any services beyond educational services, including, but not limited to, assessing students, homework help, supervision of students, transportation and/or provision of facilities, is the responsibility of Provider.

10. Board assumes no liability related to the provision of services by Provider beyond reimbursement to Provider for services as identified in this Agreement.

III. PROVIDER RESPONSIBILITIES

1. STATEMENT OF GOALS

Provider shall develop a statement of goals for each Eligible Student whose Parent elects to receive SES from Provider. Each Parent and Board shall approve the statement of goals for the student. Provider shall make no changes to, or terminate, any student's statement of goals without written consent of Board and the student's Parent.

2. PROGRESS REPORT

For every Eligible Student to whom Provider gives services under this Agreement, a written progress report will be provided, in accordance with the State-approved application, describing the student's progress, including benchmark data. If requested by Board or a Parent, Provider shall give these reports in the following languages: English, Spanish, and Creole. Failure to submit said reports in timely manner may delay the processing of the monthly invoices until receipt of these reports or, at the discretion of Board, constitute "good cause" for termination of this Agreement.

3. CURRICULUM

Provider will submit a list of materials to be used by the tutors prior to the start of tutoring. Provider will ensure that programs and materials used are research-based and tutorial services are specifically designed to increase the academic achievement of Eligible Students as measured by the NCLB under the State's assessment. Provider will also ensure that the tutorial services enable students to make reasonable progress, given their academic skills when services began, toward attaining proficiency in meeting State academic achievement standards.

4. RECORD OF ATTENDANCE

For each invoice, Provider shall submit monthly records of student attendance on a form(s) generated through the Supplemental Services Tracker (SST) computer system with a descriptive cover page provided by Board. The information shall include the student's name, assigned school, name of Provider, the hourly rate for the services given to student, the name of Provider's employee who rendered the service, the amount of time of such service for each day measured to the nearest fifteen (15) minutes and initialed by the student's Parent or the student if the Parent is not in attendance, the total hours of such service identified by academic subject (reading and/or mathematics) covered at each session, and the amount due. Each record shall be signed by a representative of Provider, a representative of Board and by the Director of Supplemental Educational Services. Provider will implement interventions for students who are habitually absent.

5. STAFFING

Provider must have the capacity and resources to provide SES services to students. Provider must ensure that all tutorial staff are Highly Qualified, meeting the minimum qualifications for Title I paraprofessionals pursuant to the FLDOE's Request for Application for 2007-2008 (earned secondary school diploma and have two years of college equivalent to 60 semester hours, or an Associate's Degree, or have passed a local paraprofessional academic assessment).

6. FINGERPRINT/BACKGROUND CHECK

Provider shall be governed by Section 1012.32(2)(a) [231.02(2)(a)], Florida Statutes. All contractual personnel (vendors, contractors, individuals, or entities) under contract with Board who are permitted access on school grounds when students are present, who have direct contact with students or contact with students through computer Internet services, or who have access to or control of school funds must undergo level 2 screening. Level 2 screening consists of fingerprinting and a background check, as set forth in section 1012.32, Florida Statutes. All contractual personnel agree to undergo a background check and fingerprinting if he/she is an individual who meets any of the above conditions and to require that all employees of the organization who meet any of the above conditions submit to a background check, including fingerprinting by Board's Police Department, or another Florida school district, at the sole cost of Provider. Online Providers' employees, located outside the state of Florida shall complete a background screening and fingerprint screening conducted by a law enforcement agency or other entity located in their home state and provide all documentation (front and back of processed fingerprint card) to School Police. Provider is to contact School Police to receive an identification card and clearance.

Contract personnel shall not begin providing services contemplated by this Agreement until he/she receives notice of clearance by Board. Neither Board, nor its members, officers, employees, nor agents, shall be liable under any legal theory for any claim whatsoever for the rejection of Provider (or discontinuation of Provider's services) on the basis of these compliance obligations. Provider agrees that neither Provider, nor any employee, agent nor representative of Provider who has been convicted or who is currently under investigation for a crime delineated in section 435.04, Florida Statutes, will be employed in the performance of this Agreement.

7. INSURANCE

The Provider must maintain the following insurance coverage during the duration of the Agreement:

- A. Commercial General Liability Coverage
Limits: \$1,000,000 Each Occurrence
\$2,000,000 Aggregate

Coverage shall include bodily injury, property damage, personal injury, contractual liability, sexual abuse and molestation coverage. The policy must name the School Board of Palm Beach County, FL as an additional insured.

- B. Worker Compensation Insurance
Limits: Coverage A--Provider must comply with State Statute 440
Coverage B--\$500,000

If Provider is entreating Board premises for services, a waiver of subrogation must be provided.

- C. Auto Liability (if Provider is transporting students or driving on School Board property)
Limits: \$1,000,000 Each Occurrence
\$1,000,000 Aggregate
- D. Errors and Omissions
Limits: \$1,000,000 Each Claim
\$1,000,000 Aggregate

Provider agrees to continue insurance coverage for 24 months after cancellation/termination of this Agreement.

8. TRANSPORTATION

Transportation arrangements and costs for students receiving services under this Agreement are between Provider and Eligible Student's Parent. The Board has no obligations to provide transportation in connection with Provider's responsibility to provide services under this Agreement. Neither Board nor Parents shall be charged an additional fee for transporting students.

9. ACCIDENT/INCIDENT REPORT

Provider agrees to notify Board within twenty-four (24) hours of an accident or incident when a pupil suffered an injury, or injured another individual, or has been involved in an activity requiring notification of law enforcement or emergency personnel. Provider agrees to submit a written accident report to Board within three (3) days of an accident or incident. Provider further agrees to notify Board immediately of any information that may be detrimental to the health and safety of any students or that may inhibit Provider's performance of this Agreement.

10. CHILD ABUSE REPORTING

Provider assures Board that all staff members, including volunteers, are familiar with and agree to adhere to child abuse and/or missing children reporting obligations and procedures under Florida law, including but not limited to, Florida Education Code 49370 and Florida Penal Code 111666 et seq. Provider agrees to provide annual training to all its employees regarding mandated reporting of child abuse and missing children. Provider agrees that all staff members will abide by such laws in a timely manner. Provider shall submit immediately by facsimile and mail, within twenty-four (24) hours, an accident or incident report to Board when it becomes aware of circumstances including, but not limited to: allegations of molestation, child abuse, and missing children under Provider's supervision.

11. CONFLICT OF INTEREST

Provider agrees to furnish to Board (upon request) a valid copy of the most recent adopted partnership agreements or bylaws of the corporation and also a complete and accurate list of the Governing Board of Directors (or Trustees or Partners), and to timely update said information as changes in such governance occur. Provider shall avoid any actual or potential conflict of interest on behalf of itself or its employees providing services hereunder, including but not limited to, employment with Board.

12. CONTROL OF STUDENTS

Provider, while providing services, shall be responsible for the control of all students from the time the student arrives for services until the student is placed under the control of the Parent, or leaves the area by the agreed-upon means, at the end of the service. Provider agrees to remain at the SES site until all students have been picked up from the site by their Parents or other authorized persons. Provider agrees that this is a material term of this Agreement and understands and agrees that Provider's failure to meet this requirement is cause for immediate termination and removal of Provider's name from Board's Provider list indefinitely. Provider agrees to indemnify and hold harmless Board, its officers, agents and employees from any liability in the form of physical injury, death, or damage resulting from Provider's failure to comply with the requirements of this paragraph.

Provider is responsible for the agency's instructors to attend tutoring sessions at the scheduled times, being on time to tutoring sessions, and remaining with the students until the end of the scheduled tutoring session. Provider will inform any tutors who are currently employed by Board that they are not to tutor any student they presently have in their class and that they are not to commence tutoring until their workday is completed. Any violation of the above may subject the employee to disciplinary action.

13. MARKETING AND INCENTIVES

Provider will submit to Board for review samples of marketing materials including brochures, newspaper advertisements, scripts by recruiters, videotapes, and TV ads prior to distribution.

Neither Provider nor Board will provide incentives to entice a student or a student's Parent to choose a Provider. After Provider has been chosen, the student may be awarded incentives for performance or attendance, the total value of which may not exceed \$50 per student per year.

14. REQUIRED DOCUMENTS

Provider must submit three signed copies of the contract to Board. At the time the contract is submitted, the Insurance certificate providing satisfactory evidence of compliance with all insurance coverages must be included. Student information will not be released without all required documents on file with Board.

15. SCHEDULE FOR TUTORING

Provider will provide SES for the 2007–2008 school year with such services to be provided to Eligible Students upon approval by Board. SES must begin by October 15, 2007, and must be completed by June 30, 2008 unless otherwise agreed upon.

16. SES PROVISIONS

Provider is responsible for ensuring that the Agreement with Board matches the State-approved application regarding location, number of sessions, time/day, and type of service. Such services shall include all of the accommodations stated in the student's IEP, LEP Plan and 504 Plan if applicable.

17. BOARD ACCESS

Provider shall allow access to its facilities for periodic monitoring of each student's instructional program by Board and shall be invited to participate in any review of each student's progress by Board. Board representatives shall have access to observe each student at work, observe the instructional setting, interview Provider, and review each student's progress. Provider shall notify Board and provide the address of the location and/or any changes in location at which it is providing services to Eligible Students. This location shall be consistent with the location or locations described in the application made to FLDOE. Provider shall provide all required permits, certificates of occupancy, or other approvals as may be required for intended facility, in which it will provide SES to Eligible Students at least ten (10) days prior to the commencement of services.

18. NOTICE OF INTENT FOR ENROLLMENT

Only the Parents have the right to enroll or apply for enrollment for their children to participate in Supplemental Educational Services. Provider is prohibited from completing and submitting enrollment forms on behalf of Parents. The registration form or any other document developed by Board shall not be manipulated, added to, deleted from, or changed in any way without a written request and consent of Board. Board's registration form will be the only registration form accepted.

19. STUDENT RECORD CONFIDENTIALITY AND SECURITY

Provider is subject to all Board obligations relating to compliance with student records confidentiality laws. By signing this Agreement, Provider acknowledges and agrees to comply with the Family Educational Rights and Privacy Act (FERPA) and Section 1002.22, Florida Statutes (student records and reports; rights of parents and students; notifications; penalty). Personally identifiable records or reports of students are confidential and exempt from public records. The Board may not permit the release of such records or information without written consent of the student's Parents. Therefore, financial records, including invoices from State-approved SES Providers that contain personally identifiable information, are protected by Federal and State laws. If such records are requested pursuant to the public records law, student identifiable information must be removed from the records. All student records shall be kept in a secure location preventing access by unauthorized individuals. Upon termination of this Agreement, Board may request that Provider turn over all student records of Board's Eligible Students to whom Provider has provided services under this Agreement.

20. PROVIDER RECORDS AND AUDIT

Provider shall provide access to all records or reports, or other matter relating to this Agreement upon request by Board. Provider shall maintain fiscal records for five (5) years and shall keep them available for audit.

21. SUPPLIES, EQUIPMENT AND FACILITIES

Provider shall be solely responsible for the provision of all appropriate supplies, equipment, and facilities for a pupil as required in his/her SLP. A Provider who desires to use Board's facilities must make a separate application for use of facilities through Board's Lease Agreement procedures, outlined in School Board of Palm Beach County Policy 7.18. Board may deny any applicant's request. Providers who are permitted to use Board's facilities shall submit payment to the school along with a copy of the school's original invoice and a check for the total amount due. Rental fees are to be paid at least twenty-four (24) hours before the use of a facility. Failure to

pay this fee in timely fashion shall result in termination of this lease without written notice. A school may receive an in-kind contribution which reasonably reflects the value of the fee under the rate schedule. A Principal must state the value of this in-kind contribution in the prequalification request. Lessee shall and will pay and discharge all costs, expenses and attorney's fees that shall arise from enforcing the covenants of this lease by the Lessor, or the rights of the Lessor in the premises.

22. INVOICES, BILLING AND PAYMENT

Board shall pay Provider the maximum dollar amount assigned per student by the Florida Department of Education for the School District of Palm Beach County for the 2007-2008 school year for Supplemental Educational Services for each student served. Provider agrees to charge the hourly rate stated in the State-approved application. No payment shall be made unless and until Board verifies that all services for which payment is requested have been fully and satisfactorily performed. Accordingly, Board may withhold payment to Provider when the Board determines in its discretion that Provider's performance, in whole or part, either has not been carried out or is insufficiently documented or has refused, neglected, or failed to furnish information or to cooperate with the inspection, review, or audit of its program, work or records. Provider shall submit to Board any documentation necessary to substantiate the full and satisfactory performance of the services for which payment is requested. Judith Klinek is Board administrator who will approve the invoice after verifying that the services have been performed satisfactorily and in full. No payment shall be made for any services rendered prior to the date of the required background clearance and fingerprinting completed by Board.

Provider shall submit a monthly invoice by the 10th day of each month after services have been rendered. Invoices must include Board-provided cover page, a list of tutors' names and social security numbers, the signed Student Learning Plans (due with first invoice only), the attendance sheets with tutors' names for students listed, and the SST computer-generated itemized invoice. Any request for additional funds is outside the responsibility of Board and rests with Provider and the Parent. Payment will be based on the total number of hours the student actually attends. Payment will not be made for any student absences. Failure to submit said invoices to Board in a timely or correct manner may result in the delay of processing of the monthly invoices and, at the discretion of Board, constitute "good cause" for termination of this Agreement. Board shall process payments to Provider in a timely manner after submission of such invoices.

Provider shall submit request for payment to:

Judith Klinek, Director
The School District of Palm Beach County
Supplemental Educational Services
3300 Forest Hill Boulevard, C-124
West Palm Beach, Florida 33406-5813

23. CODE OF ETHICS

All teachers who are employed by Providers remain subject to the Florida Code of Ethics for Educators (FCEE). Providers may not request that teachers engage in any activity that is not permitted under the FCEE.

24. CONDUCT OF PROVIDER EMPLOYEES

All employees of Provider are to be dressed in a manner appropriate to teaching young students and conduct themselves as is appropriate for a person supervising children.

25. PROHIBITION OF DEFAMING THE BOARD

Provider must not defame Board in any way or at any time, including but not limited to recruiting, advertising, presentations, publications, and/or parent conferences.

26. PROHIBITION OF LOBBYING

The funds provided under this Agreement may not be expended for the purpose of lobbying.

27. DISCRIMINATION

Provider shall not discriminate on the basis of race, religion, sex, national origin, age, handicap, or sexual orientation in employment or operation of its programs. Where applicable, Provider will provide multiple language materials to students and Parents.

28. INDEMNIFICATION/HOLD HARMLESS

Provider shall, in addition to any other obligation to indemnify Board and to the fullest extent permitted by law, protect, defend, indemnify and hold harmless Board, its agents, officers, elected officials and employees from and against all claims, actions, liabilities, losses (including economic losses), costs arising out of any actual or alleged bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss of use resulting there from, or any other damage or loss arising out of, or claimed to have resulted in whole or in part from any actual or alleged act or omission of Provider, or anyone directly or indirectly employed by Provider, or of

anyone for whose acts Provider may be liable in the performance of the work; or violation of law, statute, ordinance, governmental administration order, rule or regulation in the performance of the work; claims or actions made by Provider or other party performing the work. The indemnification obligations hereunder shall not be limited to any limitation on the amount, type of damages, compensation or benefits payable by or for Provider under workers' compensation acts; disability benefit acts, other employee benefit acts or any statutory bar. Any cost or expenses, including attorney's fees, incurred by Board to enforce this Agreement shall be borne by Provider. Provider recognizes the broad nature of this indemnification and hold harmless article, and voluntarily makes this covenant for good and valuable consideration provided by Board in support of this indemnification in accordance with the laws of the State of Florida. This article will survive the termination of this Agreement.

29. SUBCONTRACT

Provider shall not subcontract any of the work contemplated under this Agreement.

30. MANDATORY TRAINING

Provider shall use Board's Supplemental Services Tracker system (SST). Provider shall attend training offered in the use of the Tracker system and appropriately follow all procedures including, but not limited to, the online enrollment of each student, completion of the goal setting and Student Learning Plan, completion of attendance and invoicing forms, and any additional form requested by the Tracker to enable Board and the State to verify with Provider or Parent that services have been rendered. It will be the responsibility of Provider to train the agency or company staff on the use of the SST tracking system.

Each year, Board pays for two hours of technical phone support for assistance to Provider in using the Tracker system. Payment for any additional support time shall be the responsibility of Provider. The Tracker system will notify Provider and Board of the hourly rate and payment due for any phone support hours in excess of the two prepaid hours. Any payment due will be deducted from Provider's monthly invoice payment.

31. COMPLIANCE WITH POLICIES AND LAWS

Provider will ensure that the Supplemental Educational Services comply with all federal and state laws and regulations and with Board policy related to health, safety, and civil rights, including but not limited to the Americans with Disabilities Act, Section 504 of the Rehabilitation Act and with Individuals with Disabilities Act (IDEA). Provider shall comply with all current Board policies. Board's policies are located at <http://www.palmbeach.k12.fl.us/> or www.schoolboardpolicies.com and are incorporated herein. It shall be Provider's responsibility to comply with all Board policies as they may be modified from time to time during the term of this Agreement. Provider shall abide by all applicable Federal, State and Local Laws.

32. INDEPENDENT CONTRACTOR

Provider is, for all purposes arising under this Agreement, an independent contractor. Provider and its officers, agents or employees may not, under any circumstances, hold themselves out to anyone as being officers, agents or employees of Board. No officer, agent or employee of Provider or Board shall be deemed an officer, agent or employee of the other party. Neither Provider nor Board, nor any officer, agent or employee thereof, shall be entitled to any benefits to which employees of the other party are entitled, including, but not limited to, overtime, retirement benefits, workers' compensation benefits, injury leave, or other leave benefits. On a regular basis, Provider will keep Board informed of changes in contact information for Provider's corporate and/or local agencies.

33. MONITORING

Through the application process and the contractual agreement with the local school district, Providers are obligated to adhere to the strict requirement of NCLB in providing tutoring services structured to improve student achievement. Board contract managers and other Board personnel may periodically monitor an SES Provider's services. The program's curriculum and instruction may be monitored through a review of lesson plans, curriculum documents, and instructional materials to determine if the program is implemented consistent with the approved application. Periodic reviews of students' SLPs will indicate students' progress toward meeting the stated goals and if services are provided that reflect and support the students' SLP. Board may also monitor the frequency and procedures for Provider informing each student's Parents and the student's teachers regarding the progress of the student in improving academic achievement as outlined in the student's SLP. Evaluation of Provider's services will be conducted by staff members of the Departments of Supplemental Educational Services and NCLB/Title I at regular intervals and in accordance with the evaluation tool provided by Board.

IV. MISCELLANEOUS PROVISION:

A. LEGAL REVIEW

The parties hereto represent that they have reviewed the Agreement and have sought legal advice concerning the legal significance and ramifications of the provisions contained herein.

B. NOTICES

Any notice *permitted* or *required* under this Agreement shall be in writing and signed with blue ink by the party giving or serving the same, and shall be served either by *personal delivery* or *certified mail* to the following persons and at the following address:

Provider: *(add Provider's address)*

SCHOOL BOARD OF PALM BEACH
COUNTY, FLORIDA
Dept. of Supplemental Educational Services
3300 Forest Hill Boulevard, Suite C-124
West Palm Beach, FL 33406

C. AUTHORITY

Each party signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute the Agreement on behalf of the party for whom he or she is signing and to bind and obligate such party with respect to all provisions contained in the Agreement.

NOW, THEREFORE, the parties hereto have affixed their signatures on the day and year written.

**The School Board of
Palm Beach County, Florida**

Provider

By: _____
WILLIAM GRAHAM, CHAIRMAN

By: _____
SIGNATURE

DATE

DATE

Attest:

By: _____
ARTHUR C. JOHNSON, PH.D.

PRINT NAME

DATE

**Reviewed and Approved
as to Legal Sufficiency**
Arthur C. Johnson 5/4/07



THE SCHOOL DISTRICT OF PALM BEACH COUNTY

**Agreement between the
School Board of Palm Beach County, Florida
and _____**

(Provider)

THIS AGREEMENT is entered into by and between the SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, hereinafter referred to as "Board" and _____ hereinafter referred to as "Provider."

WHEREAS, Provider desires to enter into this Agreement with Board, for the purpose of providing Supplemental Educational Services (SES) in compliance with applicable law, including but not limited to No Child Left Behind Act of 2001 (NCLB); and

WHEREAS, Provider desires to enter into this Agreement with respect to its services to Board, upon the terms and conditions hereinafter set forth; and

WHEREAS, Provider is specially trained and possesses the necessary skills, experience, education, competency, and licenses or credentials to perform the required services; and

WHEREAS, Provider has been approved by the State of Florida Department of Education and has met the qualifications to be certified as an SES Provider; and

WHEREAS, Provider, if selected by the Parents of Eligible Students, is willing to provide the required services; and

WHEREAS, Provider is financially sound and otherwise capable of fulfilling its requirements to Board, Eligible Students, and Parents during the term of this Agreement; and

WHEREAS, Provider shall provide instruction that is secular, neutral, and non-ideological; and

WHEREAS, No Child Left Behind Act of 2001, Section 1116, 20 U.S.C. 6316(e)(3) provides that the Agreement between the Board and the Provider must:

- a. Require the Board to develop, in consultation with Parents and the Provider chosen by the Parents, a statement of specific achievement goals for the student described in the Student Learning Plan (SLP), how student progress will be measured, and a timetable for improving achievement; and in the case of a student with disabilities, is consistent with student's Individual Educational Plan (IEP);
- b. Require a description of how the student's Parent(s) and teacher(s) will be regularly informed of the student's progress;
- c. Require a provision for the termination of the Agreement if Provider is unable to meet the goals and timetables required;
- d. Require provisions with respect to making payments to Provider by Board; and
- e. Prohibit Provider from disclosing to the public the identity of any student eligible for, or receiving SES without the written permission of the Parent of such student.

WHEREAS, No Child Left Behind Act of 2001, Section 1116, 20 U.S.C. 6316(e)(8) requires the Board, through a provider, to continue to provide SES to Eligible Students who are receiving such services until the end of the school year in which such services were first received. Board's cost shall not exceed the per student allocation;

NOW THEREFORE, for and in consideration of the mutual benefits accruing to both parties to this Agreement, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Board hereby retains Provider for the purpose of providing SES to Eligible Students.

I. PROVIDER AND BOARD MUTUALLY AGREE AS FOLLOWS:

A. RECITALS

The foregoing recitals are true and correct and incorporated herein by this reference.

B. DEFINITIONS

1. ELIGIBLE STUDENTS

Students are eligible to receive SES if they are enrolled in free or reduced-price meals, and the school in which they are enrolled has been identified as in need of improvement for three or more consecutive years according to NCLB.

2. PARENT

For the purpose of this Agreement, a "Parent" is the natural or adoptive parent, legal guardian, or a surrogate parent as determined in a legal proceeding.

3. PROVIDER

For the purpose of this Agreement, a "Provider" is the party contracting with the Board, as specifically defined on page 1. The Provider may be a non-profit entity, a for-profit entity, or a local educational agency (LEA).

4. STUDENT LEARNING PLAN (SLP)

The "SLP" shall be developed by Provider in consultation with Parents for each Eligible Student whose Parent elects to receive SES. Providers must use assessment/diagnostic instruments to identify students' academic deficiencies in order to develop an SLP that will specifically address a student's individual academic needs. The SLP must include the pre-assessment results, as well as a timetable that focuses on steps for improving the student's achievement, a timeline for provision of services and achievement of goals, and the process for informing teachers and Parents regarding the student's progress. This Agreement must be signed by all parties before services can begin. Changes in any student's SLP may only be made with the written consent of the Parent in consultation with Provider and approved by Board. Provider, Board or Parent may request a review of a student's SLP. Provider shall obtain written authorization from Board before terminating any SLP.

C. TERM

The term of this Agreement shall commence when the Board affixes signatures on page 9 of Agreement, and shall end when the applicable grant ends.

D. TERMINATION

Board reserves the right to terminate this Agreement at any time and for any reason, upon giving thirty (30) days notice to the other party. If said Agreement should be terminated for convenience as provided herein, Board shall be relieved of all obligations under said Agreement and Board shall only be required to pay that amount of the Agreement actually performed to the date of termination with no payment due for unperformed work or lost profits. In the event Board determines that Provider's services are not being performed as agreed upon, Provider shall be deemed to be in default and Board reserves the right to cancel this Agreement with five (5) days notice and to withhold all monies due to Provider until such time as Board, in its sole discretion, shall determine whether to have the services of the Agreement completed by others or to cease obtaining the services. In the event that Board determines to have the Agreement completed by others, Provider shall be liable for any costs of completion in excess of that called for in this Agreement. In the event that Board determines not to have the Agreement completed by others, Provider shall be paid for the services that it satisfactorily performed prior to the termination but, in no event, shall Provider be paid for any work not actually performed or for lost profits.

In the event that it is determined that a termination for cause was unjustified, the termination shall be deemed a termination for convenience, and Provider shall be entitled to payment only for work actually performed prior to the termination and to any additional sums.

This Agreement terminates automatically upon payment of the total amount for SES or at the close of business on the specified ending date of the applicable grant.

E. GOVERNING LAW AND VENUE

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.

F. DISPUTES

Disputes between Board and Provider concerning the meaning, requirements or performance of this Agreement shall be submitted in writing and delivered in person or by certified mail to the Department of Supplemental Educational Services, 3300 Forest Hill Boulevard, Suite C-124, West Palm Beach, FL 33406. The determination of Board shall be made by the Superintendent's designee, and shall be made in writing and shall be binding for both parties.

G. AMENDMENT

This Agreement may be amended only with the mutual consent of the parties. All amendments must be in writing and must be approved by Board.

H. SEVERABILITY CLAUSE

If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement shall be severable and remain in effect.

I. ASSIGNMENT

Neither Provider nor Board may assign or transfer any interest in this Agreement without the prior written consent of the other party.

II. BOARD RESPONSIBILITIES

1. Annually, Board will provide notification to Parents of Eligible Students prior to and after the start of the school year. Notification shall advise Parents of the availability of SES, contact information for State-approved Providers, a brief description of the services, qualification and demonstrated effectiveness of each Provider, and shall include the enrollment form, clear instructions, and timeline for the selection of Providers and commencement of services.

2. Board will assist Parents, if requested by them, in obtaining additional information regarding the State-approved Providers available to serve their child(ren).

3. Board will host Provider Fairs inviting all contracted Providers and eligible families for the purpose of facilitating the Parents' selections of a Provider.

4. Board will create a streamlined Parent enrollment and Provider selection process for Supplemental Educational Services and ensure that the process enables Eligible Students to begin receiving SES no later than October 15 of each school year.

5. Supplemental Educational Services enrollment forms will be made freely available to the Parents of Eligible Students and Providers prior to and after the start of the school year. Providers may not "pre-populate" forms.

6. Board will notify Provider of the Eligible Student's name, school, address, and telephone number(s) of record, and allow Provider to initiate contact with the student's Parents for the provision of SES, once Parents select a Provider for their child(ren). State-approved SES Providers will be able to provide services to Eligible Students no later than October 15 of each school year contingent upon their receipt of their District-approved student enrollment lists at least 20 calendar days prior to the start date. In the event that the contract with a State-approved Provider is signed less than 20 days prior to October 15, Provider shall be afforded no less than 20 days from the date the contract was executed to begin delivering services.

7. Board will hold open student enrollment for SES unless or until it has obtained a written election to receive or reject services from Parents, or until the per-student allocation is exhausted. If current funds are insufficient to serve all Eligible Students, Board will prioritize supplemental educational services to the lowest-achieving students, and will develop a process for offering such services.

8. Board, using the same policies applied to other organizations that have access to school sites, shall provide access to school facilities to Providers that wish to use these sites for SES, at the authority of the principal, and if available.

9. Board agrees to pay Provider for educational services only. Any services beyond educational services, including, but not limited to, assessing students, homework help, supervision of students, transportation and/or provision of facilities, is the responsibility of Provider.

10. Board assumes no liability related to the provision of services by Provider beyond reimbursement to Provider for services as identified in this Agreement.

III. PROVIDER RESPONSIBILITIES

1. STATEMENT OF GOALS

Provider shall develop a statement of goals for each Eligible Student whose Parent elects to receive SES from Provider. Each Parent and Board shall approve the statement of goals for the student. Provider shall make no changes to, or terminate, any student's statement of goals without written consent of Board and the student's Parent.

2. PROGRESS REPORT

For every Eligible Student to whom Provider gives services under this Agreement, a written progress report will be provided, in accordance with the State-approved application, describing the student's progress, including benchmark data. If requested by Board or a Parent, Provider shall give these reports in the following languages: English, Spanish, and Creole. Failure to submit said reports in timely manner may delay the processing of the monthly invoices until receipt of these reports or, at the discretion of Board, constitute "good cause" for termination of this Agreement.

3. CURRICULUM

Provider will submit a list of materials to be used by the tutors prior to the start of tutoring. Provider will ensure that programs and materials used are research-based and tutorial services are specifically designed to increase the academic achievement of Eligible Students as measured by the NCLB under the State's assessment. Provider will also ensure that the tutorial services enable students to make reasonable progress, given their academic skills when services began, toward attaining proficiency in meeting State academic achievement standards.

4. RECORD OF ATTENDANCE

For each invoice, Provider shall submit monthly records of student attendance on a form(s) generated through the Supplemental Services Tracker (SST) computer system with a descriptive cover page provided by Board. The information shall include the student's name, assigned school, name of Provider, the hourly rate for the services given to student, the name of Provider's employee who rendered the service, the amount of time of such service for each day measured to the nearest fifteen (15) minutes and initialed by the student's Parent or the student if the Parent is not in attendance, the total hours of such service identified by academic subject (reading and/or mathematics) covered at each session, and the amount due. Each record shall be signed by a representative of Provider, a representative of Board and by the Director of Supplemental Educational Services. Provider will implement interventions for students who are habitually absent.

5. STAFFING

Provider must have the capacity and resources to provide SES services to students. Provider must ensure that all tutorial staff are Highly Qualified, meeting the minimum qualifications for Title I paraprofessionals pursuant to the FLDOE's Request for Application for 2007-2008 (earned secondary school diploma and have two years of college equivalent to 60 semester hours, or an Associate's Degree, or have passed a local paraprofessional academic assessment).

6. FINGERPRINT/BACKGROUND CHECK

Provider shall be governed by Section 1012.32(2)(a) [231.02(2)(a)], Florida Statutes. All contractual personnel (vendors, contractors, individuals, or entities) under contract with Board who are permitted access on school grounds when students are present, who have direct contact with students or contact with students through computer Internet services, or who have access to or control of school funds must undergo level 2 screening. Level 2 screening consists of fingerprinting and a background check, as set forth in section 1012.32, Florida Statutes. All contractual personnel agree to undergo a background check and fingerprinting if he/she is an individual who meets any of the above conditions and to require that all employees of the organization who meet any of the above conditions submit to a background check, including fingerprinting by Board's Police Department, or another Florida school district, at the sole cost of Provider. Online Providers' employees, located outside the state of Florida shall complete a background screening and fingerprint screening conducted by a law enforcement agency or other entity located in their home state and provide all documentation (front and back of processed fingerprint card) to School Police. Provider is to contact School Police to receive an identification card and clearance.

Contract personnel shall not begin providing services contemplated by this Agreement until he/she receives notice of clearance by Board. Neither Board, nor its members, officers, employees, nor agents, shall be liable under any legal theory for any claim whatsoever for the rejection of Provider (or discontinuation of Provider's services) on the basis of these compliance obligations. Provider agrees that neither Provider, nor any employee, agent nor representative of Provider who has been convicted or who is currently under investigation for a crime delineated in section 435.04, Florida Statutes, will be employed in the performance of this Agreement.

7. INSURANCE

The Provider must maintain the following insurance coverage during the duration of the Agreement:

- A. Commercial General Liability Coverage
Limits: \$1,000,000 Each Occurrence
\$2,000,000 Aggregate

Coverage shall include bodily injury, property damage, personal injury, contractual liability, sexual abuse and molestation coverage. The policy must name the School Board of Palm Beach County, FL as an additional insured.

- B. Worker Compensation Insurance
Limits: Coverage A--Provider must comply with State Statute 440
Coverage B--\$500,000

If Provider is entreating Board premises for services, a waiver of subrogation must be provided.

- C. Auto Liability (if Provider is transporting students or driving on School Board property)
Limits: \$1,000,000 Each Occurrence
\$1,000,000 Aggregate
- D. Errors and Omissions
Limits: \$1,000,000 Each Claim
\$1,000,000 Aggregate

Provider agrees to continue insurance coverage for 24 months after cancellation/termination of this Agreement.

8. TRANSPORTATION

Transportation arrangements and costs for students receiving services under this Agreement are between Provider and Eligible Student's Parent. The Board has no obligations to provide transportation in connection with Provider's responsibility to provide services under this Agreement. Neither Board nor Parents shall be charged an additional fee for transporting students.

9. ACCIDENT/INCIDENT REPORT

Provider agrees to notify Board within twenty-four (24) hours of an accident or incident when a pupil suffered an injury, or injured another individual, or has been involved in an activity requiring notification of law enforcement or emergency personnel. Provider agrees to submit a written accident report to Board within three (3) days of an accident or incident. Provider further agrees to notify Board immediately of any information that may be detrimental to the health and safety of any students or that may inhibit Provider's performance of this Agreement.

10. CHILD ABUSE REPORTING

Provider assures Board that all staff members, including volunteers, are familiar with and agree to adhere to child abuse and/or missing children reporting obligations and procedures under Florida law, including but not limited to, Florida Education Code 49370 and Florida Penal Code 111666 et seq. Provider agrees to provide annual training to all its employees regarding mandated reporting of child abuse and missing children. Provider agrees that all staff members will abide by such laws in a timely manner. Provider shall submit immediately by facsimile and mail, within twenty-four (24) hours, an accident or incident report to Board when it becomes aware of circumstances including, but not limited to: allegations of molestation, child abuse, and missing children under Provider's supervision.

11. CONFLICT OF INTEREST

Provider agrees to furnish to Board (upon request) a valid copy of the most recent adopted partnership agreements or bylaws of the corporation and also a complete and accurate list of the Governing Board of Directors (or Trustees or Partners), and to timely update said information as changes in such governance occur. Provider shall avoid any actual or potential conflict of interest on behalf of itself or its employees providing services hereunder, including but not limited to, employment with Board.

12. CONTROL OF STUDENTS

Provider, while providing services, shall be responsible for the control of all students from the time the student arrives for services until the student is placed under the control of the Parent, or leaves the area by the agreed-upon means, at the end of the service. Provider agrees to remain at the SES site until all students have been picked up from the site by their Parents or other authorized persons. Provider agrees that this is a material term of this Agreement and understands and agrees that Provider's failure to meet this requirement is cause for immediate termination and removal of Provider's name from Board's Provider list indefinitely. Provider agrees to indemnify and hold harmless Board, its officers, agents and employees from any liability in the form of physical injury, death, or damage resulting from Provider's failure to comply with the requirements of this paragraph.

Provider is responsible for the agency's instructors to attend tutoring sessions at the scheduled times, being on time to tutoring sessions, and remaining with the students until the end of the scheduled tutoring session. Provider will inform any tutors who are currently employed by Board that they are not to tutor any student they presently have in their class and that they are not to commence tutoring until their workday is completed. Any violation of the above may subject the employee to disciplinary action.

13. MARKETING AND INCENTIVES

Provider will submit to Board for review samples of marketing materials including brochures, newspaper advertisements, scripts by recruiters, videotapes, and TV ads prior to distribution.

Neither Provider nor Board will provide incentives to entice a student or a student's Parent to choose a Provider. After Provider has been chosen, the student may be awarded incentives for performance or attendance, the total value of which may not exceed \$50 per student per year.

14. REQUIRED DOCUMENTS

Provider must submit three signed copies of the contract to Board. At the time the contract is submitted, the Insurance certificate providing satisfactory evidence of compliance with all insurance coverages must be included. Student information will not be released without all required documents on file with Board.

15. SCHEDULE FOR TUTORING

Provider will provide SES for the 2007-2008 school year with such services to be provided to Eligible Students upon approval by Board. SES must begin by October 15, 2007, and must be completed by June 30, 2008 unless otherwise agreed upon.

16. SES PROVISIONS

Provider is responsible for ensuring that the Agreement with Board matches the State-approved application regarding location, number of sessions, time/day, and type of service. Such services shall include all of the accommodations stated in the student's IEP, LEP Plan and 504 Plan if applicable.

17. BOARD ACCESS

Provider shall allow access to its facilities for periodic monitoring of each student's instructional program by Board and shall be invited to participate in any review of each student's progress by Board. Board representatives shall have access to observe each student at work, observe the instructional setting, interview Provider, and review each student's progress. Provider shall notify Board and provide the address of the location and/or any changes in location at which it is providing services to Eligible Students. This location shall be consistent with the location or locations described in the application made to FLDOE. Provider shall provide all required permits, certificates of occupancy, or other approvals as may be required for intended facility, in which it will provide SES to Eligible Students at least ten (10) days prior to the commencement of services.

18. NOTICE OF INTENT FOR ENROLLMENT

Only the Parents have the right to enroll or apply for enrollment for their children to participate in Supplemental Educational Services. Provider is prohibited from completing and submitting enrollment forms on behalf of Parents. The registration form or any other document developed by Board shall not be manipulated, added to, deleted from, or changed in any way without a written request and consent of Board. Board's registration form will be the only registration form accepted.

19. STUDENT RECORD CONFIDENTIALITY AND SECURITY

Provider is subject to all Board obligations relating to compliance with student records confidentiality laws. By signing this Agreement, Provider acknowledges and agrees to comply with the Family Educational Rights and Privacy Act (FERPA) and Section 1002.22, Florida Statutes (student records and reports; rights of parents and students; notifications; penalty). Personally identifiable records or reports of students are confidential and exempt from public records. The Board may not permit the release of such records or information without written consent of the student's Parents. Therefore, financial records, including invoices from State-approved SES Providers that contain personally identifiable information, are protected by Federal and State laws. If such records are requested pursuant to the public records law, student identifiable information must be removed from the records. All student records shall be kept in a secure location preventing access by unauthorized individuals. Upon termination of this Agreement, Board may request that Provider turn over all student records of Board's Eligible Students to whom Provider has provided services under this Agreement.

20. PROVIDER RECORDS AND AUDIT

Provider shall provide access to all records or reports, or other matter relating to this Agreement upon request by Board. Provider shall maintain fiscal records for five (5) years and shall keep them available for audit.

21. SUPPLIES, EQUIPMENT AND FACILITIES

Provider shall be solely responsible for the provision of all appropriate supplies, equipment, and facilities for a pupil as required in his/her SLP. A Provider who desires to use Board's facilities must make a separate application for use of facilities through Board's Lease Agreement procedures, outlined in School Board of Palm Beach County Policy 7.18. Board may deny any applicant's request. Providers who are permitted to use Board's facilities shall submit payment to the school along with a copy of the school's original invoice and a check for the total amount due. Rental fees are to be paid at least twenty-four (24) hours before the use of a facility. Failure to

pay this fee in timely fashion shall result in termination of this lease without written notice. A school may receive an in-kind contribution which reasonably reflects the value of the fee under the rate schedule. A Principal must state the value of this in-kind contribution in the prequalification request. Lessee shall and will pay and discharge all costs, expenses and attorney's fees that shall arise from enforcing the covenants of this lease by the Lessor, or the rights of the Lessor in the premises.

22. INVOICES, BILLING AND PAYMENT

Board shall pay Provider the maximum dollar amount assigned per student by the Florida Department of Education for the School District of Palm Beach County for the 2007-2008 school year for Supplemental Educational Services for each student served. Provider agrees to charge the hourly rate stated in the State-approved application. No payment shall be made unless and until Board verifies that all services for which payment is requested have been fully and satisfactorily performed. Accordingly, Board may withhold payment to Provider when the Board determines in its discretion that Provider's performance, in whole or part, either has not been carried out or is insufficiently documented or has refused, neglected, or failed to furnish information or to cooperate with the inspection, review, or audit of its program, work or records. Provider shall submit to Board any documentation necessary to substantiate the full and satisfactory performance of the services for which payment is requested. Judith Klinek is Board administrator who will approve the invoice after verifying that the services have been performed satisfactorily and in full. No payment shall be made for any services rendered prior to the date of the required background clearance and fingerprinting completed by Board.

Provider shall submit a monthly invoice by the 10th day of each month after services have been rendered. Invoices must include Board-provided cover page, a list of tutors' names and social security numbers, the signed Student Learning Plans (due with first invoice only), the attendance sheets with tutors' names for students listed, and the SST computer-generated itemized invoice. Any request for additional funds is outside the responsibility of Board and rests with Provider and the Parent. Payment will be based on the total number of hours the student actually attends. Payment will not be made for any student absences. Failure to submit said invoices to Board in a timely or correct manner may result in the delay of processing of the monthly invoices and, at the discretion of Board, constitute "good cause" for termination of this Agreement. Board shall process payments to Provider in a timely manner after submission of such invoices.

Provider shall submit request for payment to:

Judith Klinek, Director
The School District of Palm Beach County
Supplemental Educational Services
3300 Forest Hill Boulevard, C-124
West Palm Beach, Florida 33406-5813

23. CODE OF ETHICS

All teachers who are employed by Providers remain subject to the Florida Code of Ethics for Educators (FCEE). Providers may not request that teachers engage in any activity that is not permitted under the FCEE.

24. CONDUCT OF PROVIDER EMPLOYEES

All employees of Provider are to be dressed in a manner appropriate to teaching young students and conduct themselves as is appropriate for a person supervising children.

25. PROHIBITION OF DEFAMING THE BOARD

Provider must not defame Board in any way or at any time, including but not limited to recruiting, advertising, presentations, publications, and/or parent conferences.

26. PROHIBITION OF LOBBYING

The funds provided under this Agreement may not be expended for the purpose of lobbying.

27. DISCRIMINATION

Provider shall not discriminate on the basis of race, religion, sex, national origin, age, handicap, or sexual orientation in employment or operation of its programs. Where applicable, Provider will provide multiple language materials to students and Parents.

28. INDEMNIFICATION/HOLD HARMLESS

Provider shall, in addition to any other obligation to indemnify Board and to the fullest extent permitted by law, protect, defend, indemnify and hold harmless Board, its agents, officers, elected officials and employees from and against all claims, actions, liabilities, losses (including economic losses), costs arising out of any actual or alleged bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss of use resulting there from, or any other damage or loss arising out of, or claimed to have resulted in whole or in part from any actual or alleged act or omission of Provider, or anyone directly or indirectly employed by Provider, or of

anyone for whose acts Provider may be liable in the performance of the work; or violation of law, statute, ordinance, governmental administration order, rule or regulation in the performance of the work; claims or actions made by Provider or other party performing the work. The indemnification obligations hereunder shall not be limited to any limitation on the amount, type of damages, compensation or benefits payable by or for Provider under workers' compensation acts; disability benefit acts, other employee benefit acts or any statutory bar. Any cost or expenses, including attorney's fees, incurred by Board to enforce this Agreement shall be borne by Provider. Provider recognizes the broad nature of this indemnification and hold harmless article, and voluntarily makes this covenant for good and valuable consideration provided by Board in support of this indemnification in accordance with the laws of the State of Florida. This article will survive the termination of this Agreement.

29. SUBCONTRACT

Provider shall not subcontract any of the work contemplated under this Agreement.

30. MANDATORY TRAINING

Provider shall use Board's Supplemental Services Tracker system (SST). Provider shall attend training offered in the use of the Tracker system and appropriately follow all procedures including, but not limited to, the online enrollment of each student, completion of the goal setting and Student Learning Plan, completion of attendance and invoicing forms, and any additional form requested by the Tracker to enable Board and the State to verify with Provider or Parent that services have been rendered. It will be the responsibility of Provider to train the agency or company staff on the use of the SST tracking system.

Each year, Board pays for two hours of technical phone support for assistance to Provider in using the Tracker system. Payment for any additional support time shall be the responsibility of Provider. The Tracker system will notify Provider and Board of the hourly rate and payment due for any phone support hours in excess of the two prepaid hours. Any payment due will be deducted from Provider's monthly invoice payment.

31. COMPLIANCE WITH POLICIES AND LAWS

Provider will ensure that the Supplemental Educational Services comply with all federal and state laws and regulations and with Board policy related to health, safety, and civil rights, including but not limited to the Americans with Disabilities Act, Section 504 of the Rehabilitation Act and with Individuals with Disabilities Act (IDEA). Provider shall comply with all current Board policies. Board's policies are located at <http://www.palmbeach.k12.fl.us/> or www.schoolboardpolicies.com and are incorporated herein. It shall be Provider's responsibility to comply with all Board policies as they may be modified from time to time during the term of this Agreement. Provider shall abide by all applicable Federal, State and Local Laws.

32. INDEPENDENT CONTRACTOR

Provider is, for all purposes arising under this Agreement, an independent contractor. Provider and its officers, agents or employees may not, under any circumstances, hold themselves out to anyone as being officers, agents or employees of Board. No officer, agent or employee of Provider or Board shall be deemed an officer, agent or employee of the other party. Neither Provider nor Board, nor any officer, agent or employee thereof, shall be entitled to any benefits to which employees of the other party are entitled, including, but not limited to, overtime, retirement benefits, workers' compensation benefits, injury leave, or other leave benefits. On a regular basis, Provider will keep Board informed of changes in contact information for Provider's corporate and/or local agencies.

33. MONITORING

Through the application process and the contractual agreement with the local school district, Providers are obligated to adhere to the strict requirement of NCLB in providing tutoring services structured to improve student achievement. Board contract managers and other Board personnel may periodically monitor an SES Provider's services. The program's curriculum and instruction may be monitored through a review of lesson plans, curriculum documents, and instructional materials to determine if the program is implemented consistent with the approved application. Periodic reviews of students' SLPs will indicate students' progress toward meeting the stated goals and if services are provided that reflect and support the students' SLP. Board may also monitor the frequency and procedures for Provider informing each student's Parents and the student's teachers regarding the progress of the student in improving academic achievement as outlined in the student's SLP. Evaluation of Provider's services will be conducted by staff members of the Departments of Supplemental Educational Services and NCLB/Title I at regular intervals and in accordance with the evaluation tool provided by Board.

IV. MISCELLANEOUS PROVISION:

A. LEGAL REVIEW

The parties hereto represent that they have reviewed the Agreement and have sought legal advice concerning the legal significance and ramifications of the provisions contained herein.

B. NOTICES

Any notice *permitted or required* under this Agreement shall be in writing and signed with blue ink by the party giving or serving the same, and shall be served either by *personal delivery* or *certified mail* to the following persons and at the following address:

Provider: (add Provider's address)

SCHOOL BOARD OF PALM BEACH
COUNTY, FLORIDA
Dept. of Supplemental Educational Services
3300 Forest Hill Boulevard, Suite C-124
West Palm Beach, FL 33406

C. AUTHORITY

Each party signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute the Agreement on behalf of the party for whom he or she is signing and to bind and obligate such party with respect to all provisions contained in the Agreement.

NOW, THEREFORE, the parties hereto have affixed their signatures on the day and year written.

**The School Board of
Palm Beach County, Florida**

Provider

By: _____
WILLIAM GRAHAM, CHAIRMAN

By: _____
SIGNATURE

DATE

DATE

Attest:

By: _____
ARTHUR C. JOHNSON, PH.D.

PRINT NAME

DATE

**Reviewed and Approved
as to Legal Sufficiency**
Kalshaker 5/4/07