

Board Meeting Agenda Item Executive Summary

<i>Supt.'s Office Use Only</i>
Board Meeting <u>6-17-08</u>
Agenda <u>Consent</u>
Item No. <u>H.14.</u>

Board Meeting Date:	June 17, 2008
Submitted By:	Dr. Charles Hall
Item Description:	NCLB-Supplemental I Educational Services (SES) Contract for District/Provider

Purpose and Explanation:

This Supplemental Educational Service Provider Agreement is made between The School Board of Alachua County, Florida and Various Providers for the purpose of providing tutoring to eligible students at Title I schools.

Strategic Planning	Budgetary Impact
Strategy Number:	Funding Source (Description):
Specific Result Statement:	General Fund:
	Federal Projects: xxx
	Food Service:
	Capital Projects:
	Other:
	Amount: \$1,140 per student

Staff Attorney Review & Approval	Date:
	Initial:

**School Board of Alachua County, Florida
NCLB—Supplemental Educational Services Contract
District/Provider**

THIS SUPPLEMENTAL EDUCATIONAL SERVICE PROVIDER AGREEMENT (“Contract”) is made and entered into on _____, 2008, between The School Board of Alachua County, Florida, 620 East University Avenue, Gainesville, Florida 32601 (hereinafter referred to as the “DISTRICT”), and _____ (hereinafter referred to as the “PROVIDER”), for the purpose of providing Supplemental Educational Services (“SES”) to eligible students as agreed upon in the Student Learning Plan (“SLP”)

Recitals:

WHEREAS, Students who have been identified by DISTRICT as meeting specific requirements under No Child Left Behind, 20 U.S.C. Section 6316(e) (“NCLB”), and applicable state and federal statutes, are eligible for SES; and

WHEREAS, DISTRICT is authorized by NCLB and the State of Florida to enter into an agreement with the state-approved SES providers; and

WHEREAS, PROVIDER is specially trained and experienced and competent to provide SES required by District, and SES are needed by DISTRICT on a limited basis; and

WHEREAS, NCLB outlines the requirements for SES; and

WHEREAS, Section 6316 (e) (3) of NCLB:

1) Requires DISTRICT to develop, in consultation with parents (with the SES provider to be chosen by parents), a statement of specific achievement goals for the student described in the SES Academic Plan, how the student’s progress will be measured, and a timetable for improving achievement, and in the case of a student with disabilities, is consistent with student’s Individualized Education Plan (IEP);

2) Requires the SES Provider (PROVIDER) to provide SES to eligible students who are receiving such SES until the end of the school year in which such SES were first received but DISTRICT cost shall not exceed the per student allocation as determined by the Department of Education, payable at the hourly rate of \$_____;

3) Requires a description of how the student’s parents and teacher or teachers will be regularly informed of the student’s progress;

4) Requires a provision for the termination of the Contract if PROVIDER is unable to meet the goals and timetables required;

5) Requires provisions with respect to making payments to PROVIDER by District; and

6) Prohibits 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; 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 is willing to provide SES to DISTRICT’s eligible students if selected by the parent/guardians of eligible students;

NOW, THEREFORE, in consideration of the premises and of the mutual promises contained herein, the parties agree as follows:

1. RFA Process: PROVIDER is required to adhere to all provisions of the application submitted by the PROVIDER and approved by Florida DOE under the annual RFA process. These provisions include, but are not limited to, hourly rates, student/tutor ratios, staff qualifications, and tutoring session duration.

2. Student Learning Plan (“SLP”): An SLP shall be developed by DISTRICT in consultation with the parent and PROVIDER for each eligible student whose parent elects to receive SES from PROVIDER. Changes in any student’s SLP may only be made with the written consent of DISTRICT in consultation with the parent. PROVIDER, DISTRICT or the parent may request a review of a student’s SLP. PROVIDER shall not unilaterally terminate any SLP. PROVIDER shall obtain written authorization from DISTRICT before terminating any SLP. The parent shall not be charged for SES rendered under the SLP unless such SES and related charges are clearly identified in writing as a separate contract (independent of this contract), agreed upon in advance and signed by the parent. In no event shall the agreed upon charges obligate DISTRICT financially, nor shall DISTRICT incur any obligation or expense in excess of the state/federal reimbursement amount.

All SES given by PROVIDER under this Contract shall be secular, neutral, and non-ideological in instruction and content. PROVIDER shall assume responsibility for supervision and care of students during the times that students are in its care and will further ensure that students are supervised before and after SES tutoring session have been completed.

3. Parent: For the purpose of this Contract, a “parent” is the natural or adoptive parent, legal guardian, a surrogate parent, or other person in lawful custody of the student.

4. Student Records: All student records shall be kept in a secure location preventing access by unauthorized individuals. PROVIDER will maintain an access log delineating, date, time, agency, and identity of any individual accessing student records who is not in the direct employ of PROVIDER. PROVIDER agrees to provide access to and copies of student records to DISTRICT and the parent. PROVIDER shall not forward to any person, other than the parent, any student record without the written consent of the parent or DISTRICT. Upon completion of termination of the IEP/IAP or termination of this Contract, the PROVIDER shall turn over to DISTRICT all student records for the DISTRICT’s eligible students to whom PROVIDER has rendered SES under this Contract.

5. Location of Services and District Access:

A. On or before August 1, 2008, PROVIDER shall notify DISTRICT of the names and addresses of all schools, centers and other locations where the PROVIDER’S services will be offered. The list of PROVIDER’S tutoring sites shall be boldly printed on all marketing materials intended for use at Provider Fairs in Alachua County. Providers who participate in Provider Fairs or individual school registration campaigns shall conspicuously post the locations of their tutoring programs.

B. PROVIDER shall allow access to its facilities for periodic monitoring of each student’s instructional program by DISTRICT and shall be invited to participate in the review of each student’s progress by DISTRICT. DISTRICT representatives shall have access to observe

each student at work, observe the instructional setting, interview PROVIDER, and review students' progress including the behavior intervention plan, if any.

6. Timelines for Services:

A. It is the intention of the DISTRICT to furnish a list of eligible students to PROVIDER at the earliest possible date, but prior to September 15th of each school year. Upon receiving the eligible student list, PROVIDER will consider the number of students listed and agrees to notify DISTRICT within ten (10) calendar days if it wants to serve the students listed and assigned to the PROVIDER at a locality or specific school designated by the PROVIDER. If PROVIDER fails to notify DISTRICT within the ten (10) day period, this Contract will be void, and DISTRICT will remove all names assigned to PROVIDER.

B. PROVIDER must complete the SLP agreement process and commence service with at least 80 percent of students on its furnished list by October 15th. If PROVIDER fails to serve at least 80 percent of its students by the October 15th deadline, District may reassign un-served students to an alternate provider.

C. Once DISTRICT has assigned the minimum number of students per school, PROVIDER shall serve the students from that school, irrespective of the school's location. PROVIDER's failure to serve students at a location designated by the PROVIDER shall void this Contract with DISTRICT.

7. Use of District Premises: Should PROVIDER enter into a separate agreement with DISTRICT for use of DISTRICT premises, such use shall constitute a revocable license and PROVIDER agrees to immediately vacate the premises upon the written demand of the school principal, the Superintendent, or the Superintendent's designee. PROVIDER shall be reimbursed for any money paid in advance for a period of time following PROVIDER'S vacation of the premises, subject, however, to set off for any damages to the premises caused by PROVIDER, its employees, agents, and invitees.

8. Fingerprint/Background Check: In accordance with Sec. 1012.32 and Sec. 1012.465, F.S., all employees of PROVIDER who work with students in DISTRICT shall, at a fee to be borne by PROVIDER, be fingerprinted and have a criminal background check conducted at DISTRICT's Department of Personnel Services Office, 620 East University Avenue, Gainesville, FL 32601 prior to working with students and, upon receipt of those checks, PROVIDER will certify to DISTRICT that no employee of PROVIDER working with students of the school district has been convicted of a crime involving moral turpitude, a violent or other serious felony as defined by statutes, or other crimes or misdemeanors that would disqualify a person from employment with DISTRICT pursuant to applicable law and DISTRICT policy and procedure. Under no conditions should employees of PROVIDER work with students prior to the successful completion of a fingerprint and background check at DISTRICT.

9. Independent Contractor Status: This Contract is by and between two independent agents and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association. PROVIDER understands and agrees that it shall be responsible for providing its own salaries, payroll, taxes, withholding, insurance, workers compensation coverage and all other benefits of any kind, as required by law for its own employees, and assumes the full responsibility for the acts, and/or omissions of its employees or agents as they relate to the SES to be provided under this Contract.

10. Conflict of Interest: PROVIDER agrees to furnish to DISTRICT (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 SES hereunder, including but not limited to, employment of tutors who are with DISTRICT.

11. Accident/Incident Report: PROVIDER agrees to submit a written accident report to DISTRICT within five (5) days of an accident or incident when a pupil has suffered an injury, or injured another individual, or has been involved in an activity requiring notification of law enforcement or emergency personnel.

12. Discrimination: PROVIDER shall not discriminate on the basis of race, religion, sex, age, nationality, or disability, in employment or operation of its programs.

13. Child Abuse Reporting: PROVIDER assures DISTRICT 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. 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 DISTRICT when it becomes aware of circumstances including, but not limited to: allegations of molestation, child abuse, missing children under PROVIDER's supervision.

14. Required Training: PROVIDER agrees that all its personnel who will render SES under this contract are required to attend training on the utilization of DISTRICT's on-line Cayen system, as scheduled by the DISTRICT.

15. Supplies, Equipment and Facilities: PROVIDER shall be solely responsible for the provision of all appropriate supplies, equipment, and facilities for a student as required in his/her PDPA. If PROVIDER desires to use DISTRICT's facilities, it must make a separate application for use of facilities pursuant to DISTRICT's policies and procedures. The DISTRICT has the right to deny an applicant's request.

16. Inspection and Audit: PROVIDER shall provide access to records or reports, or other matter relating to the Contract, upon request by DISTRICT. Fiscal records shall be maintained by PROVIDER for five (5) years and shall be available for audit.

17. Indemnification: PROVIDER shall defend, hold harmless, and indemnify DISTRICT and its School Board, officers, agents, and employees from and against all liabilities and claims for damage for death, sickness, or injury to any person(s) or damage to any property, including, without limitation, all consequential damages and expenses (including attorney fees), from any cause whatsoever arising from or connected with its SES hereunder, resulting in whole or in part from the negligence or intentional acts of PROVIDER, its agents or employees. It is understood and agreed that such indemnity and hold harmless agreement shall survive the termination of this Contract.

18. Insurance: During the entire term of this Contract, and any extension or modification thereof, PROVIDER shall keep in effect a policy or policies of liability insurance, including coverage of owned and non-owned vehicles used in relation to the performance of SES by PROVIDER, of at least one million dollars (\$1,000,000) for each person and one million dollars (\$1,000,000) for all

accidents or occurrences for all damages arising out of death, bodily injury, sickness or disease from any one accident or occurrence, and one million dollars (\$1,000,000) for all damages and liability arising out of injury to or destruction of property for each accident or occurrence. Not later than the effective date of this Contract, PROVIDER shall provide DISTRICT with satisfactory evidence of insurance, naming DISTRICT as additional certificate holder, including a provision for a twenty (20) calendar day written notice to DISTRICT before cancellation or material change, evidencing the above-specific coverage. PROVIDER shall, at its own cost and expense, procure and maintain insurance under the Worker's Compensation Law of Florida, if applicable. DISTRICT reserves the right to revise the requirements of this provision at any time. If DISTRICT determines that additional insurance coverage is necessary, DISTRICT will reopen negotiations with PROVIDER to modify the terms of this Contract.

19. Monthly Invoices: PROVIDER shall submit to DISTRICT (on or before the 5th of each month) monthly invoices itemized by name and identification number, actual numbers of hours for which SES were provided, and an amount owed. Such invoices shall be submitted within forty-five (45) days of rendering SES. DISTRICT shall process payments to PROVIDER within forty-five (45) days of submission of such invoices.

20. Records of Attendance: PROVIDER shall maintain a daily student sign-in sheet. A portfolio of student SES shall be maintained. The portfolio shall, at a minimum, include the name and address of each student, name of PROVIDER, the employee who rendered the SES, and the amount of time of such SES. PROVIDER is paid only for SES sessions students attend. PROVIDER shall permit access to and/or a copy of such records to DISTRICT upon request.

21. Right to Withhold: DISTRICT may withhold payment to PROVIDER, on ten (10) working days written notice of such withholding, when in the opinion of DISTRICT:

- A. PROVIDER's performance, in whole or in part, either has not been carried out or is insufficiently documented;
- B. PROVIDER has neglected, failed, or refused to furnish information or to cooperate with the inspection, review, or audit of its SES, program, work, or records; or
- C. PROVIDER has failed to submit an invoice to DISTRICT within forty-five (45) days of rendering SES.

If DISTRICT gives notice of intent to withhold, PROVIDER shall have fourteen (14) days from the day of receipt of said notice to correct such deficiency and/or may invoke the dispute resolution provision herein.

22. Modification and Amendments: This Contract may be modified or amended only by a written document signed by authorized representatives of PROVIDER and DISTRICT. No change in this Contract or in the PDPA shall result in DISTRICT financial obligation to PROVIDER in excess of the State/Federal reimbursement rate per student per year to DISTRICT.

23. Disputes: Disputes between DISTRICT and PROVIDER concerning the meaning, requirements or performance of this Contract shall be submitted in writing and delivered in person or by certified mail to Dr. Charles F. Hall, Director of Title I, Migrant Education and Dropout Prevention, at DISTRICT's address set forth above. The determination of DISTRICT shall be made by the Superintendent or designee, and shall be made in writing and shall be binding on both parties.

24. Subcontract and Assignment: PROVIDER shall not subcontract or assign any of the SES or other performance obligations contemplated under this Contract without first obtaining written approval from DISTRICT. Such approval shall be attached and made part of this Contract. Subcontracts or assignments may be entered into only with SES providers certified by the Florida Department of Education and acceptable to DISTRICT. Any sub-contractor or assignee shall be bound by all of the terms of this Contract, including the insurance and indemnification provisions.

25. Termination:

- A. This Contract may be terminated by DISTRICT or PROVIDER at any time. To terminate this Contract, either party shall give twenty (20) calendar days written notice as provided herein prior to the date of the termination. During the twenty (20) calendar day period, PROVIDER shall continue to provide SES until the effective date of termination. Upon termination, without default of PROVIDER, DISTRICT shall pay, without duplication, for all SES satisfactorily performed to date of termination.
- B. In consideration of this payment, PROVIDER waives all rights to any further payment or recovery of damages. Upon termination, PROVIDER shall turn over to DISTRICT, all student records that were generated as a result of SES rendered under this Contract and that are possessed by PROVIDER or under its control at the time of termination.
- C. The DISTRICT may terminate this contract immediately in the event of a breach of the contract by PROVIDER that, in the reasonable judgment of the DISTRICT, substantially impairs student health, safety, or welfare.
- D. A SLP may be terminated by PROVIDER only upon consent of DISTRICT; provided, however, that a SLP shall terminate immediately if the student ceases to be enrolled in DISTRICT. Upon termination, under this paragraph, final payment from DISTRICT will be calculated based upon a pro-rata calculation of total SES agreed upon in the SLP for which DISTRICT is responsible for payment, divided by that portion of SES actually rendered.

26. Compliance with Laws: During the term of this Agreement, PROVIDER shall comply with all applicable federal and state statutes and regulations, State Board of Education rules, DISTRICT policies, and local laws, ordinances, rules and regulations relating to the provision of SES, including securing and maintaining in force such permits and licenses as are required by law in connection with the furnishing of SES pursuant to the Contract.

27. Entire Contract/Agreement: This Contract, the SLP, and Title I Supplemental Educational Academic Plan constitute the entire Agreement between DISTRICT and PROVIDER. These documents supersede any prior or contemporaneous understanding or agreement with respect to the subject matter.

28. Governing Law: The terms and conditions of this Agreement shall be governed by the laws of the State of Florida with venue in Alachua County, Florida.

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

30. Notices: Notices required under this Contract shall be valid when hand delivered or delivered by certified mail as follows to DISTRICT: Dr. Charles F. Hall, Director of Title I, Migrant Education and Dropout Prevention, at DISTRICT's address set forth above; to PROVIDER:

(Address of PROVIDER)

DISTRICT:

THE SCHOOL BOARD OF ALACHUA
COUNTY, FLORIDA

PROVIDER:

(Full legal name of company)

By: _____
Janie S. Williams, Chair

By: _____
(Name and Title)

Attest:

W. Daniel Boyd, Jr., Superintendent

Approved as to form.

James F. Lang,
School Board Attorney