

## SUPPLEMENTAL EDUCATIONAL SERVICES (SES) CONTRACT

### GADSDEN INDEPENDENT SCHOOL DISTRICT, NO. 19 SERVICES CONTRACT FOR Supplemental Education Services 2011-2012 School Year

**THIS SERVICE AGREEMENT** is made and entered into by and between the Board of Education of the Gadsden Independent School District (GISD) and the Offeror on behalf of the State of New Mexico Public Education Department (NMPED) and public schools within the State of New Mexico represented by GISD and \_\_\_\_\_ ( Provider). The Agreement will be valid from date of execution to June 30, 2012. The last day of tutoring for the regular school year is April 27, 2012. Final invoices are due to the Title I Office no later than May 14, 2012.

#### IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

##### 1. Definitions

- a. "District Administrator" means the individual assigned by the School District to administer the Service Agreement(s).
- b. "District SES Coordinator" means the liaison between the Provider, District Administrator, and Parents to ensure that Supplemental Educational Services (SES) are provided to eligible students.
- c. "Duty Day" is defined as the standard work day for GISD teachers under union contract. By way of example, some elementary teachers have a duty day from 7:30 a.m. until 3:00 p.m. Whereas, some secondary teachers have a duty day from 8:00 a.m. until 3:30 p.m.
- d. "Irregular attendance" shall be defined as a student who fails to attend six (6) out of eight (8) tutoring sessions per month.
- e. "Eligible students" are students from low-income families who attend Title I schools that are in their second year of school improvement, in corrective action, or in restructuring. Eligible students means a child or children from low income families as determined by the School District. (See NMAC 6.19.6.7).

##### 2. Scope of Work

- a. The Provider shall provide services to GISD in accordance with completed Purchase Orders and the terms and conditions of this Service Agreement.
- b. In addition, each Purchase Order will become a part of the agreement. In the event of any conflict among these documents, the following order of precedence shall apply:
  - i. The terms and conditions of this document;
  - ii. Exhibits to this document;
  - iii. The completed Purchase Order;
  - iv. The Request for Proposals including amendments, if any;
  - v. The Provider's proposal including Best and Final Offer, if any.

Eligible students are students from low-income families who attend Title I schools that are in their second year of school improvement, in corrective action, or in restructuring. Eligibility is not dependent on whether the student is a member of a subgroup that caused the school to not make Annual Yearly Progress (AYP) or whether the student is in a grade that takes the statewide assessments as required by Section 1111 of the Elementary and Secondary Education Act (ESEA).

If the funds available are insufficient to provide supplemental educational services to each eligible student whose parent requests those services, GISD must give priority to providing services to the lowest-achieving eligible students. In this situation, GISD shall use objective criteria to determine the lowest-achieving students.

- c. Supplemental Educational Services (SES) Providers must use a **GISD-approved** pre- and post-assessment instrument to measure the gains that students achieve through supplemental educational services. GISD uses DRA-2 or EDL for their reading

assessment tool for grades 1 through 8. GISD uses MAPS to assess math skills for grades 1 through 12. Students in grades 9 and 10 will be assessed using MAPS (fall, winter, spring). The District SES Coordinator will be responsible for gathering pre and post testing information on students. Providers are welcome to use their own assessment tools along with the DRA-2/EDL and MAPS, but ultimately, the GISD assessments will be the assessments submitted to the department for official data computations.

- d. Providers may, in addition to the GISD assessment, use their own assessments but may not bill GISD for registration fees or tutoring time to give these assessments.
- e. Title I funds are restricted for the use of tutoring in Math and/or Reading only. This is not a homework help club. Only the goals as outlined in the Student Improvement Plan (SIP) may be addressed during the tutoring session.
- f. GISD will not be charging Providers for the use of this testing data.
- g. Only Title I schools that have received a school designation of school improvement year 2, corrective action or restructuring, are required to offer supplemental educational services to eligible students.

All school districts, public schools, including charter schools and all state-approved SES Providers who offer or plan to offer supplemental educational services in New Mexico shall adhere to the following requirements and timelines:

#### **District Responsibilities**

- Parental notification shall occur within two (2) weeks after school has started, or as agreed to by the Public Education Department and GISD. A good-faith effort will be made by GISD to adhere to this timeline.
- The enrollment period for supplemental educational services is at a minimum the four (4) week period subsequent to the beginning of a school year after the issuance of notification to parents of the availability of supplemental educational services. GISD will make a good faith effort to deliver letters within fourteen (14) days of PED's finalization of the SES regulations from their offices.
- GISD shall release names of students enrolled in supplemental educational services in a reasonable manner, at minimum, a list of student names and contact information will be released to the Providers on or before 10/31/2011, as it is anticipated that SES services will commence on or about 11/12/2011. Thereafter, a student list shall be maintained by GISD consistent with page seven (7), paragraph four (4). The student information will be provided through the Cayen Systems, GISD's web based SES software program. GISD will make every effort to continue enrolling students through the first semester or as room is available. **IMPORTANT--No school district or public school, including a charter school, shall enter into agreements or otherwise permit supplemental educational services Providers to operate during the mandatory state-mandated criterion referenced testing.** This provision may be waived with written approval from the District Superintendent. On or before October 31, 2011 the School District shall provide each SES Provider with the following documentation:
  - a. Sample Supplemental Educational Services (SES) Contract;
  - b. Calendar for the current school year including dates for the testing window;
  - c. Correspondence from the Superintendent indicating that SES Providers are not permitted to provide services during the testing window;
  - d. A copy of NMAC 6.19.6;
  - e. Gadsden SES contact directory; and
  - f. Vendor information form.

- Established guidelines for Provider recruitment:
  - a. Parents select the Provider of choice. At no time will a Provider recruit a parent into their program nor use incentives to sign a parent into their program. Providers are welcome to answer parent's questions, but may not take down registration information regarding the parent or the student. If there are any conflicts between NMAC 6.19.6 and this SES contract regarding recruitment, this contract shall control.
  - b. Providers are permitted to attend school functions (i.e., Open House) per the principal's invitation only.
  - c. Providers are not to arrive at a school site without an appointment and initiation by the administration.
  - d. Providers are not to set up tables outside, on or near, the school grounds in order to distribute information to students and parents.
  - e. Providers are not to ask staff members at school to distribute information or make student recommendations.
  - f. Providers are to work with the District SES Coordinator regarding any SES issues that may arise.
  
- Beginning with the 2011-2012 school year, if a school district or charter school employee learns that a supplemental educational services Provider is recruiting in a way that is not in accordance with established guideline and the policies of this rule, the following procedure shall occur:
  - a. The school employee shall promptly notify the District Administrator in writing. Thereafter, the District Administrator shall immediately notify the Provider in writing to cease and desist this practice immediately;
  - b. The District Administrator shall notify the New Mexico Public Education Department in writing if a Provider fails or refuses to cease or desist in recruiting students for their program; and
  - c. School District personnel may not show favoritism to any supplemental educational services Provider. The School District must provide parents with information about all state approved supplemental educational services Providers serving the district.
  
- GISD will provide tutoring space, after school hours, at school sites, according to the fee schedule as indicated in the Building Usage Application.

### **Supplemental Educational Services (SES) Provider Responsibilities**

1. Supplemental educational services shall begin no later than twenty (20) school days after the following events:  
The date the child was placed with a district approved supplemental educational services Provider. Students who have not begun services within twenty (20) school days of being placed through the Cayen systems, will be moved to another Provider of their choice by the School District.
  
2. **Other Provider duties include:**
  - a. A master schedule of tutoring times, tutor names, tutoring sites, days tutored etc. must be provided to the GISD District Administrator prior to the start of tutoring services, to provide the District SES Coordinator necessary information for room schedules, monitoring and student location.
  - b. Each SES Provider **must complete at least seventy-five (75%) percent** of services to eligible children for whom the parent/guardian has selected the supplemental educational service Provider **prior to the administration of the state-mandated criterion referenced testing. (See NMAC 6.19.6.8(A)(4)).**
  - c. All original Cayen attendance rosters **must be submitted** to the SES office for verification of provider invoices. Verification of provider invoices will occur no later than thirty (30) days of submission to the SES office.
  - d. Students who are absent from tutoring for two (2) consecutive sessions will be contacted by the Provider and warned in writing, with a copy submitted to GISD's District SES Coordinator, that the student is in danger of being dropped from the tutoring program.

Students who are absent from tutoring for four (4) consecutive sessions will no longer be eligible to attend a SES tutoring program and will be dropped from the program by GISD's District Administrator. The last date the student attended tutoring services will be considered the "drop date." Providers may not invoice for services after the student has been dropped from the program. Additionally, the failure of the Provider to warn the student in writing, or to timely provide notice to GISD of consecutive student absences will be considered a breach of this contract with respect to the student in question.

- e. Students who are exhibiting irregular attendance, that are not adhering to the parent/provider agreed upon tutoring days and times, as reflected on the Cayen monthly session logs are to be warned in writing (copy to be provided to GISD's District SES Coordinator) by the Provider. If the student's irregular attendance is not corrected within the next month of receiving notice, it will result in the student being dropped from the tutoring program. It is within GISD's sole discretion as to students to be dropped from the program due to irregular attendance.
  - f. Failure by the Provider to issue timely notice to students pursuant to paragraphs (d) and (e) above, will be considered a material breach of this SES contract, and grounds for immediate termination.
  - g. Providers MUST bill MONTHLY by school, by purchase order. The first Provider invoice must be generated and provided to the School District no later than December 13, 2011. Thereafter, all billing invoices must be submitted monthly through the Cayen System. Failure by the Provider to provide invoices in a timely manner as outlined in this provision shall be considered a material breach of this SES contract, and grounds for immediate termination.
  - h. All invoices will be reviewed and verified by GISD. Any errors in billing will be adjusted by GISD and total billing will be recalculated. Providers will have the opportunity to review the adjusted invoice and negotiate with the District SES Coordinator within fifteen (15) days receipt of the adjusted invoice. The Provider is to furnish documentary evidence to substantiate adjustments in their favor. A Provider's adjustment claim for an amount of less than Two Thousand Dollars (\$2,000.00) is within the sole discretion of GISD. If GISD and the Provider are unable to reach agreement as to claims in excess of Two Thousand Dollars (\$2,000.00), either party make seek remedies under the complaint and dispute resolution section on page nine (9) of this Service Agreement.
  - i. It is the intent of GISD to ensure the Provider is aware of the process when their employees do not pass their background checks. Tutors may not begin tutoring or have contact with GISD students until their background check is cleared.
  - j. A completed Student Improvement Plan (SIP), developed in collaboration between the student's teacher(s) and parent(s), are due within thirty (30) calendar days of the start of tutoring. SIP's can be executed in counter-parts, with facsimile copies qualifying as originals.
  - k. Students who are dropped or transferred must be billed through Cayen Systems within fifteen (15) business days. Failure to do so will result in non-payment of services rendered for that student.
3. SES Providers shall not directly or indirectly use incentives as a method of promoting selection of their services by parents or guardians of eligible children. Provided, however, that rewards may be offered to eligible children:
- a. To reward attendance, continued participation, or achievement related to a Provider's services;
  - b. If the reward has no redeemable monetary value to the eligible child or his parent/guardian and is otherwise consistent with accepted classroom incentives, such as pizza parties, ice cream parties, school supplies having nominal value, or the opportunity to order discounted instructional material for the eligible child's personal use; and
  - c. Parents or guardians of an eligible child or children consent to the offering of such incentives.

4. All school districts, public schools, including charter schools and all state-approved SES Providers who offer or plan to offer supplemental educational services in New Mexico shall adhere to the following requirements:
  - a. Each SES Provider must use a sliding fee schedule when invoicing eligible school districts for services rendered. The sliding fee schedule shall comport as follows:
    - i. A SES Provider may charge the eligible school district its full hourly amount if the tutor has a valid teaching license or four (4) year degree and the per pupil cap will not be ratably reduced based on the education level of the tutor providing supplemental educational services.
    - ii. A SES Provider may charge the eligible school district eighty-five percent of its hourly amount if the tutor has less than a four (4) year degree, but more than an associates of arts degree from an accredited post secondary institution, and the per pupil cap will be ratably reduced by fifteen percent (15%) based on the education level of the tutor providing supplemental educational services.
    - iii. A SES Provider may charge the eligible school district seventy-five percent (75%) of its hourly amount if the tutor has less than an Associates of Arts degree or its equivalent of forty-eight (48) credit hours from an accredited post secondary institution, but more than a high school diploma and the per pupil cap will be ratably reduced by twenty-five percent (25%) based on the education level of the tutor providing supplemental educational services.
    - iv. \_\_\_\_\_(Provider) must provide, at minimum, \_\_\_\_\_contact hours per student per instructional school year. The last day of tutoring will be May 14, 2012.
  - b. The length of any supplemental educational services session must be developmentally appropriate considering the age of the student participating in supplemental educational services. Under no circumstances may a session last longer than two hours in duration, nor less than one-half (½) hour, including instructional time and any break time given, regardless of the day, time or location of services. Students may receive a break that may not last longer than five (5) minutes for every hour they are receiving services and for which the School District is billed.
  - c. Students are to attend supplemental educational service sessions at a minimum of two (2) hours of tutoring per week; eight (8) hours of tutoring per month, unless the student has an excused absence from the District SES Coordinator.
  - d. Each supplemental educational services Provider must ensure that the academic services provided to each student are aligned with the individual school district curriculum and state performance standards. The tutoring session logs must reflect this alignment. The tutoring session logs must be complete and accurate in order to receive reimbursement for services.
  - e. Each student who is placed in supplemental educational services must have a SIP, with goals relating to academic improvement based on the individual school curriculum and state standards. Before any invoice for services will be paid, the Student Improvement Plan must be ratified as follows:
    - i. The SIP must be approved and signed by the parent(s) or guardian(s); and
    - ii. The SIP must be signed by the student's reading or math classroom teacher; and
    - iii. Signed by the student's SES Provider assigned tutor.
  - f. Parents or guardians, and appropriate school personnel must be notified of student progress in a format that is easily understandable. Providers may use their own progress reports but will be required to enter the data into Cayen Systems in order to invoice to ensure that a progress report has been done.
  - g. At the Providers expense, it will be the responsibility and obligations of the Providers to have a **point of contact** at each school site whenever tutoring services are being offered. The primary responsibility of this point of contact will be to make sure that all students are in their proper tutoring stations, account for lost students, account for absent tutors, and be available to supervise students between the time students are dismissed and the duty day is over for teachers. In essence, they will provide a "supervised

- environment” for students that have lag time between the end of school and the beginning of their tutoring time.
- h. Tutors who are GISD employees may not tutor during the duty day. (See Page 1 of this SES Service Agreement regarding “duty day” defined.) The GISD employee must finish their contract time with GISD before beginning any tutoring services. Failure to do so will be considered supplanting of Title I funds. There will be NO FLEX time allowed via the school administrator. Please indicate the start time for tutoring on the invoice/attendance sheet at least five (5) minutes after the teacher’s duty day ends.
  - i. GISD teachers who are hired by a SES Provider may not tutor his/her own students. The teacher may teach other students in his/her respective school.
  - j. Seventy-five percent (75%) of the total contact hours will be completed prior to the NMSBA testing.
  - k. School district administrators or charter school administrators may not, under any circumstances, hold a position or work on behalf of any supplemental educational services Provider.
5. SES Providers shall not impose a minimum enrollment figure on eligible school districts. A SES Provider must provide services to all students who sign up to receive those services. SES Providers shall specify the school sites at which they will serve, and the content areas to which they will provide services. Additionally, the Provider will furnish this information with the signing of this Service Agreement.
  6. Invoices submitted by SES Providers must accurately reflect the tutor to student ratio of the tutoring session and the qualifications of the tutor providing services. The invoiceable tutor to student ratios shall comport as follows:
    - a. A SES Provider that maintains a tutor to student ratio of:
      - i. One (1) tutor to three (3) students or less may charge the eligible school district the full hourly amount based on tutor qualifications.
      - ii. One (1) tutor to four (4) students, one (1) tutor to five (5) students, or one (1) tutor to six (6) students may charge the eligible school district eighty-five percent (85%) of its hourly amount based on tutor qualifications.
      - iii. One (1) tutor to seven (7) students or greater may only charge the eligible school district fifty percent (50%) of its hourly amount based on tutor qualifications.
  7. Provider agrees not to begin services until a valid purchase order has been issued by the Gadsden Independent School District Procurement Division.
  8. An appropriate form of BUILDING USE AGREEMENT, acceptable to GISD, will be signed by the Provider and the District Administrator.
  9. Save harmless agreement and covenant not to sue -- In connection with the Building Use Agreement cited above, the Provider, in consideration of being permitted to use facilities of GISD described in the Building Use Agreement, does hereby covenant and agree that the District and its officers, employees, agents, members or representatives (herein collectively referred to as “GISD”) shall not be liable for any loss, damage, injury or liability of any kind to any person or property caused by or arising from any use of the premises of GISD, or any part thereof, or any building, structure or improvement thereon, or any equipment to be used therein (hereafter collectively “the premises”), or because of the premises being out of repair, or arising from any act or omission of GISD, nor shall GISD be liable for any loss, damage or injury from any cause whatsoever to the property or person of the Provider or any of its officers, agents, employees, members or representatives, or to other persons entering upon or using the premises, or to any property stored or placed thereon, as a result of Provider’s activities.

Notwithstanding anything to the contrary contained herein, and irrespective of any insurance carried by the Provider for the benefit of any of the above-enumerated entities, the Provider agrees to protect, indemnify, covenants not to sue and hold GISD and the premises harmless from any and all damages or liabilities of whatsoever nature arising out of or in

connection with the Provider's proposed activities pursuant to this request or arising from any state or condition of the premises or any part thereof.

10. Provider will maintain records of tutors' transcripts and background checks. They will make these available to the District Administrator as needed. If the tutor is also an employee of GISD the need for transcripts and background check may be waived. Proof of GISD employment will be required and verification of background checks.
11. Provider shall provide instruction to a student that is different from and a supplement to the regular school program and that occurs outside the regular school day.
12. Provider shall provide appropriate materials to deliver services to students without the need to use school copies, materials, or equipment.
13. Provider will only charge GISD for actual tutoring time with student(s). Provider shall not charge GISD for students who do not attend tutoring sessions.
14. Student and tutor must initial each session tutored on the monthly tutoring log, NO EXCEPTION.
15. Provider shall provide evidence of Workman's Compensation and Professional Liability Insurance Coverage. Providers may request use of school computers. Written requests for computer use must be detailed and submitted for the District Administrator's approval. Further, if Provider is granted the use of computers, Provider shall comply with the GISD Computer Usage Policy, and all users shall sign an acceptable use agreement.
16. All SES Providers shall adhere to all requirements as enumerated in NMAC 6.19.6.8.

#### **Mutual Responsibilities for Supplemental Educational Services Providers and GISD**

1. GISD will provide:
  - a. Cayen Systems, a SES software management program that the SES Provider and GISD will use exclusively to manage supplemental educational services to students and their families.
  - b. Any Cayen training to the Providers shall be provided by PED.
2. GISD and SES Provider will:
  - a. Collect and submit all relevant student data, through either the Cayen System and/or to be provided to the District SES Coordinator. Any data collected by the Provider shall be made available to GISD, as needed.
  - b. Attend all district sponsored meetings regarding the implementation and success of supplemental educational services. GISD will provide notice of such meetings to all Providers.
3. Each Provider shall:
  - a. Provide GISD with transcripts of the tutor's educational qualifications for billing purposes. If the tutor is a current GISD teacher, this documentation will be waived but the employee number and position held at the school site will be provided. If the tutor is not a certified GISD teacher, transcripts will be provided for proof of educational levels. Proof of GISD employment must be provided by the Provider.
  - b. The tutor is required to have a background check. The background check must include the FBI report. The background check can either be performed through the GISD office or through another approved agency. For a list of approved agencies to perform the background check, please contact the District SES coordinator. Background checks are good for two (2) years only. Background checks will be sent directly to the SES office from GISD or another agency. If the tutor is a GISD employee, this documentation will be waived. Proof of GISD employment must be provided by the Provider.
  - c. Under no circumstances may a tutor be in contact with a student, at the school building or any other site (including in home tutoring or on line tutoring) tutoring a child without notification from the GISD SES office that a cleared background check has been received. **We do not know who your tutors are unless you provide us with their names.** Your tutors must show up on the GISD background spreadsheet before they can

tutor a student, NO EXCEPTIONS. It is the Provider's responsibility to always have an updated spreadsheet from the SES office. Failure to follow these guidelines will result in immediate cancellation of the Provider's Service Agreement.

- d. The SES office will forward copies of background check clearance to the Provider upon their request.

### Payment Provisions

All payments under this Service Agreement are subject to the following provisions:

1. Rates - The Provider agrees to perform billable work at the rate that it has filed with PED. GISD will not pay for billing of "no show" students to tutoring sessions.
2. Compensation -the total compensation under this Agreement will not exceed GISD Title I per pupil cap, including gross receipts taxes, of \$1,248. The compensation enumerated herein, is intended as a hard cap as to any and all monies to be paid to providers on a per pupil basis. Gross receipts taxes and other local taxes are part of the hourly rate charged by Provider. The Provider will pay their own gross receipts taxes and not list these taxes as a separate line item on the invoice.
3. The "official enrollment" list of students eligible for and receiving services will be maintained on a weekly basis by the District Administrator through the Cayen Systems. If a Provider submits an invoice with a student(s) not on the updated "official enrollment" list, the district will not pay the invoice of those student(s), NO EXCEPTIONS.
4. Proof of attendance of tutoring sessions such as student sign in sheets, computer log-in sheets, or tutor logs will be provided to the District Administrator with every billable invoice.
5. All invoices will be reviewed and verified by GISD. Any errors in billing will be adjusted by GISD and total billing will be recalculated. Providers will have the opportunity to review the adjusted invoice and negotiate with the District SES Coordinator within fifteen (15) days receipt of the adjusted invoice. The Provider shall to furnish documentary evidence to substantiate any requested adjustments. A provider's adjustment claim for an amount of less than Two Thousand Dollars (\$2,000.00) is within the sole discretion of GISD. If GISD and the Provider are unable to reach agreement as to claims in excess of Two Thousand Dollars (\$2,000.00), either party may seek remedies under the complaint and dispute resolution section on page nine (9) of this contract.
6. Invoices submitted by SES Providers must accurately reflect the tutor to student ratio of the tutoring session and the qualifications of the tutor providing services. The invoiceable tutor to student ratios shall comport as follows:
  - a. A SES Provider that maintains a tutor to student ratio of:
    - i. One (1) tutor to three (3) students or less may charge the eligible school district the full hourly amount based on tutor qualifications.
    - ii. One (1) tutor to four (4) students, one (1) tutor to five (5) students, or one (1) tutor to six (6) students may charge the eligible school district eighty-five percent (85%) of its hourly amount based on tutor qualifications.
    - iii. One (1) tutor to seven (7) students or greater may only charge the eligible school district fifty percent (50%) of its hourly amount based on tutor qualifications.
7. All invoices and tutoring logs must be billed by the month and received by the District Administrator by the twelfth (12<sup>th</sup>) day of each month for the preceding month's tutoring sessions. All invoices and logs must be received by 4:00 pm of the due date. Late invoices will not be accepted, unless approved by the Superintendent due to exceptional circumstances.
  - a. Invoices and tutoring logs must arrive together on the due date. They may be sent through regular mail, email, or other method. However, **do not fax or email invoices and send logs separately.**
  - b. District tutoring logs are required for all programs. If the SES are provided through an online format, the district tutoring log will not be required. However, proof of student sign-in must be used in its stead.



8. Payment of Invoice - Payment shall be made within forty-five (45) days upon the receipt and acceptance of a detailed, certified Statement of Account and the accompanying tutoring logs.
9. Payment will be made to the Provider's designated mailing address. Final year-end invoices must be received by the District Administrator no later than 5/31/2012. Invoices received after this date will not be submitted for payment, NO EXCEPTIONS, unless otherwise agreed by the parties in writing.
10. Payment of Taxes - The Provider shall include the tax amount into their base hourly rate. \_\_\_\_\_ (Provider) will charge GISD \_\_\_\_\_ per hour for tutoring services. A separate tax line will not be indicated on the invoice. The Provider will be responsible for backing out the tax amount due to their local taxation authority.
11. The payment of taxes for any money received under this Agreement shall be the Provider's sole responsibility and should be reported under the Provider's Federal and State tax identification number(s).
12. GISD will not pay testing fees to Providers, NO EXCEPTIONS. (See page 7, paragraph 2 regarding compensation.)
13. GISD will not pay registration fees to Providers, NO EXCEPTIONS. (See page 7, paragraph 2 regarding compensation.)

#### **Termination**

1. If an individual SES Provider does not complete seventy-five (75%) percent of services to all eligible children who are enrolled in supplemental educational services prior to the administration of the state-mandated criterion referenced testing, GISD may take the following actions:
  - a. Immediately cancel existing contracts with each supplemental education services Provider that has not met the requirement of this deadline;
  - b. Continue the existing contracts to ensure that all students enrolled in supplemental educational services continue to receive services; or
  - c. Renegotiate the existing contracts to ensure that all students enrolled in supplemental educational services continue to receive services.
2. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. THESE TERMINATION PROVISIONS ARE NOT EXCLUSIVE AND DO NOT WAIVE OTHER LEGAL RIGHTS AND REMEDIES AFFORDED THE PARTIES THROUGH THE COMPLAINT AND DISPUTE RESOLUTION PROVISIONS CONTAINED HEREIN.
3. The District may terminate this contract immediately and without prior notice upon a material breach of the Contract by the Provider.
4. It is within the District Administrator's sole discretion to determine which students qualify as "eligible students" to receive Supplemental Education Services. Whether it be due to eligibility criteria, absenteeism, or for whatever other reason, the District Administrator may drop students from this Service Agreement. The last date the student attended tutoring services will be considered the "drop date." Providers may not invoice for services after the student has been dropped from the program.

#### **Complaint and Dispute Resolution**

- A. Informal. Disputes on any matter relating to the interpretation, meaning or scope of this Agreement shall be discussed and resolved by the parties or their designated representatives. The parties or their representatives shall use their best efforts to amicably and promptly resolve the dispute. The parties agree to continue to perform the obligations under the terms of this Agreement while the dispute is being discussed unless the performance of services is within the context of the dispute.

- B. Mediation. If the parties are unable to resolve the dispute informally, either party may initiate mediation. To initiate mediation, GISD or Provider must submit a written notice of mediation to the other within fifteen (15) days of the occurrence or circumstances giving rise to the dispute. No statement made in the mediation may be used in any later proceeding for any purpose. The cost of mediation shall be paid by the initiating party, unless otherwise agreed by them. The parties shall mutually agree upon and choose a mediator. The location of the mediation shall be within the boundaries of GISD, unless otherwise agreed to by the parties.
- C. Arbitration. If the parties are unable to resolve the dispute through mediation, either party may initiate arbitration. To request arbitration, GISD or Provider must submit written notice of arbitration to the other party within thirty (30) days of the mediation.

The AAA Commercial Arbitration Rules applicable at the time of the dispute will govern the arbitration proceedings, so long as those guidelines incorporate the following: (1) the arbitrator must apply the federal or state law that would have governed the dispute had it been heard in federal or state court (including the applicable order and burdens of proof, and the applicable remedies); (2) the arbitrator may not grant remedies or other relief that would have been unavailable if the dispute had been heard in federal or state court; (3) the arbitrator may not award a remedy that neither GISD nor Provider requested; and (4) the guidelines must provide for fair prehearing disclosures and schedules, a fair hearing, and a written decision from the arbitrator.

The arbitration shall be before a single arbitrator and shall occur at GISD, unless otherwise agreed by the parties. The costs of the arbitration procedure, including the costs of the arbitrator will be divided equally unless otherwise determined by the arbitrator. Each party is responsible for its own legal and/or consulting fees associated with the arbitration process hereunder, unless otherwise determined by the arbitrator.

- D. Arbitration is final and binding. Once a decision is rendered by the arbitrator, the decision may be confirmed by the District Court of Dona Ana County in accordance with the New Mexico Uniform Arbitration Act.

### **Subcontracting**

The Provider shall not subcontract any portion of the services to be performed under this Service Agreement without prior written approval from the District Administrator.

### **STATUS OF PROVIDER**

The Provider and his agents and employees are independent Providers performing professional services for GISD and are not employees of GISD. The Provider, and his agent and employees shall not accrue leave, retirement, insurance, bonding, use of GISD vehicles, or any other benefits afforded to employees of the District as a result of this Service Agreement. Neither shall the District be liable to the Provider nor its Agents, nor their estates for any injury to person or property incurred in the course of the performance of this Agreement unless such injury shall have directly and proximately resulted from grossly negligent or reckless conduct on the part of GISD or its Agents acting within the scope of their employment and official duties.

### **Records of Audit**

SES Providers must conduct on-site audits of their services and complete a report of services. The number of on-site audits will be conducted by an approved representative of the Provider's company. Site audit reports are due to the GISD SES office at a minimum of one report per semester. (See NMAC 6.19.6.8(F)).

Dates and locations of on-site audits must be given to the GISD District SES Coordinator pursuant to Title I at least one (1) week prior to visit.

A report of each on-site audit must be forwarded to the GISD District SES Coordinator for SES service under Title I and the eligible school district/charter school where services are taking place. Any discrepancies or deficiencies disclosed by the on-site audit must be addressed by the supplemental

educational services Provider within seven (7) days of the actual date of the site audit and the results must be forwarded to the department.

During the term of this Agreement and for three (3) years thereafter, the Provider shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by GISD, the State Auditor and appropriate federal authorities. GISD shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of GISD to recover excessive or illegal payments.

#### **Conflict of Interest**

The Provider warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The Provider shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

#### **Amendment**

This Agreement shall not be altered, changed or amended, except by an instrument in writing executed by the parties hereto, with the same formalities to which this contract has been entered.

#### **Approval of Provider Personnel**

Once student services have begun, no changes of personnel will be made by the Provider without the prior written consent of the District Administrator. Replacement of any Provider personnel, if approved, shall be with personnel of equal ability, experience and qualifications. The Provider will be responsible for any expenses incurred in familiarizing the replacement personnel to ensure their being productive to the project immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld.

Beginning with the 2011-2012 school year, school district administrators or charter school administrators may not, under any circumstances, hold a position or work on behalf of any supplemental educational services Provider.

#### **Scope of Agreement**

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

#### **Notice**

The Procurement Code, Sections 13-1-21 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

#### **Equal Opportunity Compliance**

The Provider agrees to abide by all Federal and State laws, rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws, rules, and regulations, and executive orders of the Governor of the State of New Mexico, the Provider agrees to assure that no person in the United States shall on the grounds of race, color, religion, national origin, sex, sexual preference, age or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program or activity performed under this Agreement. If Provider is found to not be in compliance with these requirements during the life of this Agreement, Provider agrees to take appropriate steps to correct these deficiencies.

#### **Risk Allocation**

The district shall allocate liability for third-party claims to contracting parties.

### **Assumption of Risk**

By written agreement the contracting party shall assume the entire responsibility and liability for losses, expenses, damages, demands and claims in connection with or arising out of any actual or alleged personal injury (including death) and/or damage or destruction to property sustained or alleged to have been sustained in connection with or arising out of the performances of the work by the contracting party, its agents, employees, sub-Providers or consultants, except to the extent of liability arising out of the negligent performance of the work by or willful misconduct of GISD.

### **Indemnification**

The Provider shall hold the state and its agencies and employees harmless and shall indemnify GISD, the state and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Provider, its agents, officers, employees or sub-contractors. Provider shall not be liable for any injury or damage as a result of any negligent act or omission committed by GISD, its officers or employees.

### **Certificates of Insurance**

For proof that the contracting party has the financial capability to pay for losses, GISD requires a certificate of insurance. The certificate should demonstrate comprehensive general liability insurance policy limits in an amount of not less than One Million Dollars (\$1,000,000.00). Certificates of Insurance should include the name of the insurance company, name and address of the insured, type of policy, policy period, the insurer's A.M. Best rating, the policy's coverage trigger (occurrence or claims made), a description of services to be provided under the parties' contract, and the effective contract dates.

Additional Insured Endorsement:

A Certificate of Insurance shall include an endorsement that names GISD as an additional insured to the contracting party's insurance policies listed.

### **Applicable Law**

This Agreement shall be governed by the laws of the State of New Mexico.

### **Validity of Offer**

This contract is being sent to the Offeror electronically. Any alterations of this contract will result in a declaration by GISD that this contract is null and void, and services will immediately end between the Offeror and the Gadsden Independent School District.

### **Confidentiality of Student Information**

The Provider agrees that all student records obtained in the course of providing services to GISD under this Service Agreement shall be subject to the confidentiality and disclosure provisions of applicable federal and state statutes and regulations, and the School District's policies. 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 individuals accessing student records that are not in the direct employ of the Provider. Provider shall not forward to any person other than parent or District any student record, including, but not limited to the student's identity, without the written consent of the parent and District. Upon termination of the Service Agreement, Provider shall turn over to district all student records to whom Provider has provided services under this Agreement.

**IN WITNESS WHEREOF**, the parties have executed the above mentioned Service Agreement.

***THE BOARD OF EDUCATION OF THE GADSDEN INDEPENDENT SCHOOL DISTRICT,  
the governing body of a local political subdivision of the State of New Mexico***

BY: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: Superintendent and authorized representative for  
And on behalf of the Gadsden Independent School  
District and its Board of Education

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

**GADSDEN INDEPENDENT SCHOOL DISTRICT PROCUREMENT**

BY: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

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

\_\_\_\_\_  
SES PROVIDER

BY: \_\_\_\_\_

Title: \_\_\_\_\_  
Authorized representative on behalf of Provider

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