

AGREEMENT

THIS AGREEMENT, #11-950-1050-00010, is entered into by and between the State of New Mexico Higher Education Department, hereinafter referred to as the "DEPARTMENT," and **Gadsden Independent School District**, a public entity, hereinafter referred to as the "CONTRACTOR."

WHEREAS, the DEPARTMENT is the state agency designated to administer the GEAR UP program which provides development, support, and resources necessary to increase direct student services and academic interventions to over 5,000 students in 29 high schools across the state.

WHEREAS, the DEPARTMENT desires to engage and the CONTRACTOR is willing to provide certain portions of the DEPARTMENT'S program,

NOW THEREFORE, the DEPARTMENT and the CONTRACTOR in consideration of mutual covenants and agreements herein contained, do hereby agree as follows:

I. Period of Agreement.

This Agreement shall become effective when signed by both parties and shall terminate on **June 30, 2011**, unless terminated pursuant to Article VI, *infra*. This agreement, including all extensions and amendments, shall not exceed a total of two (2) years.

II. Statement of Work.

The CONTRACTOR shall provide the program of services as set forth in the scope of work which is attached hereto as "**EXHIBIT A – STATEMENT OF WORK**" and incorporated herein by reference, unless amended or terminated pursuant to Article VI, *infra*. In consideration for the provision of those services, the DEPARTMENT agrees to purchase and the CONTRACTOR agrees to perform the services identified in the Statement of Work.

III. Limitation of Cost.

The total amount of the monies payable to the CONTRACTOR under this Agreement shall not exceed **\$135,000.00**. The annual budget is attached hereto as "**EXHIBIT B – FINANCIAL INFORMATION SHEET**" and incorporated herein by reference.

IV. Payment.

The DEPARTMENT shall make monthly payments to the CONTRACTOR for services and costs specified in "**EXHIBIT B.**" The CONTRACTOR shall submit certified and documented invoices and vouchers monthly for actual work performed and expenses incurred to the DEPARTMENT. Invoices must include the agreement number for which services have been rendered, the PED purchase order number and should be mailed to **Josh Gonzales, NM GEAR UP Federal Fiscal Officer, at NMHED/GEAR UP, 2048 Galisteo, Santa Fe, NM 87505**. The CONTRACTOR'S failure to submit such payment vouchers, invoices and supporting

documentation within thirty days after they are due may result in the non-availability of funds for payment and/or the denial of payment by the DEPARTMENT.

V. Return of Funds.

Upon termination of this Agreement, or after the services provided for herein have been rendered, surplus money, if any, shall be returned by the CONTRACTOR to the DEPARTMENT.

VI. Appropriations.

Performance under this Agreement is contingent upon sufficient authority and appropriations granted by the New Mexico State Legislature.

VII. Termination of Agreement.

This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty days prior to 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. THE PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE OTHER LEGAL RIGHTS AND REMEDIES AFFORDED THE STATE IN SUCH CIRCUMSTANCES AS CONTRACTOR'S DEFAULT/BREACH OF CONTRACT.

VIII. Funds Accountability.

The parties shall provide for strict accountability of all monies made subject to this Agreement. The CONTRACTOR shall maintain fiscal records, follow generally accepted accounting principles and account for all receipts and disbursements of funds transferred to the CONTRACTOR pursuant to this Agreement. The CONTRACTOR will include all monies made subject to this Agreement in the annual audit and will provide the DEPARTMENT with a copy of the annual audit.

IX. Maintenance of Records.

The DEPARTMENT shall maintain records as required of any administering state agency pursuant to applicable state law and regulation. The CONTRACTOR shall maintain fiscal and programmatic records relative to those funds and activities that have been made subject to this Agreement for a minimum of three years.

X. Confidentiality.

Any confidential information provided to or developed by the CONTRACTOR in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the CONTRACTOR without the prior written approval of the DEPARTMENT or as required by a court of competent jurisdiction.

XI. Amendments.

This Agreement shall not be altered, changed, or amended except by an instrument, in writing, executed and approved by both parties.

XII. Assignment.

The CONTRACTOR shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the DEPARTMENT.

XIII. Applicable Law.

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

XIV. Acquisition of Property.

The parties agree that neither party shall acquire any property as the result of this Agreement.

XV. Liability.

Each party shall be solely responsible for fiscal or other sanctions occasioned as a result of its own violation or alleged violation or requirements applicable to the performance of the Agreement. Each party shall be liable for its actions according to this Agreement subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et. seq., NMSA 1978, as amended.

XVI. Execution of Documents.

The DEPARTMENT and the CONTRACTOR agree to execute any document(s) necessary to implement the terms of this Agreement.

XVII. Sub-Contracts.

The CONTRACTOR shall be ultimately responsible for all items enumerated in the Statement of Work (Exhibit A) of this Agreement.

The CONTRACTOR shall seek advance approval from the DEPARTMENT of all sub-contracts, including qualifications and job descriptions for any professional service sub-contract.

XVIII. Equal Opportunity Compliance.

The CONTRACTOR agrees to abide by all federal and state laws and 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 of the State of New Mexico, the CONTRACTOR agrees to assure that no person in the United States shall, on the grounds of race, religion, color,

national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, or, if the employer has fifty or more employees, spousal affiliation, or, if the employer has fifteen or more employees, sexual orientation or gender identity, 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 CONTRACTOR is found not to be in compliance with these requirements during the life of this Agreement, CONTRACTOR agrees to take appropriate steps to correct these deficiencies.

XIX. Workers' Compensation.

The CONTRACTOR agrees to comply with state laws and rules applicable to workers' compensation benefits for its employees. If the CONTRACTOR fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the DEPARTMENT.

XX. Lobbying Certification.

The CONTRACTOR, by signing below, certifies to the best of his/her knowledge and belief, that:

No federal appropriated funds have been paid or will be paid by or on the behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit a Standard Form LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions. The undersigned shall require that the language of this certification be included in the award document for sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of facts upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C. (United States Code). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

IN WITNESS WHEREOF, the DEPARTMENT and the CONTRACTOR have caused this Agreement to be executed, said Agreement to become effective when signed by both parties.

CONTRACTOR:

DEPARTMENT:

Contractor

Dr. Viola Florez
Secretary of Higher Education

Printed Title of Authorized Signatory

Date: _____

Date: _____

Exhibit A

Statement of Work

Course Instructor:

The contractor will be responsible for the position posting, screening, and hiring of 3 full time instructors who are qualified, licensed, and endorsed in the content area for which they will be delivering instruction. The instructors will be assigned, full time, 1 at Gadsden High School, 1 at Santa Teresa High School, and 1 at Chaparral High School.

For the duration of the academic school year, the instructors will be responsible for a full schedule of instructional time with the exception of the following:

- 1 period a day for which the GEAR UP NM course instructor will be allowed time to participate in GEAR UP NM program planning, implementation , and evaluation
- 1 period per day for instructional planning
- 4 days throughout the academic school year for professional development approved and funded by the GEAR UP NM program

Course Curriculum:

The contractor will be responsible for identifying students who are performing below grade level proficiency (nearing proficiency students). The contractor will be responsible for developing and adopting a course curriculum that will support the identified students with the goal of increasing student academic performance.

Allowable curricular focus may include academic interventions in the following areas:

- Mathematics*
- Reading/Language Arts*
- College readiness
- Career preparation
- Test preparation
- Student leadership

Modifications to the course curriculum guidelines may be allowed upon GEAR UP NM Director approval.

*The curriculum must supplement existing courses and may not serve as the primary means for instruction in the content area.

Student Enrollment:

Enrollment priority will be given to GEAR UP NM Class of 2012 students. The contractor will be responsible for enrolling students in the GEAR UP NM course. Student participation requirements and grade distribution will be consistent with existing school policies and procedures.

If the contractor can demonstrate that the GEAR UP NM cohort academic needs are being adequately addressed, the contractor may extend GEAR UP NM course enrollment to non-cohort students.

Data Sharing:

The contractor shall allow for the collection and entry of student record data relative to GEAR UP NM course participation for the purpose of evaluating course effectiveness and GEAR UP NM program reporting requirements. Data elements include:

- Student name
- Student State ID
- Daily student participation
- Type of services received during participation
- Student grades

Exhibit B
Financial Information Sheet

Funding:

Upon final execution of this agreement, the contractor will be awarded a total of \$135,000 a year for salary and benefits of one instructor at Gadsden High School (\$45,000), one instructor at Santa Teresa High School (\$45,000), and one instructor at Chaparral High School (\$45,000). Funding is for up to two years.

- Year 1 funding term: July 1, 2010 – June 30, 2011
- Year 2 funding term: July 1, 2011 – June 30, 2012

Funding will be awarded on a reimbursement basis and upon ongoing satisfactory completion of the terms listed in Exhibit A. The contractor will be responsible for submitting monthly invoices against incurred expenses. Invoices must include the following:

- Agreement number for which services have been rendered
- HED purchase order number
- Official supporting expenditures documentation

Invoices shall be mailed to: Josh Gonzales, NM GEAR UP Federal Fiscal Officer, at NMHED/GEAR UP, 2048 Galisteo, Santa Fe, NM 87505.

In-Kind/Match Contributions:

The contractor will provide the following in-kind match contributions for the successful implementation of the GEAR UP NM course:

- Classroom space (annual cost for space use)
- Adequate instructor planning accommodations
- Adequate classroom instructional materials
- Salary and benefit costs exceeding \$45,000 per year