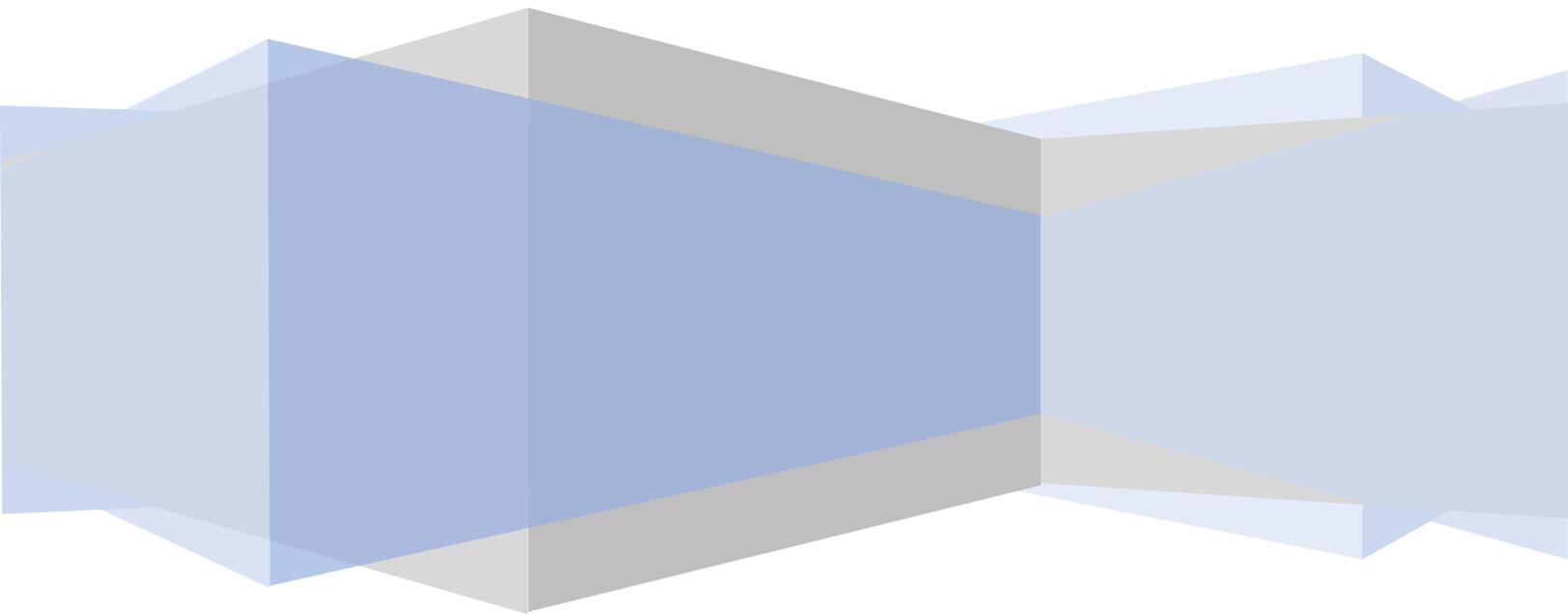


COLORADO DEPARTMENT OF EDUCATION'S

RESOURCE GUIDE FOR
SCHOOLS AND DISTRICTS:

ENGAGING EXTERNAL SERVICE
PROVIDERS TO SUPPORT EFFECTIVE
PURCHASING PRACTICES AND IMPROVE
SCHOOL PERFORMANCE

NOVEMBER 2011



INTRODUCTION

The Colorado Department of Education developed this resource guide to support schools and districts that engage external service providers as part of their school improvement process. A number of schools and districts are incorporating external expertise into their turnaround or transformation strategies with support from School Improvement Grants or Tiered Intervention Grants. Regardless of whether services are purchased with grant funds or per pupil revenue, spending public money requires the highest level of transparency and prudent decision-making when it comes to purchasing processes. This guide is designed to inform best practice when it comes to identifying potential providers, issuing a request for proposal based on identified needs, evaluating potential providers and their proposals, contracting with an external provider, and evaluating and monitoring the provider’s ongoing performance.

Because school improvement efforts are funded publicly, the utmost care and responsibility must be exercised in determining how funds are spent. Schools and districts must conduct significant due diligence on potential providers, compare multiple options, ensure costs for services are reasonable and necessary, involve multiple stakeholders in decision-making processes, and hold the chosen provider to high standards and strong accountability for results. While much of the guidance in this document can and should be modified to reflect individual district and school needs, we hope it will provide adequate guidance for ensuring that money is well spent and that the end result is significant improvement in student achievement.

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PART 1: INTRODUCTION TO WORKING WITH EXTERNAL PROVIDERS

Schools and districts will undoubtedly consider a number of strategies for school improvement. In many cases, however, schools and districts will turn to an *external service provider* for support in addressing identified needs.

The types of service providers vary greatly and can include educational management organizations (EMOs), which are usually for-profit companies; charter management organizations (CMOs), which are usually non-profits; boards of cooperative educational services (BOCES) that provide shared services across school districts; school districts that provide contracted services, often to autonomous schools; professional associations such as CASE, NCTM, etc.; and a variety of other companies and organizations that provide professional development, leadership support, or other support services to schools.

As much diversity as there is in the types of providers, there is similar diversity in terms of the breadth of services available from providers. Some providers offer short one-time services (such as an in-service prior to the start of school), while others provide ongoing or comprehensive services.

POTENTIAL EXTERNAL PROVIDERS

The Colorado Department of Education posts information on a number of potential external service providers (also referred to as *contractors* or *vendors*) on its website for general school and district access.¹ The website provides a brief overview of the provider and the services it provides. Districts are able to review providers with expertise in areas such as academics, learning environment, operations, leadership, and planning. A handful of the listed providers offer comprehensive services in all five areas, while most offer specialized expertise in just a couple areas. Keep in mind, however, that the list on CDE's website is not exclusive; schools and districts may also choose from other providers not on the CDE website.

Oftentimes, schools and districts that contract with external service providers are implementing an *Intervention Model* because of state and federal accountability requirements. For more information on the four primary intervention models, see Appendix H: Choosing an Intervention Model.

COLORADO DEPARTMENT OF
EDUCATION OFFICE OF TURNAROUND
AND INTERVENTION:

[www.cde.state.co.us/turnaround/
cde_turnaroundplan_home.htm](http://www.cde.state.co.us/turnaround/cde_turnaroundplan_home.htm)

¹ Colorado Department of Education Office of Turnaround and Intervention:
http://www.cde.state.co.us/turnaround/cde_turnaroundplan_home.htm.

PROCESS OVERVIEW

The process of engaging an external service provider involves five main steps, each of which is detailed in the following sections of this resource guide:

1. Develop a Needs Assessment and RFP (Request for Proposal)
2. Evaluate Proposals and Select an External Service Provider
3. Contract with the Provider for Services
4. Manage an Ongoing Relationship with the External Service Provider
5. Monitor and Evaluate the Provider

Many of the recommendations in this resource guide are taken from and informed by three key publications on working with external providers.² More information on these three reports is available in Appendix A: Useful Resources.

² See **Useful Resources** (Appendix A) for more information on these three reports:

- *Selecting the Intervention Model and Partners/Providers for a Low-Achieving School: A Decision-Making and Planning Tool for the Local Education Agency* by the Center of Innovation and Improvement (www.centerii.org).
- *Choosing an Education Contractor: A Guide to Assessing Financial and Organizational Capacity* by the Comprehensive School Reform Quality Center and the American Institutes of Research (www.csrq.org) and the Finance Project (www.financeproject.org).
- *Guide to Working with External Providers: Partnerships to Improve Teaching and Learning* by Learning Point Associates (www.learningpt.org).

PART 2: NEEDS ASSESSMENT AND REQUEST FOR PROPOSALS

The first step that must be taken before even considering various service providers is a comprehensive needs assessment. In most cases, the school or district will have already conducted an extensive needs assessment as part of their process to develop a Unified Improvement Plan (UIP).

COMPREHENSIVE NEEDS ANALYSIS

As in the UIP, the school should gather data, conduct data analysis to identify trends and performance challenges, conduct root cause analyses, and then develop an action plan. The action plan should include a goals worksheet with performance indicators, measures/metrics, annual targets, interim measures, and major improvement strategies. After identifying goals, the school should create an action planning worksheet in which the major improvement strategies are defined by action steps and corresponding timelines, key personnel, resources needed, and implementation benchmarks. The action plan should identify the need for the external service provider and what specific goals a provider will help the school meet.

If the school and district developed a thoughtful and thorough UIP in the past six months, there may not be a need to re-create work by conducting a separate needs assessment; the UIP can serve this purpose. If the UIP process was not written collaboratively or was rushed and therefore not created in a meaningful way, it is strongly recommended that the school and district re-visit this document or conduct a separate self-evaluation and needs assessment.³ Similarly, if the UIP has not been revisited or monitored for more than six months and more up-to-date or relevant data is available, an update is recommended.

KEY SOURCES OF INFORMATION IN CONSIDERING THE SCHOOL'S NEEDS

In addition to reviewing the school's UIP, the following data sources should also be reviewed in creating a comprehensive picture of the school's needs:

- School Performance Framework (both the one-year and three-year versions)
- School Growth Summary Report that shows trends in student growth by grade, subject, and disaggregated groups.
- Other quantitative student data such as graduation rates with disaggregated subgroups, mobility and enrollment trends, attendance data, etc.

³ An elaborate set of self-evaluation tools can be found in *Making Good Choices: A Guide for Schools and Districts* (Appendix A: Self-Evaluation Tool, pages 21 – 32):

<http://www.centerforsri.org/pubs/mgcSchoolsandDistricts.pdf>. This package addresses the current state of the school's program, including its curriculum, instruction, and assessments; its governance, management, professional development, parent and community involvement; and its overall environment—including policy and regulatory issues, and financial and human resources.

- Other qualitative data such as parent and student surveys, feedback from TELL Colorado survey, community input, etc.

CONNECTING NEEDS TO THE EXTERNAL SERVICE PROVIDER RFP PROCESS

In order to successfully identify an external service provider, the school needs to be able to accurately *articulate its specific needs* that can be addressed by an external provider. This is a key piece of the RFP. A provider cannot effectively propose aligned services if it doesn't fully understand the self-identified need.

In order to articulate this need (after gathering and reviewing data and the UIP), the district and/or school leadership should consider the following key questions:

1. What goals/strategies in the UIP does the school feel least capable of achieving and therefore require support from an external service provider?
2. For which students is there the most urgency to make improvements (based on which groups are experiencing the lowest achievement and/or graduation rates)?
3. In which subjects is there the most urgency to make improvements (based on the lowest achievement levels)?
4. What characteristics of the student demographics should be taken into account in selecting an external service provider?
5. What, if any, idiosyncratic characteristics of the enrollment area should be taken into account in selecting a comprehensive school reform model or an external service provider?
6. What characteristics of administrators and faculty should be taken into account in selecting an external service provider?
7. What data does the school have on teacher effectiveness for the past five years?
8. How has the district or school historically leveraged funds for school improvement efforts? What resource decisions have been effective or ineffective in improving student achievement? Why?
9. Consider previous and current reform and improvement efforts, within the last five years, and what impeded their success. For example:
 - Adopted a model and curriculum to raise reading scores but was not able to implement with fidelity.
 - District provided instructional coach but coach was not able to have an impact due to only visiting school twice per quarter.
 - Adopted a block schedule for math and reading but inadequate PD funds limited ability for teachers to change instructional approach and fully utilize longer instructional blocks.
 Based on this past experience with reform efforts, what should be taken into account now in selecting an external service partners?

IN ORDER TO SUCCESSFULLY IDENTIFY AN EXTERNAL SERVICE PROVIDER, THE SCHOOL NEEDS TO BE ABLE TO ACCURATELY ARTICULATE ITS SPECIFIC NEEDS THAT CAN BE ADDRESSED BY AN EXTERNAL PROVIDER.

After multiple stakeholders have reviewed the data and corresponding needs and discussed the questions above, write a concise description of what the school seeks in an external service provider. This description will become a crucial piece of the Request for Proposals.

DEVELOPING AN RFP (REQUEST FOR PROPOSALS)

The next step is simply compiling all of the information into an RFP that can be shared with potential external service providers. A team of people representing various stakeholders (such as teachers, administrators, parents, board members, community members, and in some cases, students) should be involved in the development of the RFP. Be sure to include anyone in the RFP process who will ultimately be involved in choosing a provider. If certain pieces of information are needed for selecting a provider, it is essential that these are included in the RFP.

An RFP template is included in Appendix B. This template provides a framework for the RFP process, but should be modified as needed to reflect the needs and priorities of the school in identifying the most appropriate external service provider.

Once the RFP is complete, it should be distributed to a variety of providers that offer the services needed by the school. At this stage in the process, the district's purchasing policy should be referenced to ensure compliance. Based on the potential cost of the contracted services, the district should have guidance regarding the number of bids needed, factors to consider in decision-making, etc. In addition to complying with district policy, the school's goal should be to receive at least three proposals from different providers so they can be weighed against each other and the best option selected. When the RFP has been released and adequately distributed, allow potential providers at least one month to respond. After the deadline has passed and all responses have been received, the school is ready to begin the selection process.

PART 3: EVALUATING PROPOSALS AND SELECTING AN EXTERNAL SERVICE PROVIDER

IDENTIFICATION OF THE SELECTION TEAM

The selection team will be largely assembled already as team members should have all been involved in developing the RFP. However, if any additional stakeholders are needed for the decision-making process, involve them at the beginning of the selection process. The selection team should be large enough that all stakeholder groups are represented leading to buy-in and effective ownership, but not so large as to become unproductive or inhibit decision-making. Any potential conflicts of interest should be disclosed and addressed according to the district's conflict of interest policy.

DEVELOPMENT OF A RUBRIC FOR EVALUATING PROPOSALS

The team should develop a rubric for evaluating proposals simultaneously while the RFP is being developed. It is bad practice to create the rubric/evaluation tool after proposals are received as the information included in the proposals could unfairly influence the rubric being used to evaluate that proposal.

The rubric/evaluation tool requires the team to define what exactly it wants in a provider and having this information will guide in the development of RFP questions that effectively elicit this information. This is a values-based process and should involve multiple stakeholders, potentially even people beyond the section team. Having widespread buy-in into what the school community values in an external service provider will go a long way in making the process smooth and supported by many. In addition, using a formal evaluation tool will assure constituents that providers are being evaluated fairly.

NOTE REGARDING COSTS: IN DEVELOPING A RUBRIC/EVALUATION TOOL AND CONSIDERING THE STRENGTHS OF VARIOUS PROVIDERS, DISTRICT AND SCHOOLS ARE STRONGLY ADVISED TO PAY CAREFUL ATTENTION TO THE COSTS BEING PROPOSED BY DIFFERENT PROVIDERS. REGARDLESS OF WHETHER THE FUNDING SOURCE FOR A CONTRACT IS GRANT FUNDS OR PER PUPIL REVENUE, ENSURE THAT THE PROPORTION OF FUNDS GOING TO AN EXTERNAL PROVIDER IS REASONABLE. IF NEARLY ALL FUNDS (FROM A GRANT OR A BUDGETED CATEGORY) ARE GOING TO ONE PROVIDER, IT RAISES QUESTIONS ABOUT 1) WHETHER THE DISTRICT IS SPENDING PUBLIC FUNDING WISELY, AND 2) WHETHER THE INITIATIVE WILL BE SUSTAINABLE IN THE LONG-TERM.

SOME SIGNIFICANT INVESTMENT MUST BE MADE INTERNALLY TO ENSURE THAT THE IMPROVEMENT EFFORTS WILL LIVE BEYOND THE DURATION OF THE CONTRACT WITH THE EXTERNAL SERVICE PROVIDER. THE DISTRICT SHOULD ALSO CONDUCT SOME DUE DILIGENCE ON MARKET VALUE FOR THE PROPOSED SERVICES TO ENSURE THAT THE EXTERNAL SERVICE PROVIDER IS OFFERING COMPETITIVE RATES ON ITS PACKAGE OF SERVICES.

Appendix C includes an evaluation tool template. This is simply a foundational document that should be modified and/or expanded based on the schools specific identified needs.

REVIEW OF PROPOSALS

Once the deadline has passed and all proposals have been received, the selection team should begin the review process. Each member of the team should review and score the proposals independently using the evaluation tool. It is essential that all reviewers be critical consumers and focus on the criteria identified in the evaluation tool. Guard against being swayed by glossy marketing materials or unsubstantiated promises of quick success. Comprehensive reform requires a commitment of time, dollars, and human resources that should be driven by sound data and backed up by proven results.

When all team members have completed their independent evaluations, they should submit their reviews to the head of the selection team who can consolidate all scores and notes. The consolidated scores and notes should be shared with the whole team and a conversation should follow regarding which providers should be invited for an interview. The scores should provide some guidance as to the group's perspective on the strongest proposals; however, if there is a proposal that didn't rate as high as another but there are compelling reasons to offer that provider an interview, the group can make that decision. The key is ensuring transparency among the team members and with external parties regarding the decision-making process. It is recommended that the team identify at least two providers to interview so the top two potential providers can be compared against one another.

REFERENCE CHECKS

Interviewing the potential provider's recent clients—other schools and/or districts it has served—can provide insight into the decision-making process. These conversations can also help articulate the work plan for the contract that will be written, for it can bring greater insight into the type and amount of services to be provided, and the kind of customer service resources this provider offers. Using a common list of reference check questions is recommended to ensure an equitable process.

EDGAR 80.35 – Sub-awards to debarred and suspended parties. Grantees and sub-grantees must not make any award or permit any award (sub-grant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, “Debarment and Suspension.”
(Authority: 20 U.S.C. 3474; OMB Circular A-102)

INTERVIEWS WITH TOP EXTERNAL PROVIDERS

The interview process should be formal, structured, and consistent so that potential providers are treated and evaluated fairly. Develop interview questions that enable the selection team to discover the human dimensions of the match between the school and the provider. This will help the team assess whether the provider is a good fit in theory, and more importantly, in practice. Sample questions are included in Appendix D.

Once interview questions have been established, the team should not deviate from them during the interview process and the same person or people should ask the questions in all interviews. Keeping these variables consistent provides the most equitable interview environment for the potential providers and gives the selection team the best opportunity to compare their responses and determine the best fit for the school.

IDENTIFYING A FINALIST

This part of the process should begin with a review of all of the data gathered on the potential providers – their initial proposal, reference checks, other background information gathered on past projects, interview material, etc. The selection team leader should facilitate a discussion on the strengths and weaknesses of each potential provider, along with corresponding conversations regarding how the school will have to compensate for any areas of weakness, how the strengths of the providers align with the school’s identified priorities and student needs, etc.

Coming to a consensus or using a voting process within the selection team to identify the top finalist may be difficult, but it is of critical importance. If there are conflicting opinions on the team, having a skilled facilitator involved is of the utmost value.

Once a finalist has been selected by the team, the provider should be invited to some sort of “meet and greet” where the provider’s key personnel who would be working in the school have an opportunity to interact with a broader group of stakeholders. Following such an event, input can be gathered from participants on the perceived strengths and weaknesses of the potential provider. This is also the time to gauge a general sense of “fit” that will lead to a productive working relationship.

It is important to note that some comprehensive school reform models (such as Success for All, Accelerated Schools, and New American Schools) set forth a required process that must be followed in order to become eligible to implement the model. For example, some models require a certain percentage of the school’s faculty to vote “yes” in a referendum about whether to adopt the model. If your chosen model prescribes procedures like these, the stakeholder review process should be shaped accordingly.

This is also the time for the appropriate personnel to begin discussing with the potential provider some of the key details of the possible working relationship. Negotiating the specifics of the work before a contract is in place will lower the chances of facing unpleasant surprises later.

MAKING A FINAL DECISION

Again, this last step of the decision-making process can be largely aided by a skilled facilitator. The team should review any new information gathered from constituents during the informal meet and greet, as well as initial conversations regarding a specific work plan. If concerns have been raised, the selection team should consider

IDEALLY, THIS ENTIRE PROCESS HAS STIMULATED A HIGH LEVEL OF CONVERSATION ABOUT AND COMMITMENT FOR THE IMPROVEMENT PROCESS IN THE SCHOOL, BUILDING A STRONG FOUNDATION FOR IMPLEMENTATION OF THE CHOSEN APPROACH.

revisiting the process and pursuing other providers. If the final steps have only confirmed that the proposed external service provider is the best fit for the school, then contract negotiations should begin.

PART 4: PERFORMANCE CONTRACTING

Once an external service provider has been identified, the next step is to establish a performance contract that defines the relationship and the performance expectations. This process involves coming to agreement on the scope of work, contract terms, specific roles and responsibilities, and accountability measures. This section provides key guidance on these topics for school districts contracting with a provider.

GENERAL PRINCIPLES FOR EFFECTIVE CONTRACT NEGOTIATIONS

Consider these six general recommendations as districts and schools begin contract negotiations and collaboration with an external service provider.

1. **Collaborative negotiation process.** Prior to entering into contract negotiations, the parties should develop collaborative processes for coming to a mutual agreement about services and materials to be provided, and other contract terms.
2. **Collaborative implementation.** The negotiation process and the contract itself should lay the foundation for ongoing communication and collaboration, and shared problem-solving throughout the contract term. Channels for multi-directional feedback, which allow both the district/school and provider to hold the other party accountable or rate the support they are receiving, can be crucial to the success of implementation efforts (e.g., Chicago guaranteed a provider-advocate at the district level).
3. **Community engagement.** Engage relevant stakeholders (such as teachers, administrators, parents, board members, community members, and in some cases, students) in the partnership between the provider and the school or district. The contracting process and new restructuring initiatives often face community resistance. These partnerships can empower parents and community members, or they can spark conflict that may derail reform. Research shows that those who manage the process well by listening and responding to community concerns have the most success. Those who don't manage the process well face possible backlash, skepticism, and families pursuing other school options.

The contract could require a community engagement plan and/or include mechanisms for community engagement throughout implementation. Districts and providers should both dedicate adequate resources to introducing the providers to the school communities in which they will work.

4. **Teacher engagement.** It is also important to empower teachers to overcome resistance to changes that may be threatening to some. Involving teachers in the implementation process can improve the chances of success.
5. **Leadership.** Both sides need to pay attention to the central role school and district leadership will play in the success or failure of any improvement initiatives. They should discuss whether the school leadership is stable, or whether there has been effective succession planning. Changes in leadership can frustrate even well-developed partnerships.

6. **Records of communication.** Written records of communication between the parties can help avoid misunderstandings, and prevent minor misunderstandings from escalating into significant conflicts.

NEGOTIATING CONTRACT TERMS

Contracts will vary in length and complexity depending on the level of provider responsibility; the continuum goes from offering a service or set of services to taking on accountability for whole-school performance and receiving significant authority over school design and operations. For more information on whole-school management, see Appendix I.

CLARITY AND SPECIFICITY SHOULD BE THE GOALS OF BOTH THE CONTRACT AND OVERSIGHT PROCESSES. SCHOOLS SHOULD NOT EXPECT, NOR SHOULD EFFECTIVE PROVIDERS INSIST ON, A “ONE-SIZE-FITS-ALL” CONTRACT REGARDLESS OF THE CIRCUMSTANCES, ENVIRONMENT, OR THE HISTORY OF REFORM, IN EACH BUILDING.

Unclear contracts may lead to disputes, which generate unnecessary costs for both parties. Informal understandings and “gentleman's agreements” will not survive leadership changes and are otherwise prone to post-contract disagreements. A strong management agreement also precludes the need to continuously renegotiate or amend contract terms. Renegotiations can lead to transition fatigue among stakeholders.

It is recommended that the school, district and provider begin by finalizing the key contract terms. Once these have all been mutually agreed upon, each of these provisions can be inserted into a standard contract template (see Appendices E, F, and G for different contract examples). Much of the information included in the list below can be lifted from the provider's proposal written in response to the RFP. However, adjustments will likely need to be made based on subsequent conversations between the provider, school and district regarding the school's unique needs.

- **Scope of Work:** Specific services and materials that will be provided by the external service provider. This should be customized so that it addresses any gaps between what the school requires and what the provider's standard package or proposal provides. The services and materials should be clearly aligned with the Major Improvement Strategies included in the school's UIP. This section should specify the manner in which services will be provided (e.g., for on-site consulting, the duration, frequency, and content of services). The contract should also specify those materials or services required for implementation that will not be supplied by the provider (i.e., that will have to be provided by the district or school).
- **Deliverables:** Deliverables for which the provider is responsible over the duration of the contract.
- **Timelines:** Timelines for providing deliverables, services and materials.

- **Personnel:** The contract should address the following personnel issues:
 - The leader of the external service provider’s work with/at the school site.
 - The district’s role in choosing or having a say in the selection of the external service provider’s program leader.
 - The district’s role in overseeing/evaluating the provider’s program leader.
 - The responsibilities of the external provider’s staff in implementing services at the school site.
 - The number of the external service provider’s staff members who will be at the school and their time/number of days committed to the school; if splitting time between locations, the time/number of days at each site.
 - The external service provider’s representative who is responsible for managing the relationship between the school, district and provider, and his/her specific responsibilities. Clarify whether this is the “Go To” person on the provider side if implementation concerns arise.
 - The individuals at the school and district level who are responsible for managing the relationship with the provider. Clarify whether these are the “Go To” people on the school and district side if implementation concerns arise. Staff assigned to manage the contracting relationship must be committed to successfully implementing the process and must have sufficient time and resources to do so.

- **Provider’s Expectations of the School and District:** The contract should give the provider an opportunity to articulate its expectations of the school and district in terms of time, resources, and commitment to the school improvement process. Clarify whether the district will provide technical assistance that complements the provider’s services. Explain the school/district role in providing core academic and student support services directly or aligning the services of other programs and support partners.

- **Goals and Performance Management:** The contract must address UIP-aligned academic targets with corresponding timelines, measures and interim benchmark measures for which the provider is responsible. The contract should also specify the types of organizational, financial, and compliance data that will be reviewed and the process for gathering and reviewing that data.

In an intensive change effort, year-end student achievement results and other reporting will be insufficient to let the district know whether a provider is on the right track. In year one of a partnership with an external service provider, the contract should allow for frequent (i.e., weekly or monthly) performance monitoring by the school and district.

In all cases, specific targets should be established that align with the school’s UIP. Examples of performance accountability metrics follow:

- Results on interim formative or summative assessments. These may be standardized assessments such as NWEA’s MAP, Stanford 10, etc. or they may be school- or provider-generated assessments.
- Student progress on CSAP in terms of both achievement and growth, disaggregated by subgroups.
- Progress on state and federal metrics such as Adequate Yearly Progress.
- Student attendance, attrition, and graduation rates, both in aggregate and disaggregated by subgroups.

- Measurements of college readiness, such as ACT/SAT scores, college application rates, college acceptance rates, and college persistence rates.
- The number and percentage of students completing advanced coursework (such as Advanced Placement or International Baccalaureate coursework and exams), early college high schools, or dual enrollment classes.

Through the contract, the district might also require public reporting of performance results. In this case, the data that will be reported publicly and timelines for such reporting should be agreed to by both parties.

- **Rewards and Sanctions:** The contract should define any rewards for achieving, or consequences for not achieving, targets and interim measures. The contract might include preliminary consequences short of termination, such as shorter contract renewal terms, increased frequency of reporting, or mandatory leadership changes. The contract should also identify what supports are in place to help if performance lags. A strong contract will also document in detail the circumstances and processes by which the district may intervene when the provider is not fulfilling its contractual obligations.
- **Cost:** Total package cost, as well as an itemized breakdown to include specific services and materials, travel expenses, and any other anticipated expenses.

The contract should also spell out the items that will generate direct and indirect costs that may not be included in the stated contract price, and specify the extent to which the school/district or provider will have financial responsibility for each item. It should also specify any services or benefits the provider is *required* to use, with related details on cost and who has financial responsibility for the items (e.g., transportation, technical assistance, food service, professional development, nursing, IT infrastructure, etc.).

- **Payment Terms:** Payment arrangements, including the timing and frequency of payments, any use of enrollment reporting in funding formulas, and how money will flow from the district to the provider.
- **Contract Length:** The contract should be specific to the length of the term and grant period. Regardless of the length, the contract should provide for periodic reviews; firm decision points about renewal, modification, or termination; and clearly stated grounds for early termination.
- **Intellectual Property and Propriety Rights:** The contract should address who maintains propriety rights to intellectual property (such as curriculum and educational materials) developed during the project. At a minimum, the contract should provide that the district or school owns all proprietary rights to curriculum or educational materials that (i) are both directly developed and paid for by the district or school; or (ii) were developed by the external service provider at the direction of the district or school with school or grant funds dedicated for the specific purpose of developing such curriculum or materials.
- **Dispute Resolution:** This section specifies what happens if the school, district, or provider becomes dissatisfied with services, materials, support or outcomes. It should specify the district,

school, and provider's understanding and agreement on specific, detailed dispute-resolution procedures.

- **Contract Amendment:** Inevitably some conditions and terms will need to change as the relationship between the provider and district progresses. The contract should include a clear process for amending the contract throughout its term. Allow providers sufficient autonomy so that contract amendments are not required for every change they make in their operations. At the same time, the contract should require amendment for material changes to the contract, and outline a process for amending the contract when necessary (for example, who can propose amendments; how and when; and a process for the other party to accept, decline, or modify proposed amendments). Some district/provider contracts include annual review processes for amendments, to prevent the disruption of frequent, scattered amendments that might otherwise occur.
- **Dissolution Process:** The contract should include or reference procedures for orderly, structured transition to wrap up the relationship following nonrenewal, revocation, or termination (for example, how final payments will be handled; return of equipment and repayment of loans; communication to external constituents regarding the end of the partnership). This should include authority for the dissolution of assets in the event of contract revocation or termination.

In addition, the contract should:

- Spell out interventions that may occur short of termination (as mentioned above in the section on Performance Management).
 - Specify conditions agreed to by the parties as grounds for termination, and processes and expectations for contract renewal or nonrenewal. Reasons for contract termination include, but are not limited to, failure to meet performance expectations, violations of contract terms, endangering students or public funds (including through negligence, fraud, or misconduct).
 - At a minimum, empower the district to revoke a contract prior to the end of the contract term in cases of extreme underperformance, misfeasance, or malfeasance. Contract clauses commonly allow termination for failure to make specified progress toward student achievement goals (a stricter standard than just avoiding “extreme underperformance”).
- **Ties to Other Laws and Policies.** The contract should reference governing law, and should identify federal laws and grant/funding source requirements to which the school is subject (NCLB, IDEA, FERPA, Title VI, Title IX, and the ADA). It should also specify state law and regulations with which the provider is expected to comply, including provisions related to health, safety and welfare; civil rights; state testing and accountability; and open government (public records and meetings).
 - **Other Legal Components of the Contract.** Additional standard contract terms include liability, indemnification, notice, waiver, severability, assignment, and merger (entirety of the agreement). The contract should be specific about what constitutes “material compliance” with contract terms. Other key legal issues include confidentiality, jurisdiction, method of communication between parties, and non-discrimination. The contract should include all covenants and warranties, disclaimers of responsibility and liability, and other notices and conditions.

PART 5: BEST PRACTICES FOR IMPLEMENTATION

This section addresses best practices and common pitfalls in working with an external service provider. At the beginning of the implementation process, the following questions should be discussed by the provider, school and district:

- What school-level policies are required for effective implementation?
- What district-level policies are required for effective implementation?
- In what other ways can the school and district support implementation?
- How can both parties maintain open communication?

Key issues to address in working successfully with an external provider are included below.⁴

SUSTAINABILITY

During the implementation process, the school, district, and external service provider should keep in mind that what is being built must be sustained after the partnership ends. While it is hard to be thinking about the district or school's needs five years down the road while in the midst of major changes, it is important to maintain this perspective to ensure that the improvement efforts will not simply be a short-term fix.

THERE IS ALWAYS THE CONCERN THAT WITHOUT THE FUNDING AND OUTSIDE SUPPORT, TOO MUCH OF THE GOOD WORK AND KEY CHANGES THAT BEGAN WILL NOT BE SUSTAINED. AS ONE REPORT STATES:

“ALL THESE EFFORTS DURING IMPLEMENTATION WILL BE ESSENTIALLY WASTED IF THEY CANNOT BE MAINTAINED. IN OUR EXPERIENCE, THE INABILITY TO EMBED SUCCESSFUL SUSTAINABILITY STRATEGIES INTO YOUR IMPLEMENTATION AND DEVELOP A LONG-TERM PLAN IS THE ROOT CAUSE OF EFFORTS THAT CANNOT BE MAINTAINED... WE CONSISTENTLY EMPHASIZE CAPACITY BUILDING AND LEADERSHIP CONTINUITY AS CRITICAL ELEMENTS FOR LONG-TERM AND LASTING SUCCESS.”⁴

The improvement efforts will be more sustainable if the practices are institutionalized through various school documents and policies. Rituals that build a school culture focused on academic achievement should be documented in the school's family handbook and the employee handbook. Expectations for teachers should be formalized in job descriptions and evaluation tools. School- and

⁴ “Addressing Common Issues that Arise During Implementation of Provider Services,” from Section 5 (Working in Partnership) in *Guide to Working with External Providers: Partnerships to Improve Teaching and Learning*, by Bryan Hassel and Lucy Steiner, pp. 45-51.

district-level policies should reflect the school improvement work. All professional development – both the informal meetings and the beginning-of-year trainings for teachers – should focus on the unifying school improvement efforts. The more staff members understand the improvement strategies and practice them day-to-day, the more likely it is that they will be ingrained into the school’s culture and live beyond current leadership.

After initial implementation, the school should begin focusing on transitioning away from support from the external service provider. When the majority of staff members understand and can provide the improvement strategies independently, the reform efforts are well on their way to being sustainable for the long-term.

GAINING SUPPORT FROM SCHOOL STAFF

It is important to support teachers in their ongoing efforts to help students succeed. Be sure to establish a mechanism for staff members to voice their concerns. Teachers will be more supportive of the reform efforts if school leaders can demonstrate concrete proof of the provider’s positive effects and stakeholder support. Once implementation has begun, establish mentoring or coaching relationships between teachers who have experienced positive results and teachers who have not. Teachers who continue to not support the improvement efforts should be let go or allowed to transfer to another school.

CUSTOMIZATION TO LOCAL CONTEXT

Once the external service provider has begun work, gather information about how interventions are challenging existing practices, values, and norms. Through scheduled observations, teacher surveys, and regular conversations, external service providers should assess the “sticking points” related to staff members putting new practices into effect.

After understanding any areas of implementation that are challenging, rethink the implementation strategy and determine whether further customization for the local context is needed. If the provider is willing and able to make midcourse corrections in its implementation strategy, the contract may need to be revised as well—depending on the nature of the changes.

SCHEDULING PROFESSIONAL DEVELOPMENT

At the outset of the project, clarify the exact dates of provided staff development. Will it be during the district’s designated professional development days? Because providers cannot always plan their offerings around the schedules of individual schools, the school is then forced to pay for substitute teachers to allow staff to attend the training during regular school days. The school may need to negotiate with the provider for different training days, petition the district for a waiver from mandated scheduling of professional development days, or make the necessary substitute arrangements in advance. Ideally, the school and district can reach an agreement with the provider on flexibility in scheduling professional development days to maximize the external service provider’s offerings.

FINDING TIME TO LEARN AND REFLECT ON NEW PRACTICES

When working with an external service provider and implementing school improvement strategies, make scheduling changes as needed. It can be very difficult for teachers to find the time to learn and practice new strategies while keeping up with their many day-to-day responsibilities. After assessing how much additional time staff members will need to implement new strategies, schools and districts often need to rework their schedules in a variety of ways to free up time for training, reflection, and collaboration. Teachers also may need additional pay to compensate them for the additional hours they are working beyond the school day.

CONFLICTING EFFORTS AND SHIFTING PRIORITIES

A common challenge when implementing school improvement strategies is conflicting efforts which compete for limited time and resources. To address this, schools and districts should limit new initiatives. Prioritize the major improvement strategies identified in the UIP and use the UIP to filter out any other extraneous new programs. The key question to ask is, *Is the new initiative necessary and aligned with existing efforts?* By taking action to eliminate programs that conflict with new initiatives, the school or district sends a powerful signal to everyone involved that this initiative has a high priority and is not just another program that will go by the wayside (Newmann et al., 2001).

ALIGNING DISTRICT AND STATE STANDARDS AND ASSESSMENTS

Prior to implementation, the school and district should clarify with the external service provider how its assessment mechanisms will correspond to the state or district assessment requirements. The provider should be able to map out how their services will meet the state or district's curriculum standards. Schools also need to be clear on how the provider's assessment strategy matches with the state (CSAP) or district assessment requirements. The school and the provider should have negotiated an assessment system that both parties find acceptable.

UNACCEPTABLE PROVISION OF SERVICES

During the contract negotiation process, the external provider should have established a contact person on their staff who would be the "go to" person in case of difficulties with service or materials delivery. The school or district should feel comfortable bringing any concerns to this person as soon as they occur so problems can be rectified as quickly as possible. Significant conflicts can arise when the concerns accumulate and escalate until they've reached a point where everyone is completely frustrated with the external service provider and the school improvement process.

In cases where the provider is unable or unwilling to implement services effectively over time, the contract should address under what conditions the school or district can terminate the partnership.

TURNOVER OF LEADERSHIP

In beginning the implementation process, schools should seek support from the district for policies that promote the stability of school leadership. Some policies that could potentially enhance the success of implementation include a district guarantee that it will hire a principal who supports the provider's service-delivery plans, or a district or school policy that offers incentives to principals who remain at their schools and continue to be effective leaders.

TRAINING NEW TEACHERS

One difficulty many schools face is teacher turnover. The contract should specify how incoming teachers will be trained after implementation has already begun. Because a provider's training schedule may occur in two-year cycles, for example, contract provisions for training teachers coming in during the second year of implementation need to be discussed and agreed upon.

The external service provider should also focus on building capacity with existing teachers so they can train new teachers on-site (e.g. train-the-trainer sessions). In addition to supporting long-term sustainability, this can also reduce the costs of having the provider train all incoming teachers.

SCHOOLS AND DISTRICTS SHOULD WORK PRO-ACTIVELY TO BUILD INTERNAL CAPACITY AND WITH SUCCESSION PLANNING IN MIND. DURING IMPLEMENTATION, THE EXTERNAL SERVICE PROVIDER SHOULD FOCUS AS MUCH AS POSSIBLE ON BUILDING THE INTERNAL CAPACITY OF STAFF MEMBERS TO USE NEW STRATEGIES INDEPENDENTLY.

PART 6: MONITORING AND EVALUATING PERFORMANCE

A strong contractual relationship exists when the contract addresses and the school or district holds the external service provider accountable for three primary areas of performance:

- **Student performance**—Most importantly, the external service provider is accountable for academic results, specifically the UIP-aligned implementation benchmarks identified in the contract.
- **Financial performance**—The external service provider is accountable for the degree to which it uses public and other funds properly in support of its improvement plan.
- **Legal performance**—The external service provider is accountable for its compliance with statutory and regulatory requirements such as those governing special education and ELL, health and safety, facilities, fiscal compliance, and governance.

A strong contract should specify measures and targets, implementation benchmarks, and a timetable for measurement. The contract should also detail the consequences if the external service provider fails to meet established performance targets. With a contract in place that specifies these accountability provisions, it is then the school and district’s responsibility to monitor and evaluate the provider’s progress towards meeting the targets and benchmarks.

THE DISTRICT ROLE IN MONITORING AND EVALUATING THE PROVIDER’S PERFORMANCE

THE CONTRACT SHOULD EMPOWER THE DISTRICT TO DILIGENTLY MONITOR AND EVALUATE PERFORMANCE THROUGH REPORTING REQUIREMENTS, SITE VISITS OR INSPECTIONS, AND FINANCIAL AUDITS.

The external service provider, school and district should intentionally plan for early discussion and midpoint check-ins to clarify the school/district/provider relationship and establish trust. The contract might outline a process for feedback and discussion to evaluate how things are going and allow midcourse corrections.

The contract should then authorize districts to exercise appropriate interventions where performance lags expectations or, in extreme cases, revoke or terminate the contract. The contract should document in detail the circumstances and processes by which the district may intervene when the provider is not fulfilling its contractual obligations.

In addition to the established interim benchmarks and annual targets used for holding an external service provider accountable, the district and school can ask the following questions as part of their monitoring responsibilities:

- Is the external service provider proving effective in responding to our schools and students’ specific needs?
- Has the provider been able to fulfill its commitments this quarter, this semester, this year?

- Is it proving to be a partnership that is bringing about the kind of positive impact expected in the initial agreement?
- Is it proving to be a partnership that is welcome and supported by the staff? While good feelings and good relations are not always priorities in this hard work, significant challenges in the working relationship can lead to tensions and differences of opinion that impede progress.

If the response to the above questions is negative, the partnership could be extended for a specific length of time—such as another quarter or half year—when there will be another review to determine if the partnership should be abandoned or withdrawn. In the case of a decision to terminate the contract, there may be controversy over the decision, hence the need for clear dispute resolution in the contract.

APPENDIX A: USEFUL RESOURCES

RESOURCES ON WORKING WITH EXTERNAL SERVICE PROVIDERS

Choosing an Education Contractor: A Guide to Assessing Financial and Organizational Capacity. Developed jointly by The Finance Project and the Comprehensive School Reform Quality (CSRQ) Center, operated by the American Institutes for Research (2006). (41 pages) Available: <http://www.financeproject.org/publications/CSRQconsumerguide.pdf>

Choosing a Model and Types of Models: How to Find What Works for Your School. This Research Brief by the National Clearinghouse for Comprehensive School Reform (NCCSR) addresses the following questions: what are the types of models and how are they different, what should I look for in a model, and what process should I use to choose a model? (February 2002). Available: <http://www.eric.ed.gov/PDFS/ED470758.pdf>

Choosing Success. Johns Hopkins University researcher Sam Stringfield provides guidance to help schools considering Comprehensive School Reform programs analyze their specific objectives and research base (1998). Available: <http://www.aft.org/pdfs/americaneducator/fall1998/ChoosingSuccess.pdf>

Guide to Working with External Providers - Partnerships to Improve Teaching and Learning. Learning Point Associates, by Bryan Hassel and Lucy Steiner, Second Edition (September 2010). (106 pages) Available: http://www.learningpt.org/pdfs/External_Provider_Guide.pdf

Guidelines for Ensuring the Quality of National Design-Based Assistance Providers. Created by a blue-ribbon panel of school board leaders and prominent education policymakers, this manual provides guidelines, a toolkit, and a checklist to ensure the quality of a chosen school reform model and its implementation (2000). <http://www.naschools.org/contentViewer.asp?highlightID=48&catID=86>

Making Good Choices—A Guide for Schools and Districts. The North Central Regional Education Lab created this guide to aid in choosing the appropriate CSR program. Bryan Hassel; Revised and updated by Maria Ferguson (2002). (58 pages) Available: <http://www.centerforsri.org/pubs/mgcSchoolsandDistricts.pdf>

Selecting the Intervention Model and Partners/Providers for a Low-Achieving School; A Decision-Making and Planning Tool for the Local Education Agency. The Center on Innovation & Improvement (Updated April 2011). Available: <http://www.centerii.org/leamodel/>

Report of SIG funding to Colorado

School Turnarounds in Colorado, by Public Impact, Julie Kowal and Joe Ableidinger (January 2011). Available: http://www.cde.state.co.us/FedPrograms/dl/ti_sitig_schtturnarounds.pdf

**KEY SOURCES – RECOMMENDED BY PUBLIC IMPACT IN ITS REPORT FOR CDE:
“CONTRACTING WITH EXTERNAL PROVIDERS: GUIDANCE FOR DISTRICTS”**

Haft, W. (2009). “The Terms of the Deal: A Quality Charter School Contract Defined” (NACSA Issue Brief #18). National Association of Charter School Authorizers.

Kowal, J. M., & Arkin, M. D. (2005). “Contracting with external education management providers.” In *School Restructuring Options Under No Child Left Behind: What Works When?* Naperville, IL: Learning Point Associates. Available:
<http://www.centerforcsri.org/pubs/restructuring/KnowledgeIssues3Contracting.pdf>.

Kowal, J. & Hassel, B. (2006). “Establishing the Right Relationship Terms.” In *Starting Fresh in Low-Performing Schools*. Chicago, IL: National Association of Charter School Authorizers. Available: http://www.qualitycharters.org/images/stories/Starting_Fresh_Series.pdf .

Mass Insight Education & Research Institute (2010). *Designing MOUs for Lead Partners*. Available: http://www.massinsight.org/publications/stg-resources/83/file/1/pubs/2010/04/20/MOU_Lead_Partner_tool_2.17.10.pdf

Mass Insight Education & Research Institute (2009). *The Essential Conditions: Recommended Operational and Instructional Criteria for Partnership Zones*. Available: http://www.massinsight.org/publications/stg-resources/87/file/1/pubs/2010/04/20/Recommended_State_Criteria.pdf

NACSA (2009). “Charter School Contracts” (NACSA Policy Guide). National Association of Charter School Authorizers. Available:
http://www.qualitycharters.org/images/stories/Charter_School_Contracts.pdf

Rhim, L.M. (2005). “Restructuring Schools in Chester Upland, Pennsylvania: An Analysis of State Restructuring Efforts” (ECS Policy Brief). Education Commission of the States. Available: <http://www.ecs.org/clearinghouse/57/93/5793.pdf>

APPENDIX B: REQUEST FOR PROPOSAL TEMPLATE

SCHOOL INFORMATION

School Name:

School District:

Grades Served:

Total Enrollment:

Demographic Data:

% of Student Eligible for Free/Reduced Lunch Program	
% of Students on IEPs	
% of English Language Learner	
Primary languages spoken by English Language Learners (list up to 3 most frequent languages spoken)	
% of African-American Students	
% of Asian American Students	
% of Caucasian Students	
% of Latino Students	
% of Native American Students	
% of Other _____	

School's Primary Enrollment Area:

Feeder and/or Recipient Schools that Supply or Receive Most of the School's Students:

ACADEMIC SUMMARY

School Performance Framework Overview

Performance Plan Type (select the appropriate box by double-clicking it):

- Performance Plan
- Improvement Plan
- Priority Improvement Plan
- Turnaround Plan

Academic Achievement

- Exceeds
- Meets
- Approaching
- Does Not Meet

Academic Growth

- Exceeds
- Meets
- Approaching
- Does Not Meet

Academic Growth Gaps

- Exceeds
- Meets
- Approaching
- Does Not Meet

Postsecondary and Workforce Readiness

- Exceeds
- Meets
- Approaching
- Does Not Meet

Summary of Need:

[Here the school should describe the major improvement strategies it is using for school improvement and what it needs in an external service provider. The identified needs should align with data analysis, identified root causes, and major improvement strategies included in the school’s Unified Improvement Plan. If the school has conducted a formal needs assessment separate from the UIP, this should also be addressed in this section.]

SUPPORTING DOCUMENTATION

The following school-level documents are provided as attachments with this RFP to provide more detailed data on the school’s performance and needs:

- School Performance Framework (3-Year):** The district and school performance frameworks provide a snapshot of the district or school's level of attainment on academic achievement, growth, growth gaps and postsecondary readiness. This document is attached, but is also available for each public school in the state at: <http://www.schoolview.org/performance.asp>.
- Unified Improvement Plan:** Improvement plans provide information on the district or school's data trends, root causes and targets, and identify strategies and resources the district or school will use to improve student academic outcomes. This document is attached, but is also available for download at: <http://www.schoolview.org/performance.asp>.
- School Growth Summary Report:** This report provides three years of detailed growth data disaggregated by grade, subject, and subgroups. This report is attached, but is also available for download at: <http://www.schoolview.org/ColoradoGrowthModel.asp>.
- Additional Student Data:** Attached is other relevant data such as average daily attendance for the last complete school year, student mobility rate for the last complete school year, and graduation rates (for high schools) by subgroups.
- Needs Assessment:** If the district or school conducted a needs assessment that is not reflected in the UIP, this should be attached as well.

PROVIDER RESPONSE TO RFP

1. **Proposed Provider Background:** Provide a brief history of the company and the primary services offered by the provider.
2. **Proposed Services:** Describe the *specific* services the provider proposes to offer *this* school. Include information on how much time the provider would provide on-site and off-site supporting the school throughout the duration of the contract.
3. **Alignment with the School's Identified Needs:** Explain how the provider would be responsive to the school's specific needs identified in the RFP above, in the Unified Improvement Plan, and through an analysis of the data provided in the School Performance Framework and School Growth Summary Report.
4. **Work Environment/Collaboration:** Describe the provider's work style and ideal working environment. How would the provider work to be collaborative and involve multiple stakeholders in this improvement process?
5. **Measurable Outcomes:** Provide the specific, measurable goals/outcomes for which the provider would be accountable. Include any interim measures that would be used to evaluate progress during the project. Make sure the identified goals/outcomes align with the school's identified performance indicators, measures/metrics, annual targets, and major improvement strategies included in the Unified Improvement Plan. Also provide implementation benchmarks that would be used to gauge progress towards the end goals.
6. **Track Record:** Share the results of work the provider has done in other similar schools. Be as specific as possible in terms of improvements in performance data and academic growth of the students in those schools.
7. **Cost:** Provide the cost for the services defined in question 2 above and any payment schedule or expectations. Include an itemized breakdown for the proposed costs (e.g. 5 days of support at \$500 per day, travel costs at \$400 per visit, etc.).
8. **Human Capital:** Provide resumes or bios for the individual(s) who would be providing services to the school on behalf of the provider. Include information on their work and accomplishments in similar schools or with similar projects.
9. **References:** Provide three references for schools for which the provider has provided services in the past two years.
10. **Financial Information:** Attach the provider's audited financial statements for the past two years. These should provide the school with an idea of the provider's financial position, annual budget and sources of revenue.

TIMELINE

Responses are due to the school/district no later than the close of business on Day, Month XX, 2011.
Please send response to:

[Insert contact information here]

QUESTIONS

Inquiries can be directed to [insert name and contact information].

APPENDIX C: PROPOSAL EVALUATION TOOL

This tool is designed to assist a school or district in evaluating proposals from potential service providers. This rubric provides a foundation for the evaluation process, but it can and should be customized to meet the school’s specific needs. The following rubric is organized around the components included in the RFP Template. If the RFP Template is modified to better meet the district or school’s needs, this evaluation tool will need to be modified as well.

This template offers weighted values for each component. The weights can be adjusted to reflect the school’s priorities, though it is recommended that no weight values are less than 5 or greater than 10.

PROVIDER BACKGROUND	Provider 1	Provider 2	Provider 3	Notes – Strengths and Weaknesses of Each Proposed Provider
<ul style="list-style-type: none"> • Provider is a well-established company that has successfully offered services to schools for at least five years. • Provider has a solid infrastructure and large enough staff so that quality of services won’t be dependent on just one individual. • Provider serves a number of clients and isn’t overly dependent on one large client. 	___/5	___/5	___/5	
PROPOSED SERVICES	Provider 1	Provider 2	Provider 3	Notes – Strengths and Weaknesses of Each Proposed Provider
<ul style="list-style-type: none"> • Proposed services meet the essential need identified in the RFP. • The school is comfortable with the provider’s approach to school improvement and feels the approach is likely to be successful. • Proposed services are suitable in terms of 	___/10	___/10	___/10	

time and access to the provider that will be needed for successful implementation.				
ALIGNMENT WITH SCHOOL'S IDENTIFIED NEEDS	Provider 1	Provider 2	Provider 3	Notes – Strengths and Weaknesses of Each Proposed Provider
<ul style="list-style-type: none"> The proposal reflects a strong and thoughtful understanding of the school's demographics and student achievement data. The proposed strategies are customized to target specific needs that are unique to this school. In other words, the provider is not offered a "canned" approach. 	___/10	___/10	___/10	
WORK ENVIRONMENT/COLLABORATION	Provider 1	Provider 2	Provider 3	Notes – Strengths and Weaknesses of Each Proposed Provider
<ul style="list-style-type: none"> The provider's preferred work style and working environment are suitable for the school for which the work is proposed. The provider is likely to be a good "culture fit." The provider is committed to a collaborative process and work environment in which the voices of all constituents are heard. The provider has identified specific strategies that would be used to establish a collaborative process. The school feels these strategies are likely to be successful in its school environment. 	___/7	___/7	___/7	
MEASURABLE OUTCOMES	Provider 1	Provider 2	Provider 3	Notes – Strengths and Weaknesses of Each Proposed Provider
<ul style="list-style-type: none"> The proposal includes specific, measurable outcomes that are realistic and appropriately rigorous. 	___/5	___/5	___/5	

<ul style="list-style-type: none"> • The proposal includes interim measures that can be used to evaluate progress during the project. • The outcomes are aligned with the school's UIP and reflect that the provider understands the school's UIP. • The provider has sound measures for evaluating whether interim and final outcomes/goals have been met. 				
TRACK RECORD	Provider 1	Provider 2	Provider 3	Notes – Strengths and Weaknesses of Each Proposed Provider
<ul style="list-style-type: none"> • The provider has successfully worked with a number of other schools or districts. • The provider offers quantitative data documenting its success with other schools. • The schools that the provider has worked with have similar demographics and/or needs as the school for which services are proposed. 	___ / 8	___ / 8	___ / 8	
COST	Provider 1	Provider 2	Provider 3	Notes – Strengths and Weaknesses of Each Proposed Provider
<ul style="list-style-type: none"> • The proposal includes a breakdown of costs so it is easy to understand how the total cost is derived. • The proposed costs are reasonable and competitive with market rates. • Overall, the total package is cost effective and a good use of public funds. • The provider has provided a payment plan that is reasonable and aligns with the district's cash flow needs, including 	___ / 8	___ / 8	___ / 8	

appropriate timing related to receipt of grant funds from CDE.				
HUMAN CAPITAL	Provider 1	Provider 2	Provider 3	Notes – Strengths and Weaknesses of Each Proposed Provider
<ul style="list-style-type: none"> The provider has identified the specific personnel that will provide the services described in the proposal, including who will provide which service and the respective time allocations. The individuals identified have relevant experience, education, and a track record of success. The proposed individuals and the school staff have met and a good rapport exists between all parties. 	___/7	___/7	___/7	
REFERENCES	Provider 1	Provider 2	Provider 3	Notes – Strengths and Weaknesses of Each Proposed Provider
<ul style="list-style-type: none"> The proposal includes at least three references for schools with which the provider has worked within the past two years. The references are from schools with similar needs as the school for which the services are proposed. The references indicate that their work experience with the provider was positive and that given the opportunity; they would engage the provider again. The references indicate that the provider produced the results and outcomes that were promised. 	___/5	___/5	___/5	

FINANCIAL INFORMATION	Provider 1	Provider 2	Provider 3	Notes – Strengths and Weaknesses of Each Proposed Provider
<ul style="list-style-type: none"> • The proposed provider offers audited financial statements for the two most recently completed fiscal years. • The audits are unqualified with no reportable conditions or material weaknesses, and a minimal number of recommendations. • The most recent audit’s Statement of Financial Position indicates that the provider has adequate access to cash or reserves and a healthy financial position (e.g. significant assets and limited liabilities). • The proposed provider has a diverse and sustainable funding base including revenues from multiple sources that are largely fees-for-service (as opposed to one-time grants or other variable revenue sources). 	___/5	___/5	___/5	
OTHER	Provider 1	Provider 2	Provider 3	Notes – Strengths and Weaknesses of Each Proposed Provider
<ul style="list-style-type: none"> • The provider has established a strong working relationship with the school and district. • The provider is focused on the school’s needs, rather than just trying to push services offered. • The provider has a strong customer service orientation. • The provider communicates clearly and responds quickly and effectively to questions from the school or district. 	___/5	___/5	___/5	

<ul style="list-style-type: none"> • The provider values continuous improvement and has regular periods of reflection focused on improvement (based on both internal self-evaluation and external evaluations). • The provider seems as though it will be able to “hit the ground running.” 				
<p style="text-align: center;">TOTAL POINTS PERCENTAGE</p>	<p style="text-align: center;">___ / 75 ___ %</p>	<p style="text-align: center;">___ / 75 ___ %</p>	<p style="text-align: center;">___ / 75 ___ %</p>	

APPENDIX D: SAMPLE INTERVIEW QUESTIONS

These are sample questions that should be a resource for a school or district interviewing potential external service providers. It is important to note that the questions should be customized to the specific needs of the school and the services being sought.

1. Describe the approach you used to understand the school's needs and develop a proposal.
2. What do you see as the school's greatest need? What informs this assessment?
3. Provide an overview of how you see your company helping address our needs. Describe the services you will provide and how stakeholders in our school will work with you and those providing technical assistance and training.
4. Who from your company will be assigned to work with us, and how often will they be on site? If the provider is not in the same city, how will this be addressed?
5. If your company is selected for this project, what kinds of staffing changes should we anticipate?
6. How will the work of administrators, teachers, students, and parents change as a result of this partnership?
7. What kinds of changes can we expect in student achievement and when?
8. If selected for this project, what additional information or resources would you need to prepare for this work? How would you fully orient yourself to this school?
9. What strategies do you use to build bridges among stakeholders with conflicting opinions about what is best for a school and its students?
10. How do you know if your work on a project is successful? What do you do if you find yourself down a path that isn't working? What techniques have you found to be most successful in making mid-course corrections?
11. How do you determine your pricing structure when charging fee-based services? How did you come to the total proposed cost for this project? How do you determine if your fees are comparable to those charged by other similar providers in the field?
12. How do you evaluate your success as a company and how frequently does evaluation happen?
13. What excites you about this project? What makes you nervous about this project?
14. Tell us about the most rewarding school project with which you've been involved. Tell us about the most frustrating school project with which you've been involved.
15. What are your preferred formal and informal means of communication with a school for which you are providing services?
16. How would you respond to the following scenarios (use these or create your own):

- a. You are selected to be the external provider on this project and you are responsible for providing 15+ days of professional development for the school's teachers throughout the year. The administration was supportive of selecting you to be the school's PD provider, but the teachers were not. After two days of PD, the teachers' resistance to your methods is so significant that any further efforts seem futile. What would you do?
- b. You are working in a racially mixed and diverse school. Much of your work and the school's improvement efforts are focused on closing the achievement gap for Latino students. A small but vocal group of Caucasian parents have complained to the administration that your company's work is directing all resources towards Latino students and their students are suffering academically as a result. What is your role in this situation and how would you work with the administration to address this issue?
- c. After six months of working in a school, interim measures that were mutually established by you and the school have not been met. The administration and teachers have all bought into the process and everyone is working diligently to improve student learning, but quantitative data is not showing the results that were hoped for. How do you respond?

APPENDIX E: SAMPLE CONTRACT LANGUAGE PROFESSIONAL SERVICES AGREEMENT

THIS IS INTENDED TO BE A SAMPLE ONLY. DISTRICTS SHOULD CONSULT WITH ITS OWN LEGAL COUNSEL REGARDING ANY CONTRACT

This contract for professional educational services is entered between the ABC School District, a Colorado public school district (“District”), on behalf of DEF School, a Colorado public school (“School”), and _____ (“Contractor”) [if not an individual, identify business entity; e.g., “a Colorado for-profit corporation,” “a Colorado university,” “a Colorado School District,” “a Colorado LLC,” etc., and modify pronouns throughout accordingly].

WHEREAS, the School is an established public school in the District; and

WHEREAS, Contractor is licensed to do business in Colorado; and

WHEREAS, the School and District have determined that, consistently with C.R.S. 22-32-122, the Contractor will provide services of comparable quality and meet the same requirements and standards as would be necessary if performed by the School; and

WHEREAS, the Board of Education of the School has been duly appointed and authorized to act for the benefit of the School,

NOW, THEREFORE, in consideration of the foregoing Recitals and their mutual covenants contained herein, the parties agree to the following:

1.0 Term. This contract shall be performed during the course of a single school and fiscal year, from July 1, 20██ to June 30, 20██.

2.0 Nature of the Relationship. This contract establishes an independent contractor relationship between District and the Contractor for certain professional educational services provided to the School.

3.0 The Work. The Contractor contracts to perform the following professional services and undertake the following duties during the course of the school year: [List services in appropriate detail]. (the “Work”). The Work shall in all respects meet the same requirements and standards as would be necessary if performed by the School.

4.0 Professional and Independent Relationship. District is contracting with Contractor in a professional capacity. The Contractor shall work at such times and for such specific periods as Contractor determines are needed to properly and professionally perform the Work. This contract does not preclude Contractor from providing similar professional services to other individuals or agencies. Contractor controls its schedule, but is expected to provide services in a timely manner. Contractor and any assistants, associates or employees of Contractor have no employment relationship with District or School and are not agents of District or School. [NOTE: The applicable legal rule is the “economic reality test,” which requires that independent contracts NOT be under

control of the District or School as if they were employees, or otherwise treated as employees; behavior inconsistent with this rule can have serious legal consequences regardless of the terms of a written contract.]

4.1 Coordination; Tools & Technology. Contractor agrees to reasonably coordinate the times he or she meets with School staff and/or the parents of students being served to carry out the Work. To the extent the Contractor employs particular tools, technology or devices; it is the Contractor's responsibility to make provisions for such equipment, provided that supplies or equipment available through School are at the reasonable disposal of the Contractor. Should the Contractor determine that tools, technology or devices are advisable which neither she nor School has, the Contractor agrees to give notice of this need to the District. The Contractor agrees to become familiar with the School's mission and educational methodology and to perform the Work consistently with such mission and methodology.

4.2 Delegation Permitted; Limitation. The Contractor may make use of such assistants, associates or employees as Contractor determines are appropriate, from time to time, provided that this contract is entered in view of the particular qualifications and expertise of the Contractor and no part of the Work above can be assigned without the prior written consent of School, which may be documented on Exhibit 1 to this contract. Any person to whom such delegation is made must comply with and meet all the requirements of paragraph 5.0, below.

4.3 Insurance. Contractor shall have obtained and maintain at all times relevant to this contract appropriate liability insurance of at least [REDACTED] [NOTE: This should correspond to the requirement of district policy and any separate assessment of the risk involved in the activity.] and workers compensation insurance, if appropriate, for Contractor and for any individuals referred to in paragraph 4.2, above.

4.4 Non-Disclosure. All technical and curricular information provided or made accessible to Contractor, including but not limited to: formulas, information, know-how, methods, practices, designs, or creations; data, algorithms, programs, software, object code, source code, or documentation; customer lists, price lists, supplier lists, business plans, marketing plans, surveys or reports, or financial information, in whatever form or medium, and whether or not marked "CONFIDENTIAL," or the like, which (a) relate to the products, services or business of School and (i) which have not been disclosed by School to the general public or (ii) which Contractor knows or has good reason to know are not generally known to the general public, (b) are received by School from a third party under an obligation of confidentiality to the third party, (c) are derived from the use or application of either of the foregoing, or (d) were or are created by School or by Contractor pursuant to this Agreement, are considered proprietary assets. Contractor shall not, as a result of any disclosure of proprietary assets to Contractor, obtain any right or license to any proprietary assets except as otherwise specifically provided for herein. Contractor agrees that disclosure of any proprietary assets, whether written, oral, or electronic, is made in strictest confidence. Contractor agrees that it will not at any time directly or indirectly disclose proprietary assets to any person or entity outside of School or make any use of such proprietary assets in any way, commercially or otherwise, other than as is reasonably required to provide the Services

listed in paragraph 3.0. Contractor agrees not to allow any unauthorized person access to proprietary assets and to take all action reasonably necessary and satisfactory to protect such proprietary assets.

5.0 Legal Compliance. Contractor acknowledges that provision of public education services is an activity closely regulated by law and agrees to comply with all relevant legal requirements imposed on School and District, including, but not limited to the following:

5.1 Nondiscrimination Policies Binding; Child Abuse Reporting. The Contractor recognizes that School has certain policies and is subject to certain laws governing nondiscrimination in educational practices and employment, which laws and policies create expectations and/or give certain rights to employees, parents and students at School. The Contractor agrees that, notwithstanding her independent contractor status, he or she will take no action inconsistent with said policies. Contractor further agrees to report to School any conduct he or she observes that may constitute discriminatory harassment and to report to proper public authorities any conduct that may constitute child abuse. Contractor may consult with School officials in determining if he or she has reasonable suspicion of child abuse, but is independently obligated as a mandatory reporter. If the person to whom Contractor would make a report of discriminatory harassment is implicated in such conduct, Contractor may report to any higher official within School, including members of the Board of Directors.

5.2 Licensing. The Contractor agrees to have or secure and to maintain any license, certificate or eligibility necessary or appropriate, including any license, certificate or eligibility necessary or appropriate for any assistants referred to in paragraph 4.2, for performance of duties listed under paragraph 3.0, above, at all times relevant to this contract. Should Contractor's license or the license of any such assistant be discontinued, suspended, revoked or otherwise invalid at any time during the term of this contract, the person or persons whose license is invalid must immediately discontinue performing services under this contract. Loss of licensure of all such persons shall render this contract void.

5.3 IEP Compliance. To the extent the Work involves fulfilling the terms of a student's IEP, the Contractor will provide such services with sufficient frequency and/or intensity to meet the terms of the IEP. Should the Contractor identify any difficulty in meeting the terms of an IEP within the time provided for in this contract, that shall be promptly reported to the District.

5.4 Background Check. Contractor shall submit to and cooperate with a background check that may include fingerprinting, in the same manner and to the same degree as required for other individuals providing educational services at School. Return of an unsatisfactory background check shall render this contract null and void.

5.5 Confidentiality. Contractor agrees to maintain, and to require any persons referenced in paragraph 4.2 to maintain, the confidentiality of student information and educational records in compliance with the Colorado Public Records Act, C.R.S. §§ 24-72-101, et seq. and the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g.

6.0 Compensation. The Contractor's compensation shall consist of: \$ [redacted] per hour for direct services actually provided for or on behalf of School students during the school year. [NOTE: Other forms of compensation (flat rate, percentage of a stated amount, per pupil) may be appropriate in some cases. For any significant contract consider using competitive bidding. If the services provided are not "professional" this form should not be used and competitive bidding may be required by law.] The Contractor shall submit a monthly statement of hours actually worked. In order to be paid in a timely fashion such statement must be submitted no later than the seventh (7th) calendar day of the month after services are rendered. Invoices submitted past 30 days of service provided may not be paid.

6.1 Taxation. The Contractor is responsible for reporting such compensation as income and for making all tax payments of any description required by law.

7.0 Termination. Either party may terminate this agreement at any time for any reason, and without any requirement to state a reason, by written notice to the other party. Both parties will endeavor to provide reasonable notice of such termination. Any notice of termination shall identify the date of termination, the services to be completed and the proportionate payment considered due under ¶ 6.0.

8.0 Indemnification. Contractor shall indemnify, defend and hold harmless School and the District and their officers, employees, representatives, and agents against any and all claims, damages, liability, and court awards, including costs, expenses, and attorneys' fees incurred as a result of any act or omission by Contractor. If Contractor is a Colorado public college, university, school district or Board of Cooperative Services, it is excused from such duty of indemnification.

9.0 Interpretation, Construction and Procedures: In order to assure that the above provisions are given the interpretation or construction intended by the parties, and to provide for certain procedural contingencies, the Parties also agree to the following

9.1 Waiver. There shall be no waiver by practice and the waiver by either party of a breach of any provision of contract or this policy shall not operate as or be construed as a waiver of any subsequent breach.

9.2 Amendment or Assignment. This contract may not be amended, revised or assigned except by a writing signed by all parties.

9.3 Applicable Law. This contract shall be interpreted according to the law of Colorado.

9.4 Separability. If, for any reason, any section or portion of this contract or any policy incorporated herein shall be held by a court to be invalid or unenforceable, this shall not affect any other section or portion of the policies or contract.

9.5 Counterparts. This contract may be executed in any number of counterparts, each of which, when bearing original signatures, shall be deemed a duplicate original.

9.6 Notices. Any notice required by contract shall be provided in writing and either hand-delivered or sent by certified mail to:

In the case of SCHOOL:

[Redacted]
[Redacted]
[Redacted]

In the case of Contractor:

[Redacted]
[Redacted]
[Redacted]

9.7 No Third Party Rights. This Agreement is made for the sole benefit of the School and Company. Except as otherwise expressly provided, nothing in this Agreement will create or be deemed to create a relationship between the Parties to this Agreement, or either or them, and any third person, including a relationship in the nature of a third party beneficiary or fiduciary.

9.8 Force Majeure. Notwithstanding any other sections of this Agreement, neither party will be liable for any delay in performance or inability to perform due to acts of God or due to war, riot, terrorism, civil war, embargo, fire, flood, explosion, sabotage, accident, labor strike or other acts beyond its reasonable control.

9.9 Governing Law. The laws of the State of Colorado will govern this Agreement, its construction, and the determination of any rights, duties and remedies of the parties arising out of or relating to this Agreement.

9.10 Voluntary Agreement. The parties are entering this contract voluntarily. Each party acknowledges that it has the right to seek legal counsel before executing this agreement. Further, each person signing this contract asserts that he or she is appropriately authorized to make the agreements herein and to so execute the contract.

10.0 Lawful Performance. Contractor certifies, warrants and agrees that it does not knowingly employ or contract with illegal aliens who shall perform any part of the Work and Contractor shall verify the employment eligibility of any employees it retains, as provided by law. Contractor, if a natural person, swears or affirms under penalty of perjury that he or she is a citizen or otherwise lawfully present in the United States pursuant to federal law.

11.0 Entire Agreement. This Agreement constitutes the entire agreement between the parties and there are no other oral or written agreements, understanding, restrictions, warranties or

representations between the parties relating to this subject matter other than those set forth. This agreement supersedes all prior agreements, understandings, discussions, or negotiations relating to this subject matter, all of which are merged herein.

WE HAVE EACH READ THIS CONTRACT, HAD THE OPPORTUNITY TO DISCUSS IT, AND UNDERSTAND IT.

Professional Service Provider

A _____ corporation

By: _____

Its: _____

ABC SCHOOL DISTRICT

A Colorado public school district

By: _____

Its: _____

Attest: _____

EXHIBIT 1

Persons authorized to provide services:

Area of qualification

Agreed by School: _____

APPENDIX F: SAMPLE CONTRACT LANGUAGE COMPREHENSIVE MANAGEMENT AGREEMENT FOR A SCHOOL DISTRICT

THIS IS INTENDED TO BE A SAMPLE ONLY. DISTRICTS SHOULD CONSULT WITH ITS OWN LEGAL COUNSEL REGARDING ANY CONTRACT

This Management Agreement (the "Agreement") is made and entered into as of July 1, 20[REDACTED], by and between **XYZ Educational Service Provider** ("ESP Company"), and the **ABC School District**, (the "District"), a Colorado public school district, on behalf of _____ School(s) ("School(s)").

RECITALS

- A. C.R.S. § 22-32-122 permits contracting for educational services provided that the contractor, such as ESP Company, meets all standards and requirements that would otherwise be imposed on the School or the District.
- B. The District hereby finds that ESP Company is a professional operator and manager of educational programs and schools for the following purposes:
 - i. promoting and encouraging effective school design and systems of instruction;
 - ii. implementing innovative and effective instructional and educational systems, management and programs;
 - iii. providing back office and other ancillary services as specified herein; and
 - iv. enabling the District and other schools to achieve their statutory purposes and educational goals.
- C. The District's Board of Education (the "Board") retains ultimate responsibility for compliance with state and federal laws and regulations and, accordingly, authority to oversee ESP Company, direct ESP Company as otherwise stated herein, and generally hold ESP Company appropriately accountable for the proper delivery of services and implementation of the educational program of the School(s).
- D. The District has approved the ESP Company curriculum, program, and operational philosophy for School(s); and
- E. The District and the ESP Company (the "Parties") have agreed to the terms stated below.

THEREFORE, for good and sufficient consideration received, the parties mutually agree as follows:

ARTICLE I
EDUCATIONAL SERVICES AND ADMINISTRATIVE SERVICES

1.01. Educational Services.

- (A) For the Term (as defined in Article II below), ESP Company will provide to the School(s) and their students the following educational services (the “Educational Services”):
- i. Curriculum. Curriculum and curriculum development;
 - ii. Instruction. Instructional services and personnel management;
 - iii. Instructional Tools. Instructional tools, equipment and supplies, including educational materials and teaching tools;
 - iv. Assessment. Assessment services including test identification, scoring, and interpretation and reporting of results;
 - v. Additional Educational Services. Any other services necessary or expedient for the provision of teaching and learning at the School(s) as agreed to from time to time between ESP Company and the District.
- (B) The Educational Services will be provided as developed by ESP Company and adopted by the Board in accordance with the educational goals, curriculum, methods of pupil instruction and assessment, policies, school calendar, school schedule and pupils to be enrolled at the School(s).
- (C) Subject to this Agreement, Colorado Revised Statutes, and Colorado Department of Education rules, ESP Company may, with the advice and consent of the Board, modify the Educational Services or related programs and activities. ESP Company will obtain the advice and approval of the Board prior to making material modifications and will undertake no modifications of any description that are inconsistent with the Performance Goals (attached as Exhibit 1 hereto). Decisions of the Board approving or disapproving material modifications to the Educational Services shall be final.
- (D) ESP Company will be responsible and accountable to the Board for the provision of the Educational Services and for making progress toward goals and objectives in Exhibit 1, provided ESP Company will not be required to expend funds on such services in excess of the amounts set forth in the approved District Budget. Educational Services will be provided consistent with the Performance Goals, law, and District and State regulations.
- (E) Educational Services will include providing students with opportunity, without limitation, to participate in the following extra-curricular or inter-scholastic activities: (the “Supplementary Programs”).
- (F) At least annually, ESP Company will develop a plan to improve the educational

services consistently with the Colorado Department of Education’s provisions for school performance, improvement, priority improvement or turnaround plans. The plan will be submitted to the Board for review, modifications, and approval the plan.

- (G) ESP Company will prepare all educational plans required by the District or State, including but not limited to performance, improvement, priority improvement, or turnaround plans and plans required by the No Child Left Behind Act. The plans developed will be subject to review, modification, and approval of the Board.
- (H) ESP Company will prepare all educational reports required by the District and State. The Board may request additional written reports about the progress being made toward achieving the identified Performance Goals and the district’s accreditation requirements, but not more than quarterly.
- (I) The Board may request the ESP Company to provide the Board with monthly, informal updates about implementation of the educational program and progress toward achieving Performance Goals.
- (J) Should the District be classified as requiring a priority improvement plan or a turnaround plan, the Board may, in its sole discretion, reopen this Agreement for renegotiation, terminate this Agreement effective at the end of the then-current fiscal year, without charge or penalty of any kind, exercise any other right of the District to modify this Agreement, or negotiate with ESP Company such changes in this Agreement as are reasonably calculated to cure such unacceptable status.

1.02 Administrative Services.

- (A) For the Term (as defined in Article II below), ESP Company will provide to the District and School(s) the following administrative services (the "Administrative Services"):
 - i. Personnel Management. Management and professional development of all personnel providing Educational Services and Administrative Services in accordance with Article VIII below;
 - ii. Facility Operation and Maintenance. Operation and maintenance of the District's facility (the “Facility”) consistent with any and all leases or other documents pertaining to the Facility. Should the ESP Company provide the Facility for the District pursuant to other agreements, arrangements or documents (the “Lease”), such Lease shall be separate from this Agreement and the terms and conditions of the Agreement shall not be in any respect conditioned or contingent upon terms of the Lease, nor shall the Lease be in any respect conditioned or contingent upon the terms of this Agreement;
 - iii. Business Administration. Administration of all business aspects of the School(s), provided that the Board shall retain an independent accountant to oversee and review the financial management of the School(s);
 - iv. Transportation and Food Services. Management of transportation and food

services for the students enrolled at the School;

- v. Legal and HR Services. Provision of legal services related to personnel, contracting, student and other issues affecting the School(s), provided that the Board shall retain independent legal counsel to advise it on all aspects of its relationship to the ESP Company, and all internal Board matters.
 - vi. Public Relations. Management of any and all advertising and public relations for the District with the community and the media, which will not include advertising or public relations that pertain solely to ESP Company;
 - vii. Audits. Under the Board's direction, and utilizing an independent auditor selected by the Board, arranging and cooperating in the annual audits or other financial statements as may be required by and in compliance with the Colorado Department of Education.
 - viii. Reporting. Reports on the finances of the School or District upon the request of the regulatory authorities or the Board, but not less frequently than as is required by the Colorado Department of Education or other applicable laws and regulations (and no more often than monthly).
- (B) Subject to this Agreement and other applicable laws and regulations, ESP Company may modify the methods, means and manner by which such Administrative Services are provided at any time.
- (C) ESP Company will be responsible and accountable to the Board for the provision of the Administrative Services, provided that ESP Company will not be required to expend funds on such services in excess of the amounts set forth in such District Budget. Administrative Services will be provided consistent with this Agreement, law, and District and State regulations.
- (D) Budgeting and Financial Reporting.
- i. Preparation of an annual budget (the "School(s) Budget") for the District that provides reasonable time for review and revision by the Board. The School(s) Budget will be subject to the approval of the Board. The Board shall timely approve an annual budget. The projected annual budget will include, but not be limited to, financial details relating to the Educational Services and Administrative Services to be provided pursuant to this Agreement, identification of any funds to be set aside as a reserve and proposed expenditures from reserve funds, and identification of those funds that will be set aside for the District to use at its sole discretion for purposes that include, without limitation, the following:
 - A. Board development and training and other costs necessary for the Board's operation;
 - B. Legal services necessary to development, review, and enforcement of

any contract to which the Board is a party and to operation of the District;

- C. Contracting for an independent financial audit of the District's operations;
 - D. Independent accounting services, consultants and other experts to monitor fulfillment of the terms and conditions of the Agreement;
 - E. Membership of the District in appropriate professional associations; and
 - F. Reasonable expenditures to support the activities of Board committees or related, Board-approved, organizations.
- ii. Detailed statements of all revenues received, from whatever source, with respect to the District, and detailed statements of all direct expenditures for services rendered to or on behalf of the District, whether incurred on-site or off-site, upon request. Such requests may include salary and benefits paid to staff.
 - iii. Other information on a periodic basis reasonably necessary to enable the Board to monitor ESP Company's performance under this and related agreements to the extent reasonably required by the District or the State, including the effectiveness and efficiency of operations at the School(s).
 - iv. Revised budgets at the request of the Board and subject to the Board's approval, no more often than four times annually.

1.03. Maintenance of Financial and Student Records.

- (A) ESP Company will maintain accurate financial records pertaining to its operation of the School(s), which are the property of the District, and retain all such records for a period of five (5) years (or longer if required by the State or other applicable laws and regulations) from the close of the fiscal year to which such books, accounts and records relate. All of the School financial records retained by ESP Company pertaining to the School will be available to the District and to all appropriate regulatory authorities for inspection and copying upon reasonable request. Financial records will be maintained in accordance with GAAP and will follow the format prescribed by the District and State.
- (B) ESP Company will maintain accurate student educational records pertaining to the students enrolled at the School(s), which are the property of the District, as is required and in the manner provided by the State and applicable laws and regulations, together with all additional School student records prepared by or in the possession of ESP Company, and retain such records permanently on behalf of the District or until this Agreement is terminated, at which time such records will be retained by and become the sole responsibility of the District. ESP Company, School

and the District will maintain the proper confidentiality of personnel, students and other records as required by law;

- i. Admissions. Implementation of the District's admission policy;
- ii. Student Hearings. Administration and enforcement of student disciplinary and special education meetings and hearings in conformity with the requirements of the state statute and other applicable laws and regulations (including, but not limited to, requirements involving due process and confidentiality) to the extent consistent with the District's duties and obligations under state statute and other applicable laws and regulations;
- iii. Rules and Procedures. ESP Company will develop and enforce the rules, regulations and procedures of the District consistent with this Agreement, state statute and other applicable laws and regulations and subject when appropriate to the approval of the Board; And
- iv. Additional Administrative Services. Any other services reasonably necessary or expedient for the effective administration of the District.

1.04. Place of Performance; Provision of Offices. ESP Company will provide instructional, extra-curricular and co-curricular services and maintain the records and books of the students and the School(s) at the Facility (ies). ESP Company may provide other services elsewhere, unless prohibited by state statute or other applicable laws and regulations.

1.05. Authority. By this Agreement, the District provides ESP Company all authority and power necessary and proper for ESP Company to undertake its responsibilities, duties and obligations provided for in this Agreement, except for instances in which such authority may not be delegated according to state statute and other applicable laws and regulations, and except to the extent that specific powers are reserved to the Board under any term of this Management Agreement (“Board’s Reserved Powers”).

1.06. Right to Review. Board Directors or their independent advisors or designees may visit the School(s) at reasonable times and with reasonable frequency and where such visits do not impair the effectiveness of staff functioning, to observe the educational program and review School(s) records, subject to applicable state and federal law including the Family Educational Rights and Privacy Act.

1.07. Discontinuation of Discrete Services. Upon a finding that it is no longer efficient to utilize such services, the Board may, effective at the end of any fiscal year within the Term, discontinue contracting with ESP Company for any or all services listed in sections 1.02(A)(ii) through (vi), above, while continuing to contract with ESP Company for other services as provided in this Article I. Upon such finding, the compensation otherwise provide for in Section 4.01(A) shall be adjusted as agreed through good faith negotiation of the Parties to reflect a reduction proportionate to the reasonable value of the services discontinued. In the event the Parties are unable to agree upon adjustment of compensation, they shall utilize dispute resolution as provided in Article XII below. Should the Parties be unable to reach agreement pursuant to dispute resolution, the Board shall, without regard to whether

bidding is otherwise required, issue an RFP for replacement services and the Compensation shall thereafter be reduced by an amount equal to the cost to the District of accepting the successful bid.

ARTICLE II TERM & NON-APPROPRIATION

- 2.01. **Term.** This Agreement will become effective as on July 1, 20[REDACTED], and end on June 30, 20[REDACTED] (the "End Date").
- 2.02. **Renewal of the Agreement.** ESP Company and the District may renew or renegotiate this Agreement for additional periods. If either ESP Company or the District does not intend to renegotiate or renew this agreement, subject to 2.01 above, they will inform the other party in writing by June 30, 20[REDACTED].
- 2.03. **Non-Appropriation.** As the District is bound by Art. X, Section 20(4)(b) of the Colorado Constitution, commonly known as "TABOR," payments under this Agreement are currently budgeted expenditures and no term of this Agreement may be construed to constitute or give rise to a multiple fiscal year (July 1 — June 30) direct or indirect debt or other financial obligation of any description. The District's obligations to pay any amount under this Agreement shall not constitute a mandatory charge against nor require liability or obligation of the District in any ensuing fiscal year beyond the then-current fiscal year. The District shall not incur any obligation nor liability in any form under this Agreement beyond the revenues budgeted and appropriated to pay the amount due for a specified fiscal year. This Agreement shall not directly nor indirectly obligate the District to make any payments beyond the funds legally available to the District and designated for payment under this Agreement for the then-current fiscal year, nor impose any obligation (whether of good faith or fair dealing or otherwise) to make an appropriation for a succeeding fiscal year. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of the District's monies. The District may, accordingly, terminate this Agreement effective at the end of any fiscal year by actual notice, given during that fiscal year, to ESP Company of the District's decision not to appropriate monies to fund the Agreement for a succeeding fiscal year, without any penalty, charge, or claim arising from such termination. Notwithstanding its power of non-appropriation, it is the District's present intention to maintain the Agreement for the full Term. Accordingly, the cost of maintaining this Agreement shall be included in all regularly prepared budgets during the Term, unless, by formal action of the Board, with advance written notice to the ESP Company and an opportunity for the ESP Company to address the Board, the Board exercises the power of non-appropriation stated in paragraph 1. The power of non-appropriation is non-exclusive and shall not modify or exclude Termination of some or all services.

ARTICLE III RELATIONSHIP OF THE PARTIES

- 3.01. **Status of the Parties.** ESP Company is not a division or any part of the District. The District is a body corporate and governmental entity and is not a division or a part of ESP Company.

The relationship between the parties was developed and entered into through arms-length negotiations, as evidenced in particular by Sections 1.02(A)(ii), 1.07 and 8.02, and is based solely on the terms of this Agreement and those of any other agreements that may exist from time to time between the parties. Nothing herein will be construed to create a partnership or joint venture by or between the District and ESP Company or to make one the agent of the other. Neither the District nor ESP Company will hold itself out as a partner or agent of the other or otherwise state or imply by advertising or otherwise any relationship between it and the other in any manner contrary to the terms of this Agreement. Neither the District nor ESP Company has and neither will represent that it has the power to bind or legally obligate the other. No employee of ESP Company will be considered an employee of the District by either party for any purpose whatsoever, notwithstanding that one or more employees of ESP Company may be engaged in providing the Educational Services, Administrative Services or Supplementary Programs to the District on a full-time basis. All personnel performing educational or administrative services for the School(s), whether employees of ESP Company or the District, shall comply with all applicable licensure or other requirements of federal law, state statute and any regulations promulgated there under, and shall be entitled to all perquisites provided thereby.

- 3.02. No Related Parties or Common Control.** ESP Company will not have any role or relationship with the District that, in effect, prevents the District's ability to exercise its rights, including cancellation rights, under this Agreement. Furthermore, the District and ESP Company will not be members of the same control group, as defined in Section 1.150-(f) of the regulations under the Internal Revenue Code of 1986 as amended (or its successor), or related persons, as defined in Section 144(a)(3) of the Internal Revenue Code of 1986 as amended (or its successor). At no time shall a person employed by ESP Company or who is an investor in ESP Company sit on the District's Board, and the ESP Company shall have no power to select, appoint, or direct selection or appointment of a Director to the Board.
- 3.03. Other Districts.** The Parties acknowledge that this arrangement is not exclusive and that ESP Company will have the right to render similar services to other persons or entities including other public or private schools or institutions ("Other Districts"). ESP Company will maintain separate accounts for reimbursable expenses incurred on behalf of the School(s) and Other Schools and only charge the District for expenses incurred or consideration earned on behalf of the School(s). All grants or donations received by the District for the School(s), or by ESP Company for the specific benefit of the School(s), will be maintained in separate accounts and used solely for the School(s). If ESP Company incurs authorized reimbursable expenses on behalf of the School(s) and Other Schools which are incapable of precise allocation between the School and Other Schools, then ESP Company will allocate such expenses among all such Other Schools and the School on a pro rata basis based upon the number of students enrolled at the School and the Other Schools, or upon such other equitable basis as the Parties may agree.
- 3.04. The District.** Neither ESP Company nor the District, individually or jointly, may extend the faith and credit of the District to any contract to which they are a party.

ARTICLE IV CONSIDERATION

4.01. **Compensation for Services.**

- (A) For the term of this Agreement, including each and every Renewal Term, the District will pay ESP Company an annual fee of (i) █% of the state and local school funds (the “State Aid”) that the District receives, directly or indirectly, for the particular students enrolled in the School(s) (the “Management Fee”) [NOTE: This figure should take into account any amounts paid directly under 4.02]. Consideration paid pursuant to this section of the Agreement does not preclude the payment of additional consideration if additional consideration is permitted or specified elsewhere in this Agreement or by other agreements between the parties. Consideration paid under this section may be adjusted as otherwise provided in this Agreement.
- (B) **Reasonable Compensation.** The Management Fee under this Agreement is reasonable compensation for services rendered. ESP Company's compensation for services under this Agreement will not be based, in whole or in part, on a share of net profits from the operation of the District.

4.02. **Payment of Costs.** In addition to the Management Fee described in Section 4.01 above, the District will reimburse ESP Company for all expenses paid by ESP Company in implementing the School budget. Such costs include █. [NOTE: This list should be coordinated with the management fee under 4.01]. Expenses to be paid by the District pursuant to this Section 4.02 shall be itemized in sufficient detail to permit the Board to identify the cost of each separate service, good or class of goods being provided and to permit auditing of such expenditures.

4.03. **Time and Priority of Payments.**

- (A) ESP Company will receive its Management Fee in the same number of installments and in the same proportion that the District receives its revenues. Each installment of the Management Fee will be due and payable within five (5) days of receipt by the District of the revenues related thereto.
- (B) ESP Company will notify the District of payments, if any, due and owing to ESP Company pursuant to Section 4.02 above as soon as possible after the end of each month and the District will make such payments to ESP Company within ten (10) days thereafter.

4.04. **Other Revenue Sources.**

- (A) The District and ESP Company may, together or independently, solicit and receive grants and donations from public and private sources, in the name of ESP Company, the District, or the School(s); provided, however, that any solicitation of such grants by ESP Company in the name of the District or School(s) or which identifies the

School(s) shall be subject to the prior approval of the District.

- (B) All funds received by ESP Company or the District for the benefit of the School(s) from such other revenue sources pursuant to this Section 4.04 will be deemed District funds, except that ESP Company may receive compensation of any such funds as agreed to by both Parties and to the extent allowable by the donor or grantor of such other revenue source.
- (C) Nothing in this Section 4.04 will be construed to prohibit ESP Company from soliciting funds or grants solely for its own general corporate purposes and using such funds or grants solely for such purposes.

4.05. District Funds. All funds received by the District from all sources are District funds, including funds carried over from prior years, interest earned on funds, and any funds remaining after expenditures. ESP Company may request expenditure of all or part of these funds in the budget presented to the Board for its approval.

ARTICLE V PERSONNEL AND TRAINING

5.01. Personnel Responsibility.

- (A) Subject to the Board's responsibility to adopt a school budget consistent with all applicable laws and regulations, ESP Company will have the sole responsibility and authority to select, evaluate, assign, discipline, supervise, manage and transfer ESP Company personnel as necessary to carry out the Educational Services, the Administrative Services, the Supplemental Programs (if any) and all other services provided under this Agreement. The ESP Company shall have authority to make any recommendations regarding School personnel that may be necessary or appropriate for efficient operation of the District, and the Board agrees to give due consideration to such recommendations.
- (B) ESP Company will be responsible for conducting criminal background checks and unprofessional conduct checks on all employees it assigns to the School(s) and of any employees it recommends for hiring by the School(s) to the extent required under applicable laws and regulations as if all such the employees were employed by a District. Upon request, ESP Company will provide the Board evidence documenting such background checks.
- (C) **Principal.**

[NOTE: Many variations on this paragraph may be appropriately negotiated. This option seeks to balance the legitimate interests of both Parties in a school's educational leader.]

The principal of the school (the "Principal") will be an employee of ESP Company, and ESP Company will determine the employment terms of the Principal. ESP

Company will have the authority, consistent with state statute and other applicable laws and regulations to select, supervise, and evaluate the Principal and to hold him or her accountable for the success of the School. ESP Company will evaluate the Principal annually, which evaluation shall include formal input from the Board and which evaluation shall be provided, in final form, to the Board. The Principal shall serve as the chief academic officer of the School and the principle liaison between ESP Company and the Board. Without any claim of interference, the Board may express its confidence, or lack thereof, in the Principal, and ESP Company agrees to give due consideration to such expressions. With advance notice to the ESP Company and the Principal, and an opportunity for the ESP Company and Principal to address the Board, the Board may request termination of the assignment of the Principal to the District and the ESP Company shall timely honor such requests. If a new Principal is hired, ESP Company shall identify a list of no fewer than three finalists, which list shall be posted as required by the Colorado Sunshine Act. Identification of finalists shall reflect the ESP Company's willingness to hire, subject to successful completion of background checks and negotiation of an employment contract, any of the finalists. The Board shall interview all finalists and indicate its preferences for assignment of one or more of the finalists as Principal, which preference shall be, if practicable, honored by the ESP Company. If no finalist is acceptable to the Board, or the ESP Company is unable to employ a finalist acceptable to the Board, the ESP Company shall conduct a further search. The ESP Company may, while any search or selection is pending, in its sole discretion appoint an acting Principal.

(D) **Teachers & Support Staff.**

[OPTION 1: Consistent with the Budget approved by the Board, ESP Company will provide the School(s) with such teachers and support staff as are required to provide the Educational Services, Administrative Services and Supplementary Programs. Such teachers and support staff shall be employees of the ESP Company.]

[OPTION 2: Consistent with the Budget approved by the Board, ESP Company will identify and recommend to the Board such teachers and support staff as are required to provide the Educational Services, Administrative Services and Supplementary Programs. The Board shall retain the power to hire and fire such teachers and support staff.]

Such teachers and support staff may work at the School(s) on a full or part time basis. Each teacher assigned to the School(s) will be highly qualified in his or her grade levels and subjects, hold a valid teaching certificate issued by the Colorado Department of Education to the extent required by state statute and other applicable laws and regulations, meet other qualifications set forth in this Agreement. Each employee working at the District shall have undergone a criminal background check and unprofessional conduct check to the extent required under state statute and other applicable laws and regulations. Support staff may include, among others, teachers' aides, clerical staff, administrative assistant to the Principal, bookkeepers and maintenance personnel.

(E) **Training.** ESP Company will coordinate training in its instructional methods,

curriculum, educational program and support technology to its instructional personnel on a regular and continuous basis. Such training will enable ESP Company's instructional staff to provide in-service training to each other. Non-instructional personnel will receive such training as ESP Company determines to be reasonable and necessary under the circumstances.

- (F) **Monitoring of Employment Policies, Practices & Satisfaction.** The Board may take such steps as it deems appropriate periodically to review the employment policies and practices of ESP Company and ESP Company shall cooperate in such activities. The Board shall have no authority to hire, fire, supervise, evaluate, or otherwise make decisions in a capacity as employer related to any ESP Company employees (which limitation shall not affect the Board's power in relation to assignment of the Principal), but may make appropriate recommendations and may exercise oversight of ESP Company regarding its personnel policies and practices at the School(s). ESP Company shall retain discretion to adopt or not adopt any such recommendation. The Board may require the ESP Company to survey employee satisfaction at the School(s) and the ESP Company shall periodically report information it gathers on employee satisfaction to the Board.
- (G) **Non-Compete Affecting the District Prohibited.** No employee of ESP Company retained exclusively at the School(s) shall be required by the ESP Company to enter in any form of covenant not to compete that would preclude their retention, without limitation or penalty of any kind on either such employee or the District, by the District following any termination of this Agreement or termination of particular services under this Agreement.

ARTICLE VI TERMINATION OF AGREEMENT

6.01. Termination.

- (A) **By ESP Company.** ESP Company may terminate this Agreement prior to the end of the Term specified in Article II in the event that the District fails to remedy a material breach within 30 days, or for any breach that it may not be practicable to remedy in such time begins within ten days of notice and diligently pursues such remedy to the satisfaction of ESP Company, after written notice from ESP Company. A material breach includes, but is not limited to (i) ESP Company's failure to receive any fee or reimbursement as required by the terms of this Agreement, (ii) adoption by the District of an Educational Program in substantial variance from ESP Company's prescribed Curriculum or the material recommendations of ESP Company, or (iii) an act or omission of gross negligence that causes ESP Company to be unable to perform its material obligations under this Agreement. Termination by ESP Company will not relieve the District of any obligations for payments outstanding to ESP Company as of the date of termination. If practicable, termination shall be timed to correspond to the end of an academic year or term, so as to minimize the disruption of education.

(B) **By District.** The District may terminate this Agreement prior to the end of the term specified in Article II in the event that ESP Company fails to remedy a material breach within 30 days, or for any breach that it may not be practicable to remedy in such time begins within ten days of notice and diligently pursues such remedy to the satisfaction of the District, after written notice from the Board. A material breach by ESP Company includes, but is not limited to: (i) failure to account for its expenditures, (ii) failure to substantially follow the material policies, procedures, rules, regulations or curriculum as otherwise provided herein, (iii) failure to abide by and meet the educational goals set forth in the Performance Goals, (iv) the employment of any person in violation of state statute or this Agreement, (v) an action taken in willful derogation of the Board's Reserved Powers; or (vi) any act or omission of gross negligence. Termination by the District will not relieve the District of any obligations for payments outstanding to ESP Company as of the date of the termination.

6.02. Change in Law. If any federal, State or local law or regulation, court or administrative decision or Attorney General's opinion has a materially adverse effect on the ability of either party to carry out its obligations under this Agreement, such party, upon written notice, may request renegotiation of this Agreement. Such renegotiation will be undertaken in good faith and will include the use of a third party arbitrator for alternative dispute resolution pursuant to Article XII below.

6.03 Real and Personal Property. Upon termination, all real and personal property leased or provided by ESP Company to the District will remain the real and personal property and leases of ESP Company, and all property purchased with funds provided to ESP Company by the District will be the property of the District.

6.04 Future Advances/Out-of-Pocket Expenses. Upon termination or expiration of this Agreement for any reason, all advances or out-of-pocket expenses relating to services under this Agreement paid by ESP Company with ESP Company's own funds, if consistent with and scheduled for expenditures in a proper Budget of the District, will be immediately repaid by the District unless otherwise agreed in writing by ESP Company.

ARTICLE VII PROPRIETARY INFORMATION AND OWNERSHIP

7.01 Ownership. Educational materials purchased by ESP Company with funds ESP Company receives pursuant to this Agreement will be the property of the District. The District acknowledges and agrees that ESP Company owns the intellectual property rights and interests in ESP Company's curriculum and materials. The District further acknowledges and agrees that it has no intellectual or property interest or claims in ESP Company's Curriculum and materials.

- 7.02 **License.** Upon any complete or partial termination of other services under this Agreement, District shall have an ongoing license to use materials provided by the ESP Company, and owned pursuant to 8.01, above, notwithstanding ESP Company's copyright, trademark, trade secret or other interests in such material. District shall also have the right and opportunity to pay for ongoing access to the ESP Company's curriculum and materials for a reasonable license fee to be agreed between the Parties, which shall in no event be more than the license fee charged by ESP Company to any Other School or District for comparable curriculum and materials, without regard to whether District continues to purchase any other services pursuant to this Agreement.

ARTICLE VIII INDEMNIFICATION

- 8.01. **Indemnification.** The District and ESP Company will indemnify and save and hold each other and all of the employees, officers, directors, subcontractors and agents of indemnitee harmless against any and all claims, demands, suits or other forms of liability that may arise out of, or by reason of, any noncompliance by the indemnitor with any agreements, covenants, warranties or undertakings of the indemnitor contained in or made pursuant to this Agreement, and any misrepresentations or breach of the representations and warranties of the indemnitor contained in or made pursuant to this Agreement. In addition, the indemnitor will reimburse indemnitee for any and all legal expenses and costs associated with the defense of any such claim, demand or suit. The indemnification requirements of this Section 9.01 may be met by the purchase of insurance pursuant to Article X below. This indemnification requirement shall not modify, waive or to any degree impair the District's immunities from suit under the Colorado Governmental Immunity Act.
- 8.02. **Limitations of Liabilities.** The District will assert all immunities and statutory limitations of liability in connection with any claims arising from its operations, and will not waive any immunities or limitations without the prior written consent of ESP Company.

ARTICLE IX INSURANCE

- 9.01. **Insurance Coverage.** ESP Company will maintain for itself and recommend to the Board for the School(s) such general liability insurance and umbrella insurance coverage in at least the amounts, with such insurers, and upon such terms as are required by the District. ESP Company will comply with any information or reporting requirements applicable to ESP Company with its insurer(s).
- 9.02. **Workers' Compensation Insurance.** Each Party will maintain workers' compensation insurance as required by law, covering its respective employees.
- 9.03. **Cooperation.** Each Party will, upon request, present evidence to the other that it maintains the requisite insurance in compliance with the provisions of this Article X. Each Party will comply with any information or reporting requirements required by the other Party's

insurer(s), to the extent reasonably practicable. The ESP Company shall report any and all claims or threats of litigation in any way related to operation of the School(s) to the Board and comply with any reporting requirements required by the District.

ARTICLE X WARRANTIES AND REPRESENTATIONS

10.01. Representations and Warranties of ESP Company. ESP Company hereby represents and warrants to the District:

- (A) ESP Company is a duly organized corporation authorized to conduct business in the State of Colorado.
- (B) ESP Company has the authority under state statute and other applicable laws and regulations to execute, deliver, perform this Agreement, and to incur the obligations provided for under this Agreement.
- (C) ESP Company's actions under this Agreement have been and will be duly and validly authorized, and it will adopt any and all further resolutions or expenditure approvals required for execution of this Agreement.
- (D) ESP Company will review with the Board all ESP Company operations that impact the District's operation and reasonably cooperate with the Board to ensure that all services are coordinated to best meet the goals and objectives in Exhibit 1: Performance Goals.

10.02. Representations and Warranties of the District. The District hereby represents and warrants to ESP Company:

- (A) The District (i) authorizes the ESP Company to operate and receive the State, Federal and Local education funds, as well as other revenues; (ii) approves the Education Program and other activities contemplated by this Agreement; and (iii) vests the ESP Company with all powers necessary and desirable for carrying out the Education Services and other activities contemplated in this Agreement.
- (B) The District has the authority under state statute and other applicable laws and regulations to contract with a private entity to perform the Educational Services, Administrative Services, Supplemental Programs, and all other services under this Agreement and execute, deliver and perform this Agreement, and to incur the obligations provided for under this Agreement.
- (C) The District's actions and those of the Board have been duly and validly authorized, and the District and Board will adopt any and all further resolutions or expenditure approvals required for execution of this Agreement; provided, however, that with regard to expenditures, such resolutions and approvals shall be required only if sufficient information is available to the District and the District has sufficient funds in the Budget to pay for such expenditures.

- (D) The District has provided and will provide ESP Company all authority and power necessary and proper for ESP Company to undertake its responsibilities, duties, and obligations provided for in this Agreement.
- (E) The District is not in breach or default under any loan or financial obligations, including, but not limited to, salary obligations and related benefits, payroll taxes, and leases for real and personal property, to the extent that any such obligation is related to the District's required performance under this Agreement.
- (F) The District has no intellectual or property rights or claims in the curriculum, programs, or processes of ESP Company, except as expressly provided in this Agreement.

10.03. Mutual Warranties. Each party to the Agreement warrants to the other that there are no pending actions, claims, suits or proceedings, to its knowledge, threatened or reasonably anticipated against or affecting it, which if adversely determined, would have a material adverse effect on its ability to perform its obligations under this Agreement.

ARTICLE XI ALTERNATIVE DISPUTE RESOLUTION PROCEDURE

11.01 Alternative Dispute Resolution Procedure.

[NOTE: Dispute resolution provisions may provide for mediation or fact-finding, which are non-binding. The following is a binding arbitration clause.]

The Parties will endeavor to resolve in good faith any controversy, disagreement or claim arising between them, whether as to the interpretation, performance or operation of this Agreement, any rights or obligations under this Agreement, or any necessary further agreement. If they are unable to do so, any such controversy, disagreement or claim will be submitted, for final resolution without appeal, to arbitration, by either party giving written notice to the other of the existence of a dispute which it desires to have arbitrated. The place of arbitration will be _____, Colorado. The arbitration will be conducted by an arbitrator selected by the Parties or, in the absence of such agreed selection, the party requesting dispute resolution shall request a list of three (3) arbitrators from the [OPTION 1: Judicial Arbitrator Group (“JAG”)] [OPTION 2: American Arbitration Association (“AAA”)]. A Party requesting the list shall strike one name from the list and forward the remaining names to the other Party. Each Party shall make a strike within three (3) business days of receiving the list. Should either Party fail to timely strike a name, the other Party may select the Arbitrator from the list. Should both Parties exercise their right to strike, the name remaining shall be the Arbitrator. A decision and award (if any) of the Arbitrator construing, interpreting or enforcing this Agreement, will be final and binding, *i.e.*, not subject to appeal, and the parties hereby mutually agree that any such determination will have the same effect as an arbitration pursuant to Colorado law, or a final judgment of a court, following exhaustion of all rights of appeal. The award may be made in brief or summary form. A judgment upon the award may be entered in the Colorado district court for the judicial district in which the Facility is located or the United States District Court for the District of

Colorado. The Arbitrator shall not add to or subtract from this Agreement, but shall have authority to rule on issues of arbitrability. The expenses of arbitration will be divided equally between the Parties, unless the Arbitrator for good cause orders some other allocation. Pending the decision by the Arbitrator, all obligations of the Parties will continue to be in effect. The Arbitrator will make his or her decision in accordance with the laws of the State of Colorado and the United States. Should the Parties submit to the Arbitrator an issue that, if decided, would result in formation of a new contractual obligation, the Arbitrator may make a recommendation to the Parties on such issue, but such recommendation shall not be a final and binding award.

ARTICLE XII MISCELLANEOUS

- 12.01. **Sole Agreement.** This Agreement supersedes and replaces any and all prior agreements and understandings between the District and ESP Company.

- 12.02. **Force Majeure.** Notwithstanding any other sections of this Agreement, neither party will be liable for any delay in performance or inability to perform due to acts of God or due to war, riot, terrorism, civil war, embargo, fire, flood, explosion, sabotage, accident, labor strike or other acts beyond its reasonable control.

- 12.03. **Governing Law.** The laws of the State of Colorado will govern this Agreement, its construction, and the determination of any rights, duties and remedies of the parties arising out of or relating to this Agreement.

- 12.04. **Agreement in Entirety.** This Agreement constitutes the entire agreement of the parties.

- 12.05. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, but both of which will constitute one and the same instrument.

- 12.06. **Official Notices.** All notices and other communications required by the terms of this Agreement will be in writing and sent to the parties hereto at the addresses set forth below (and such addresses may be changed upon proper notice to such addressees). Notice may be given by: (i) certified or registered mails, postage prepaid, return receipt requested, (ii) facsimile (with confirmation of transmission by sender's facsimile machine) or (iii) personal delivery. Notice will be deemed to have been given two days after mailing or on the date of personal delivery or on the date of transmission of a facsimile if on a business day during normal business hours (or, if not, the first business day). The addresses of the parties are:

To: _____ With a copy to: _____

Attn:
Fax:

To: _____ With a copy to: _____

Attn:

Fax:

- 12.07. Assignment.** This Agreement will not be assigned by ESP Company without the prior consent in writing of the District (which consent will not be unreasonably withheld) or by the District without the prior consent in writing of ESP Company (which consent will not be unreasonably withheld), provided that ESP Company may delegate the performance of but not responsibility for any duties and obligations of ESP Company hereunder to any independent contractors, experts or professional advisors.
- 12.08. Amendment.** This Agreement will not be altered, amended, modified or supplemented except in a written document approved by the Board and signed by both the President of the District and an authorized officer of ESP Company.
- 12.09. Waiver.** No practice not reduced to a written agreement shall be construed as a waiver of this Agreement, and no waiver of any provision of this Agreement will be deemed to be or will constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver unless otherwise expressly stated.
- 12.10. Severability.** The invalidity of any of the covenants, phrases or clauses in this Agreement will not affect the remaining portions of this Agreement, and this Agreement will be construed as if such invalid covenant, phrase or clause had not been contained in this Agreement. To the extent that any of the services to be provided by ESP Company are found to be over broad or an invalid delegation of authority by the District, such Services will be construed to be limited to the extent necessary to make the Services valid and binding.
- 12.11. Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the parties and their respective successors and assigns.
- 12.12. No Third Party Rights.** This Agreement is made for the sole benefit of the District and ESP Company. Except as otherwise expressly provided, nothing in this Agreement will create or be deemed to create a relationship between the Parties to this Agreement, or either or them, and any third person, including a relationship in the nature of a third party beneficiary or fiduciary.
- 12.13. Lawful Employment.** Contractor certifies, warrants and agrees that it does not knowingly employ or contract with illegal aliens who shall perform any part of the Work and Contractor shall verify the employment eligibility of any employees it retains, as provided by law.
- 12.14. Survival of Termination.** All representations, warranties and indemnities made in this Agreement will survive termination of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date and year first above written.

XYZ Educational Service Provider

A _____ corporation

By: _____

Its: _____

ABC SCHOOL DISTRICT

A Colorado public school district

By: _____

Its: _____

Attest: _____

EXHIBIT 1

Performance Goals

APPENDIX G: SAMPLE CONTRACT LANGUAGE COMPREHENSIVE MANAGEMENT AGREEMENT FOR A CHARTER SCHOOL

THIS IS INTENDED TO BE A SAMPLE ONLY. DISTRICTS SHOULD CONSULT WITH ITS OWN LEGAL COUNSEL REGARDING ANY CONTRACT

This Management Agreement (the "Agreement") is made and entered into as of July 1, 20[REDACTED], by and between **XYZ Educational Service Provider** ("ESP Company"), and the **ABC Charter School**, (the "School"), a Colorado public charter school established under the Colorado Charter School Act, §§ 22-30.5-101 *et seq.* of the Colorado Revised Statutes (the "Code"), and nonprofit corporation established under the Colorado Revised Nonprofit Corporations Act, §§ 7-121-101, *et seq.* of the Code.

RECITALS

- A. The School has negotiated a charter contract (the "Contract") with the DEF School District (the "District") to organize and operate a charter and, pursuant to that contract delegated authority for conducting the educational program to the School.
- B. C.R.S. § 22-32-122 permits contracting for educational services provided that the contractor, such as ESP Company, meets all standards and requirements that would otherwise be imposed on the District or the School.
- C. The School hereby finds that ESP Company is a professional operator and manager of educational programs and schools for the following purposes:
 - v. promoting and encouraging effective school design and systems of instruction;
 - vi. implementing innovative and effective instructional and educational systems, management and programs;
 - vii. providing back office and other ancillary services as specified herein; and
 - viii. enabling the School and other schools to achieve their statutory purposes and educational goals.
- D. The School's Board of Directors (the "Board") retains ultimate responsibility for compliance with the Contract and, accordingly, authority to oversee ESP Company, direct ESP Company as otherwise stated herein, and generally hold ESP Company appropriately accountable for the proper delivery of services and implementation of the educational program of the School.
- E. The School has approved the ESP Company curriculum, program, and operational philosophy for the School, which is consistent with the terms and conditions in the Contract; and

F. The School and the ESP Company (the “Parties”) have agreed to the terms stated below.

THEREFORE, for good and sufficient consideration received, the parties mutually agree as follows:

ARTICLE I
EDUCATIONAL SERVICES AND ADMINISTRATIVE SERVICES

1.01. Educational Services.

- (A) For the Term (as defined in Article II below), ESP Company will provide to the School and their students the following educational services (the “Educational Services”):
- vi. Curriculum. Curriculum and curriculum development;
 - vii. Instruction. Instructional services and personnel management;
 - viii. Instructional Tools. Instructional tools, equipment and supplies, including educational materials and teaching tools;
 - ix. Assessment. Assessment services including test identification, scoring, and interpretation and reporting of results;
 - x. Additional Educational Services. Any other services necessary or expedient for the provision of teaching and learning at the School as agreed to from time to time between ESP Company and the School.
- (B) The Educational Services will be provided as developed by ESP Company and adopted by the Board in accordance with the educational goals, curriculum, methods of pupil instruction and assessment, policies, school calendar, school schedule and pupils to be enrolled at the School as described in the Contract.
- (C) Subject to this Agreement, the Contract, and the Code, ESP Company may, with the advice and consent of the Board, modify the Educational Services or related programs and activities. ESP Company will obtain the advice and approval of the Board prior to making material modifications and will undertake no modifications of any description that are inconsistent with the Contract (attached as Exhibit 1 hereto). Decisions of the Board approving or disapproving material modifications to the Educational Services shall be final.
- (D) ESP Company will be responsible and accountable to the Board for the provision of the Educational Services and for making progress toward goals and objectives in the Contract, provided ESP Company will not be required to expend funds on such services in excess of the amounts set forth in the approved School Budget. Educational Services will be provided consistent with the Contract, law, and District and State regulations.

- (E) Educational Services will include providing students with opportunity, without limitation, to participate in the following extra-curricular or inter-scholastic activities: [REDACTED] (the “Supplementary Programs”).
- (F) At least annually, ESP Company will develop a plan to improve the educational services consistently with the Code’s provisions for school performance, improvement, priority improvement or turnaround plans. The plan will be submitted to the Board for review, modifications, and approval the plan.
- (G) ESP Company will prepare all educational plans required by the Contract, District, Code, or State, including but not limited to performance, improvement, priority improvement, or turnaround plans and plans required by the No Child Left Behind Act. The plans developed will be subject to review, modification, and approval of the Board.
- (H) ESP Company will prepare all educational reports required by the Contract, Code, District, and state. The Board may request additional written reports about the progress being made toward achieving goals and objectives in the Contract and the district’s accreditation requirements, but not more than quarterly.
- (I) The Board may request the ESP Company to provide the Board with monthly, informal updates about implementation of the educational program and progress toward achieving goals and objectives in the Contract.
- (J) Should the School be classified as requiring a priority improvement plan or a turnaround plan under the Code, the Board may, in its sole discretion, reopen this Agreement for renegotiation, terminate this Agreement effective at the end of the then-current fiscal year, without charge or penalty of any kind, exercise any other right of the School to modify this Agreement, or negotiate with ESP Company such changes in this Agreement as are reasonably calculated to cure such unacceptable status.

1.02 Administrative Services.

- (A) For the Term (as defined in Article II below), ESP Company will provide to the School the following administrative services (the "Administrative Services"):
 - i. Personnel Management. Management and professional development of all personnel providing Educational Services and Administrative Services in accordance with Article VIII below;
 - ii. Facility Operation and Maintenance. Operation and maintenance of the School's facility (the “Facility”) consistent with any and all leases or other documents pertaining to the Facility. Should the ESP Company provide the Facility for the School pursuant to other agreements, arrangements or documents (the “Lease”), such Lease shall be separate from this Agreement

and the terms and conditions of the Agreement shall not be in any respect conditioned or contingent upon terms of the Lease, nor shall the Lease be in any respect conditioned or contingent upon the terms of this Agreement;

- iii. Business Administration. Administration of all business aspects of the School, provided that the Board shall retain an independent accountant to oversee and review the financial management of the School;
 - iv. Transportation and Food Services. Management of transportation and food services for the students enrolled at the School, consistent with the Contract;
 - v. Legal and HR Services. Provision of legal services related to personnel, contracting, student and other issues affecting the School, provided that the Board shall retain independent legal counsel to advise it on all aspects of its relationship to the ESP Company, all internal Board matters, and the School's compliance with the Contract.
 - vi. Public Relations. Management of any and all advertising and public relations for the School with the community and the media, which will not include advertising or public relations that pertain solely to ESP Company;
 - vii. Audits. Under the Board's direction, and utilizing an independent auditor selected by the Board, arranging and cooperating in the annual audits or other financial statements as may be required by and in compliance with the Code and the charter contract.
 - viii. Reporting. Reports on the finances of the School upon the request of the regulatory authorities or the Board, but not less frequently than as is required by the Contract, the Code or other applicable laws and regulations (and no more often than monthly).
- (B) Subject to this Agreement, the Contract, the Code and other applicable laws and regulations, ESP Company may modify the methods, means and manner by which such Administrative Services are provided at any time.
- (C) ESP Company will be responsible and accountable to the Board for the provision of the Administrative Services, provided that ESP Company will not be required to expend funds on such services in excess of the amounts set forth in such School Budget. Administrative Services will be provided consistent with the Contract, law, and District and State regulations.
- (D) Budgeting and Financial Reporting.
- i. Preparation of an annual budget (the "School Budget") for the School that provides reasonable time for review and revision by the Board and is consistent with the budget timeline in the Contract. The School Budget will be subject to the approval of the Board. The Board shall timely approve an

annual budget consistent with the Contract. The projected annual budget will include, but not be limited to, financial details relating to the Educational Services and Administrative Services to be provided pursuant to this Agreement, identification of any funds to be set aside as a reserve and proposed expenditures from reserve funds, and identification of those funds that will be set aside for the School to use at its sole discretion for purposes that include, without limitation, the following:

- A. Board development and training and other costs necessary for the Board's operation;
 - B. Legal services necessary to development, review, and enforcement of any contract to which the Board is a party and to operation of the School;
 - C. Contracting for an independent financial audit of the School's operations;
 - D. Independent accounting services, consultants and other experts to monitor fulfillment of the terms and conditions of the Agreement and the Contract;
 - E. Membership of the School in appropriate professional associations; and
 - F. Reasonable expenditures to support the activities of Board committees or related, Board-approved, organizations.
- ii. Detailed statements of all revenues received, from whatever source, with respect to the School, and detailed statements of all direct expenditures for services rendered to or on behalf of the School, whether incurred on-site or off-site, upon request. Such requests may include salary and benefits paid to staff.
 - iii. Other information on a periodic basis reasonably necessary to enable the Board to monitor ESP Company's performance under this and related agreements to the extent reasonably required by the District or the Code, including the effectiveness and efficiency of operations at the School.
 - iv. Revised budgets at the request of the Board and subject to the Board's approval, no more often than four times annually.

1.03. Maintenance of Financial and Student Records.

- (A) ESP Company will maintain accurate financial records pertaining to its operation of the School, together with all School financial records prepared by ESP Company, which are the property of the School, and retain all such records for a period of five

(5) years (or longer if required by the Code or other applicable laws and regulations) from the close of the fiscal year to which such books, accounts and records relate. All of the School financial records retained by ESP Company pertaining to the School will be available to the School and to all appropriate regulatory authorities for inspection and copying upon reasonable request. Financial records will be maintained in accordance with GAAP and will follow the format prescribed by the District and State.

- (B) ESP Company will maintain accurate student educational records pertaining to the students enrolled at the School, which are the property of the School, as is required and in the manner provided by the Contract, the Code and applicable laws and regulations, together with all additional School student records prepared by or in the possession of ESP Company, and retain such records permanently on behalf of the School or until this Agreement is terminated, at which time such records will be retained by and become the sole responsibility of the School. ESP Company and the School will maintain the proper confidentiality of personnel, students and other records as required by law and the Contract;
- i. Admissions. Implementation of the School's admission policy;
 - ii. Student Hearings. Administration and enforcement of student disciplinary and special education meetings and hearings in conformity with the requirements of the Code and other applicable laws and regulations (including, but not limited to, requirements involving due process and confidentiality) to the extent consistent with the School's duties and obligations under the Contract, the Code and other applicable laws and regulations;
 - iii. Rules and Procedures. ESP Company will develop and enforce the rules, regulations and procedures of the School consistent with this Agreement, the Contract, the Code and other applicable laws and regulations and subject when appropriate to the approval of the Board; And
 - iv. Additional Administrative Services. Any other services reasonably necessary or expedient for the effective administration of the School.

1.04. Place of Performance; Provision of Offices. ESP Company will provide instructional, extra-curricular and co-curricular services and maintain the records and books of the students and the School at the Facility. ESP Company may provide other services elsewhere, unless prohibited by the Contract, the Code and other applicable laws and regulations.

1.05. Authority. By this Agreement, the School provides ESP Company all authority and power necessary and proper for ESP Company to undertake its responsibilities, duties and obligations provided for in this Agreement, except for instances in which such authority may not be delegated by the Code, the Contract and other applicable laws and regulations, and except to the extent that specific powers are reserved to the Board under any term of this Management Agreement (“Board’s Reserved Powers”).

- 1.06. **Right to Review.** Board Directors or their independent advisors or designees may visit the School at reasonable times and with reasonable frequency and where such visits do not impair the effectiveness of staff functioning, to observe the educational program and review School records, subject to applicable state and federal law including the Family Educational Rights and Privacy Act.
- 1.07. **Discontinuation of Discrete Services.** Upon a finding that it is no longer efficient to utilize such services, the Board may, effective at the end of any fiscal year within the Term, discontinue contracting with ESP Company for any or all services listed in sections 1.02(A)(ii) through (vi), above, while continuing to contract with ESP Company for other services as provided in this Article I. Upon such finding, the compensation otherwise provide for in Section 4.01(A) shall be adjusted as agreed through good faith negotiation of the Parties to reflect a reduction proportionate to the reasonable value of the services discontinued. In the event the Parties are unable to agree upon adjustment of compensation, they shall utilize dispute resolution as provided in Article XII below. Should the Parties be unable to reach agreement pursuant to dispute resolution, the Board shall, without regard to whether bidding is otherwise required, issue an RFP for replacement services and the Compensation shall thereafter be reduced by an amount equal to the cost to the School of accepting the successful bid.

ARTICLE II TERM & NON-APPROPRIATION

- 2.01. **Term.** This Agreement will become effective as on July 1, 20[REDACTED], and end on June 30, 20[REDACTED] (the "End Date"). Notwithstanding anything to the contrary in this Agreement, the Agreement is at all times conditioned upon and will not be effective and binding in any respect until and unless the Contract issued pursuant to the Code is effective.
- 2.02. **Renewal of Contract.** The School will inform ESP Company in writing no later than June 30, 20[REDACTED], if it does not intend to seek renewal of the Charter Contract.
- 2.03. **Renewal of the Agreement.** ESP Company and the School may renew or renegotiate this Agreement for additional periods. If either ESP Company or the School does not intend to renegotiate or renew this agreement, subject to 2.01 above, they will inform the other party in writing by June 30, 20[REDACTED].
- 2.04. **Non-Appropriation.** As the School is bound by Art. X, Section 20(4)(b) of the Colorado Constitution, commonly known as "TABOR," payments under this Agreement are currently budgeted expenditures and no term of this Agreement may be construed to constitute or give rise to a multiple fiscal year (July 1 — June 30) direct or indirect debt or other financial obligation of any description. The School's obligations to pay any amount under this Agreement shall not constitute a mandatory charge against nor require liability or obligation of the School in any ensuing fiscal year beyond the then-current fiscal year. The School shall not incur any obligation nor liability in any form under this Agreement beyond the revenues budgeted and appropriated to pay the amount due for a specified fiscal year. This

Agreement shall not directly nor indirectly obligate the School to make any payments beyond the funds legally available to the School and designated for payment under this Agreement for the then-current fiscal year, nor impose any obligation (whether of good faith or fair dealing or otherwise) to make an appropriation for a succeeding fiscal year. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of the School's monies. The School may, accordingly, terminate this Agreement effective at the end of any fiscal year by actual notice, given during that fiscal year, to ESP Company of the School's decision not to appropriate monies to fund the Agreement for a succeeding fiscal year, without any penalty, charge, or claim arising from such termination. Notwithstanding its power of non-appropriation, it is the School's present intention to maintain the Agreement for the full Term. Accordingly, the cost of maintaining this Agreement shall be included in all regularly prepared budgets during the Term, unless, by formal action of the Board, with advance written notice to the ESP Company and an opportunity for the ESP Company to address the Board, the Board exercises the power of non-appropriation stated in paragraph 1. The power of non-appropriation is non-exclusive and shall not modify or exclude Termination of some or all services under circumstances otherwise stated in the Contract.

ARTICLE III RELATIONSHIP OF THE PARTIES

- 3.01. Status of the Parties.** ESP Company is not a division or any part of the School. The School is a body corporate and governmental entity authorized under the Code and is not a division or a part of ESP Company. The relationship between the parties was developed and entered into through arms-length negotiations, as evidenced in particular by Sections 1.02(A)(ii), 1.07 and 8.02, and is based solely on the terms of this Agreement and those of any other agreements that may exist from time to time between the parties. Nothing herein will be construed to create a partnership or joint venture by or between the School and ESP Company or to make one the agent of the other. Neither the School nor ESP Company will hold itself out as a partner or agent of the other or otherwise state or imply by advertising or otherwise any relationship between it and the other in any manner contrary to the terms of this Agreement. Neither the School nor ESP Company has and neither will represent that it has the power to bind or legally obligate the other. No employee of ESP Company will be considered an employee of the School by either party for any purpose whatsoever, notwithstanding that one or more employees of ESP Company may be engaged in providing the Educational Services, Administrative Services or Supplementary Programs to the School on a full-time basis. All personnel performing educational or administrative services for the School, whether employees of ESP Company or the School, shall comply with all applicable licensure or other requirements of the Code and any regulations promulgated there under, and shall be entitled to all perquisites provided thereby.
- 3.02. No Related Parties or Common Control.** ESP Company will not have any role or relationship with the School that, in effect, prevents the School's ability to exercise its rights, including cancellation rights, under this Agreement. Furthermore, the School and ESP Company will not be members of the same control group, as defined in Section 1.150-(f) of the regulations under the Internal Revenue Code of 1986 as amended (or its successor), or related persons,

as defined in Section 144(a)(3) of the Internal Revenue Code of 1986 as amended (or its successor). At no time shall a person employed by ESP Company or who is an investor in ESP Company sit on the School's Board, and the ESP Company shall have no power to select, appoint, or direct selection or appointment of a Director to the Board.

- 3.03. Other Schools.** The Parties acknowledge that this arrangement is not exclusive and that ESP Company will have the right to render similar services to other persons or entities including other public or private schools or institutions ("Other Schools"). ESP Company will maintain separate accounts for reimbursable expenses incurred on behalf of the School and Other Schools and only charge the School for expenses incurred or consideration earned on behalf of the School. All grants or donations received by the School, or by ESP Company for the specific benefit of the School, will be maintained in separate accounts and used solely for the School. If ESP Company incurs authorized reimbursable expenses on behalf of the School and Other Schools which are incapable of precise allocation between the School and Other Schools, then ESP Company will allocate such expenses among all such Other Schools and the School on a pro rata basis based upon the number of students enrolled at the School and the Other Schools, or upon such other equitable basis as the Parties may agree.
- 3.04. The District.** ESP Company and the School acknowledge that the District is not a party to this Agreement and that neither ESP Company nor the School, individually or jointly, may extend the faith and credit of the District to any contract to which they are a party.

ARTICLE IV CONSIDERATION

4.01. Compensation for Services.

- (A) For the term of this Agreement, including each and every Renewal Term, the School will pay COMPANY an annual fee of (i) █% of the state and local school funds (the "State Aid") that the School receives, directly or indirectly, pursuant to the Code, for the particular students enrolled in the School (the "Management Fee") [NOTE: This figure should take into account any amounts paid directly under 4.02]. Consideration paid pursuant to this section of the Agreement does not preclude the payment of additional consideration if additional consideration is permitted or specified elsewhere in this Agreement or by other agreements between the parties. Consideration paid under this section may be adjusted as otherwise provided in this Agreement.
- (B) Reasonable Compensation. The Management Fee under this Agreement is reasonable compensation for services rendered. ESP Company's compensation for services under this Agreement will not be based, in whole or in part, on a share of net profits from the operation of the School.

- 4.02. Payment of Costs.** In addition to the Management Fee described in Section 4.01 above, the School will reimburse ESP Company for all expenses paid by ESP Company in implementing the School budget. Such costs include █. [NOTE: This list should be coordinated

with the management fee under 4.01]. Expenses to be paid by the School pursuant to this Section 4.02 shall be itemized in sufficient detail to permit the Board to identify the cost of each separate service, good or class of goods being provided and to permit auditing of such expenditures.

4.03. Time and Priority of Payments.

- (A) ESP Company will receive its Management Fee in the same number of installments and in the same proportion that the School receives its revenues. Each installment of the Management Fee will be due and payable within five (5) days of receipt by the School of the revenues related thereto.
- (B) ESP Company will notify the School of payments, if any, due and owing to ESP Company pursuant to Section 4.02 above as soon as possible after the end of each month and the School will make such payments to ESP Company within ten (10) days thereafter.

4.04. Other Revenue Sources.

- (A) The School and ESP Company may, together or independently, solicit and receive grants and donations from public and private sources consistent with the Contract, in the name of either ESP Company or the School; provided, however, that any solicitation of such grants by ESP Company in the name of the School or which identifies the School shall be subject to the prior approval of the School.
- (B) All funds received by ESP Company or the School for the benefit of the School from such other revenue sources pursuant to this Section 4.04 will be deemed School funds, except that ESP Company may receive compensation of any such funds as agreed to by both Parties and to the extent allowable by the donor or grantor of such other revenue source.
- (C) Nothing in this Section 4.04 will be construed to prohibit ESP Company from soliciting funds or grants solely for its own general corporate purposes and using such funds or grants solely for such purposes.

4.05 School Funds. All funds received by the School from all sources are School funds, including funds carried over from prior years, interest earned on funds, and any funds remaining after expenditures. ESP Company may request expenditure of all or part of these funds in the budget presented to the Board for its approval.

**ARTICLE V
PERSONNEL AND TRAINING**

5.01. Personnel Responsibility.

- (A) Subject to the Board's responsibility to adopt a budget consistent with the charter contract, and all applicable laws and regulations, ESP Company will have the sole

responsibility and authority to select, evaluate, assign, discipline, supervise, manage and transfer ESP Company personnel as necessary to carry out the Educational Services, the Administrative Services, the Supplemental Programs (if any) and all other services provided under this Agreement. The ESP Company shall have authority to make any recommendations regarding School personnel that may be necessary or appropriate for efficient operation of the School, and the Board agrees to give due consideration to such recommendations.

- (B) ESP Company will be responsible for conducting criminal background checks and unprofessional conduct checks on all employees it assigns to the School and of any employees it recommends for hiring by the School to the extent required under the Code and other applicable laws and regulations as if all such the employees were employed by an School. Upon request, ESP Company will provide the Board evidence documenting such background checks.

- (C) **Principal.** [NOTE: Many variations on this paragraph may be appropriately negotiated. This option seeks to balance the legitimate interests of both Parties in a school's educational leader.] The principal of the school (the "Principal") will be an employee of ESP Company, and ESP Company will determine the employment terms of the Principal. ESP Company will have the authority, consistent with the Code and other applicable laws and regulations to select, supervise, and evaluate the Principal and to hold him or her accountable for the success of the School. ESP Company will evaluate the Principal annually, which evaluation shall include formal input from the Board and which evaluation shall be provided, in final form, to the Board. The Principal shall serve as the chief academic officer of the School and the principle liaison between ESP Company and the Board. Without any claim of interference, the Board may express its confidence, or lack thereof, in the Principal, and ESP Company agrees to give due consideration to such expressions. With advance notice to the ESP Company and the Principal, and an opportunity for the ESP Company and Principal to address the Board, the Board may request termination of the assignment of the Principal to the School and the ESP Company shall timely honor such requests. If a new Principal is hired, ESP Company shall identify a list of no fewer than three finalists, which list shall be posted as required by the Colorado Sunshine Act. Identification of finalists shall reflect the ESP Company's willingness to hire, subject to successful completion of background checks and negotiation of an employment contract, any of the finalists. The Board shall interview all finalists and indicate its preferences for assignment of one or more of the finalists as Principal, which preference shall be, if practicable, honored by the ESP Company. If no finalist is acceptable to the Board, or the ESP Company is unable to employ a finalist acceptable to the Board, the ESP Company shall conduct a further search. The ESP Company may, while any search or selection is pending, in its sole discretion appoint an acting Principal.

- (D) **Teachers & Support Staff.**

[OPTION 1: Consistent with the Budget approved by the Board, ESP Company will provide the School with such teachers and support staff as are required to provide

the Educational Services, Administrative Services and Supplementary Programs. Such teachers and support staff shall be employees of the ESP Company.]

[**OPTION 2:** Consistent with the Budget approved by the Board, ESP Company will identify and recommend to the Board such teachers and support staff as are required to provide the Educational Services, Administrative Services and Supplementary Programs. The Board shall retain the power to hire and fire such teachers and support staff.]

Such teachers and support staff may work at the School on a full or part time basis. Each teacher assigned to the School will be highly qualified in his or her grade levels and subjects, hold a valid teaching certificate issued by the Colorado Department of Education under the Code to the extent required under the Code and other applicable laws and regulations, meet other qualifications set forth in the Contract. Each employee working at the School shall have undergone a criminal background check and unprofessional conduct check to the extent required under the Code and other applicable laws and regulations. Support staff may include, among others, teachers' aides, clerical staff, administrative assistant to the Principal, bookkeepers and maintenance personnel.

- (E) **Training.** ESP Company will coordinate training in its instructional methods, curriculum, educational program and support technology to its instructional personnel on a regular and continuous basis. Such training will enable ESP Company's instructional staff to provide in-service training to each other. Non-instructional personnel will receive such training as ESP Company determines to be reasonable and necessary under the circumstances.
- (F) **Monitoring of Employment Policies, Practices & Satisfaction.** The Board may take such steps as it deems appropriate periodically to review the employment policies and practices of ESP Company and ESP Company shall cooperate in such activities. The Board shall have no authority to hire, fire, supervise, evaluate, or otherwise make decisions in a capacity as employer related to any ESP Company employees (which limitation shall not affect the Board's power in relation to assignment of the Principal), but may make appropriate recommendations and may exercise oversight of to ESP Company regarding its personnel policies and practices at the School. ESP Company shall retain discretion to adopt or not adopt any such recommendation. The Board may require the ESP Company to survey employee satisfaction at the School and the ESP Company shall periodically report information it gathers on employee satisfaction to the Board.
- (G) **Non-Compete Affecting the School Prohibited.** No employee of ESP Company retained exclusively at the School shall be required by the ESP Company to enter in any form of covenant not to compete that would preclude their retention, without limitation or penalty of any kind on either such employee or the School, by the School following any termination of this Agreement or termination of particular services under this Agreement.

ARTICLE VI
TERMINATION OF AGREEMENT

6.01. Termination.

- (A) **By ESP Company.** ESP Company may terminate this Agreement prior to the end of the Term specified in Article II in the event that the School fails to remedy a material breach within 30 days, or for any breach that it may not be practicable to remedy in such time begins within ten days of notice and diligently pursues such remedy to the satisfaction of ESP Company, after written notice from ESP Company. A material breach includes, but is not limited to (i) ESP Company's failure to receive any fee or reimbursement as required by the terms of this Agreement, (ii) adoption by the School of an Educational Program in substantial variance from ESP Company's prescribed Curriculum or the material recommendations of ESP Company, or (iii) an act or omission of gross negligence that causes ESP Company to be unable to perform its material obligations under this Agreement. Termination by ESP Company will not relieve the School of any obligations for payments outstanding to ESP Company as of the date of termination. If practicable, termination shall be timed to correspond to the end of an academic year or term, so as to minimize the disruption of education.
- (B) **By School.** The School may terminate this Agreement prior to the end of the term specified in Article II in the event that ESP Company fails to remedy a material breach within 30 days, or for any breach that it may not be practicable to remedy in such time begins within ten days of notice and diligently pursues such remedy to the satisfaction of the School, after written notice from the Board. A material breach by ESP Company includes, but is not limited to: (i) failure to account for its expenditures, (ii) failure to substantially follow the material policies, procedures, rules, regulations or curriculum as otherwise provided herein, (iii) failure to abide by and meet the educational goals set forth in the Contract, (iv) the employment of any person in violation of the Code or this Agreement, (v) an action taken in willful derogation of the Board's Reserved Powers; or (vi) any act or omission of gross negligence that causes the School to breach the Contract in a material way. Termination by the School will not relieve the School of any obligations for payments outstanding to ESP Company as of the date of the termination.
- (C) **Termination of the Contract.** This Agreement will terminate upon the School's ceasing to be a party to a valid and binding charter contract, or extension of such contract. Termination pursuant to this paragraph will not relieve the School of any obligations for payments outstanding to ESP Company as of the date of termination.

- 6.02. Change in Law.** If any federal, State or local law or regulation, court or administrative decision or Attorney General's opinion has a materially adverse effect on the ability of either party to carry out its obligations under this Agreement, such party, upon written notice, may request renegotiation of this Agreement. Such renegotiation will be undertaken in good faith and will include the use of a third party arbitrator for alternative dispute resolution

pursuant to Article XII below.

- 6.03 Real and Personal Property.** Upon termination, all real and personal property leased or provided by ESP Company to the School will remain the real and personal property and leases of ESP Company, and all property purchased with funds provided to ESP Company by the School will be the property of the School.
- 6.04 Future Advances/Out-of-Pocket Expenses.** Upon termination or expiration of this Agreement for any reason, all advances or out-of-pocket expenses relating to services under this Agreement paid by ESP Company with ESP Company's own funds, if consistent with and scheduled for expenditures in a proper Budget of the School, will be immediately repaid by the School unless otherwise agreed in writing by ESP Company.
- 6.05 Changes in Charter Contract.** If any change in the Charter Contract or interpretation of the Charter Contract has a materially adverse effect on the ability of either party to carry out its obligations under this Agreement, such party, upon written notice, may request renegotiation of this Agreement. Such renegotiation will be undertaken in good faith and will include the use of a third party arbitrator for alternative dispute resolution pursuant to Article XII below.

ARTICLE VII PROPRIETARY INFORMATION AND OWNERSHIP

- 7.01 Ownership.** Educational materials purchased by ESP Company with funds ESP Company receives pursuant to this Agreement will be the property of the School. The School acknowledges and agrees that ESP Company owns the intellectual property rights and interests in ESP Company's curriculum and materials. The School further acknowledges and agrees that it has no intellectual or property interest or claims in ESP Company's Curriculum and materials.
- 7.02 License.** Upon any complete or partial termination of other services under this Agreement, School shall have an ongoing license to use materials provided by the ESP Company, and owned pursuant to 8.01, above, notwithstanding ESP Company's copyright, trademark, trade secret or other interests in such material. School shall also have the right and opportunity to pay for ongoing access to the ESP Company's curriculum and materials for a reasonable license fee to be agreed between the Parties, which shall in no event be more than the license fee charged by ESP Company to any Other School for comparable curriculum and materials, without regard to whether School continues to purchase any other services pursuant to this Agreement.

ARTICLE VIII INDEMNIFICATION

- 8.01. Indemnification.** The School and ESP Company will indemnify and save and hold each other and all of the employees, officers, directors, subcontractors and agents of indemnitee

harmless against any and all claims, demands, suits or other forms of liability that may arise out of, or by reason of, any noncompliance by the indemnitor with any agreements, covenants, warranties or undertakings of the indemnitor contained in or made pursuant to this Agreement, and any misrepresentations or breach of the representations and warranties of the indemnitor contained in or made pursuant to this Agreement. In addition, the indemnitor will reimburse indemnitee for any and all legal expenses and costs associated with the defense of any such claim, demand or suit. The indemnification requirements of this Section 9.01 may be met by the purchase of insurance pursuant to Article X below. This indemnification requirement shall not modify, waive or to any degree impair the School's immunities from suit under the Colorado Governmental Immunity Act.

- 8.02. Limitations of Liabilities.** The School will assert all immunities and statutory limitations of liability in connection with any claims arising from its operations, and will not waive any immunities or limitations without the prior written consent of ESP Company.

ARTICLE IX INSURANCE

- 9.01. Insurance Coverage.** ESP Company will maintain for itself and recommend to the Board for the School such general liability insurance and umbrella insurance coverage in at least the amounts, with such insurers, and upon such terms as are required by the Contract. ESP Company will comply with any information or reporting requirements applicable to ESP Company with its insurer(s).
- 9.02. Workers' Compensation Insurance.** Each Party will maintain workers' compensation insurance as required by law, covering its respective employees.
- 9.03 Cooperation.** Each Party will, upon request, present evidence to the other that it maintains the requisite insurance in compliance with the provisions of this Article X. Each Party will comply with any information or reporting requirements required by the other Party's insurer(s), to the extent reasonably practicable. The ESP Company shall report any and all claims or threats of litigation in any way related to operation of the School to the Board and comply with any reporting requirements of the Contract.

ARTICLE X WARRANTIES AND REPRESENTATIONS

- 10.01. Representations and Warranties of ESP Company.** ESP Company hereby represents and warrants to the School:
- (A) ESP Company is a duly organized corporation authorized to conduct business in the State of Colorado.
 - (B) ESP Company has the authority under the Code and other applicable laws and regulations to execute, deliver, perform this Agreement, and to incur the obligations

provided for under this Agreement.

- (C) ESP Company's actions under this Agreement have been and will be duly and validly authorized, and it will adopt any and all further resolutions or expenditure approvals required for execution of this Agreement.
- (D) ESP Company will review with the Board all ESP Company operations that impact the School's operation and reasonably cooperate with the Board to ensure that all services are coordinated to best meet the goals and objectives in the Contract.

10.02 Representations and Warranties of the School. The School hereby represents and warrants to ESP Company:

- (A) The Contract (i) authorizes the School to operate and receive the State, Federal and Local education funds, as well as other revenues; (ii) approves the Education Program and other activities contemplated by this Agreement; and (iii) vests the School with all powers necessary and desirable for carrying out the Education Services and other activities contemplated in this Agreement.
- (B) The School has the authority under the Code and other applicable laws and regulations to contract with a private entity to perform the Educational Services, Administrative Services, Supplemental Programs, and all other services under this Agreement and execute, deliver and perform this Agreement, and to incur the obligations provided for under this Agreement.
- (C) The School's actions and those of the Board have been duly and validly authorized, and the School and Board will adopt any and all further resolutions or expenditure approvals required for execution of this Agreement; provided, however, that with regard to expenditures, such resolutions and approvals shall be required only if sufficient information is available to the School and the School has sufficient funds in the Budget to pay for such expenditures.
- (D) The School has provided and will provide ESP Company all authority and power necessary and proper for ESP Company to undertake its responsibilities, duties, and obligations provided for in this Agreement.
- (E) The School will not breach the Contract.
- (F) The School is not in breach or default under any loan or financial obligations, including, but not limited to, salary obligations and related benefits, payroll taxes, and leases for real and personal property, to the extent that any such obligation is related to the School's required performance under this Agreement.
- (G) The School has no intellectual or property rights or claims in the curriculum, programs, or processes of ESP Company, except as expressly provided in this Agreement.

- 10.03. **Mutual Warranties.** Each party to the Agreement warrants to the other that there are no pending actions, claims, suits or proceedings, to its knowledge, threatened or reasonably anticipated against or affecting it, which if adversely determined, would have a material adverse effect on its ability to perform its obligations under this Agreement.

ARTICLE XI ALTERNATIVE DISPUTE RESOLUTION PROCEDURE

11.01 **Alternative Dispute Resolution Procedure.**

[NOTE: Dispute resolution provisions may provide for mediation or fact-finding, which are non-binding. The following is a binding arbitration clause.]

The Parties will endeavor to resolve in good faith any controversy, disagreement or claim arising between them, whether as to the interpretation, performance or operation of this Agreement, any rights or obligations under this Agreement, or any necessary further agreement. If they are unable to do so, any such controversy, disagreement or claim will be submitted, for final resolution without appeal, to arbitration, by either party giving written notice to the other of the existence of a dispute which it desires to have arbitrated. The place of arbitration will be _____, Colorado. The arbitration will be conducted by an arbitrator selected by the Parties or, in the absence of such agreed selection, the party requesting dispute resolution shall request a list of three (3) arbitrators from the [OPTION 1: Judicial Arbitrator Group (“JAG”)] [OPTION 2: American Arbitration Association (“AAA”)]. A Party requesting the list shall strike one name from the list and forward the remaining names to the other Party. Each Party shall make a strike within three (3) business days of receiving the list. Should either Party fail to timely strike a name, the other Party may select the Arbitrator from the list. Should both Parties exercise their right to strike, the name remaining shall be the Arbitrator. A decision and award (if any) of the Arbitrator construing, interpreting or enforcing this Agreement, will be final and binding, *i.e.*, not subject to appeal, and the parties hereby mutually agree that any such determination will have the same effect as an arbitration pursuant to Colorado law, or a final judgment of a court, following exhaustion of all rights of appeal. The award may be made in brief or summary form. A judgment upon the award may be entered in the Colorado district court for the judicial district in which the Facility is located or the United States District Court for the District of Colorado. The Arbitrator shall not add to or subtract from this Agreement, but shall have authority to rule on issues of arbitrability. The expenses of arbitration will be divided equally between the Parties, unless the Arbitrator for good cause orders some other allocation. Pending the decision by the Arbitrator, all obligations of the Parties will continue to be in effect. The Arbitrator will make his or her decision in accordance with the laws of the State of Colorado and the United States. Should the Parties submit to the Arbitrator an issue that, if decided, would result in formation of a new contractual obligation, the Arbitrator may make a recommendation to the Parties on such issue, but such recommendation shall not be a final and binding award.

**ARTICLE XII
MISCELLANEOUS**

- 12.01. Sole Agreement.** This Agreement supersedes and replaces any and all prior agreements and understandings between the School and ESP Company.
- 12.02. Force Majeure.** Notwithstanding any other sections of this Agreement, neither party will be liable for any delay in performance or inability to perform due to acts of God or due to war, riot, terrorism, civil war, embargo, fire, flood, explosion, sabotage, accident, labor strike or other acts beyond its reasonable control.
- 12.03. Governing Law.** The laws of the State of Colorado will govern this Agreement, its construction, and the determination of any rights, duties and remedies of the parties arising out of or relating to this Agreement.
- 12.04. Agreement in Entirety.** This Agreement constitutes the entire agreement of the parties.
- 12.05. Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, but both of which will constitute one and the same instrument.
- 12.06. Official Notices.** All notices and other communications required by the terms of this Agreement will be in writing and sent to the parties hereto at the addresses set forth below (and such addresses may be changed upon proper notice to such addressees). Notice may be given by: (i) certified or registered mails, postage prepaid, return receipt requested, (ii) facsimile (with confirmation of transmission by sender's facsimile machine) or (iii) personal delivery. Notice will be deemed to have been given two days after mailing or on the date of personal delivery or on the date of transmission of a facsimile if on a business day during normal business hours (or, if not, the first business day). The addresses of the parties are:

To:

With a copy to:

Attn:

Fax:

To:

With a copy to:

Attn:

Fax:

- 12.07. **Assignment.** This Agreement will not be assigned by ESP Company without the prior consent in writing of the School (which consent will not be unreasonably withheld) or by the School without the prior consent in writing of ESP Company (which consent will not be unreasonably withheld), provided that ESP Company may delegate the performance of but not responsibility for any duties and obligations of ESP Company hereunder to any independent contractors, experts or professional advisors.
- 12.08. **Amendment.** This Agreement will not be altered, amended, modified or supplemented except in a written document approved by the Board and signed by both the President of the School and an authorized officer of ESP Company.
- 12.09. **Waiver.** No practice not reduced to a written agreement shall be construed as a waiver of this Agreement, and no waiver of any provision of this Agreement will be deemed to be or will constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver unless otherwise expressly stated.
- 12.10. **Severability.** The invalidity of any of the covenants, phrases or clauses in this Agreement will not affect the remaining portions of this Agreement, and this Agreement will be construed as if such invalid covenant, phrase or clause had not been contained in this Agreement. To the extent that any of the services to be provided by ESP Company are found to be over broad or an invalid delegation of authority by the School, such Services will be construed to be limited to the extent necessary to make the Services valid and binding.
- 12.11. **Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the parties and their respective successors and assigns.
- 12.12. **No Third Party Rights.** This Agreement is made for the sole benefit of the School and ESP Company. Except as otherwise expressly provided, nothing in this Agreement will create or be deemed to create a relationship between the Parties to this Agreement, or either or them, and any third person, including a relationship in the nature of a third party beneficiary or fiduciary.
- 12.13. **Lawful Employment.** Contractor certifies, warrants and agrees that it does not knowingly employ or contract with illegal aliens who shall perform any part of the Work and Contractor shall verify the employment eligibility of any employees it retains, as provided by law.
- 12.14. **Survival of Termination.** All representations, warranties and indemnities made in this Agreement will survive termination of this Agreement.
- 12.15. **Relationship to the Contract.** The School and ESP Company agree that the Agreement is consistent with the Contract for the period. Where conflicts arise between the Agreement and the Contract, the Contract will govern.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date and year first above written.

XYZ Educational Service Provider

A _____ corporation

By: _____

Its: _____

ABC SCHOOL

A Colorado public charter school

By: _____

Its: _____

EXHIBIT 1

Charter Contract with Performance Goals

APPENDIX H: CHOOSING AN INTERVENTION MODEL

THIS SECTION IS SPECIFIC TO THE 1003G SCHOOL IMPROVEMENT GRANTS (TIERED INTERVENTION GRANT)

INTERVENTION MODELS

Schools that are using an Intervention Model because of their status on federal accountability indicators have four intervention models from which to choose. The decision around which type of external service provider to engage and the breadth of their services depends largely on the intervention model selected by the school or district. The four intervention models are as follows:

- *Turnaround* – this involves replacing the principal and at least half of the school’s staff. It also requires adopting a new governance structure and implementing a new or revised instructional program.
- *Restart* – this intervention model involves closing or phasing out the school and re-opening it under the management of a charter school operator or educational management organizational following a rigorous review process.
- *Closure* – the school is closed and students are re-assigned to higher performing schools.
- *Transformation* – this intervention model involves making substantial changes in four specific areas of the school’s operations: teacher and school leader effectiveness, comprehensive instructional reform strategies, extended learning time and community-oriented schools, and operating flexibility.

The first step is to determine which intervention model will prove most beneficial for a *particular* school and the students in the *specific* community. (In some cases the students’ best interests could mean restart or closure, so the critical question to address is broader than what will best serve the school—and its survival in its current form.) In making a choice of an intervention model, the district and school should factor in how well the intervention model is:

- Suitable for the school, given factors such as past achievement results, past improvement efforts, and community context;
- Suitable in terms of access to an external service provider that will be needed for successful implementation;
- Suitable in terms of the district’s policy environment, its contextual factors (for example, availability of staff replacement, availability of schools to receive students of a school that closes) and the district’s ability to fully support the implementation and provide effective oversight;
- Suitable in terms of the demands on the district to support more than one intervention model in its community, if it has more than one low-achieving school eligible for SIG funds.

Transformation schools will likely opt for less comprehensive services from an external provider, while Turnaround and Restart schools will be more likely to utilize providers that offer comprehensive educational services. This guide addresses the common best practices that should be followed when engaging an external provider, regardless of the intervention model, type of provider, or the breadth of their services. Then, because the needs of Turnaround and Restart schools are unique, special considerations for engaging external service providers with these intervention models have been addressed in Appendix I.

APPENDIX I: TURNAROUND AND RESTART SCHOOL CONTRACT PROVISIONS

THIS SECTION IS SPECIFIC TO THE 1003G SCHOOL IMPROVEMENT GRANTS (TIERED INTERVENTION GRANT)

In Turnaround or Restart Interventions, where the school or district is working with a comprehensive external service provider, such as an Educational Management Organization or Charter Management Organization, certain additional considerations should be taken into account.

Responsibilities

When working with a comprehensive external service provider, a key area of negotiation and understanding involves the various parties' responsibilities and with whom authority and accountability rests. Some specific questions to consider are included here:

- Who is the leader of the external service provider's work at the school site? What are his/her qualifications?
- Clarify the school and district's role in choosing or having a say in the selection of the provider's program leader.
- Clarify the district's role in overseeing and evaluating the provider's program leader.
- Clarify the responsibilities of the external service provider's staff implementing program at school site.
- Clarify the responsibilities of the external service provider's staff who manage the relationship between district and provider.
- Who is the school leader? What are his/her qualifications and why was he/she chosen?
- Clarify who is responsible for selecting the school leader (the district or provider).
- Clarify for *whom* the school leader is working – district or provider?
- Clarify who evaluates the school leader (the district or provider) and who has the authority to terminate the school leader if there are performance issues.
- Clarify who is ultimately accountable for the school's successful attainment of its student achievement goals.
- To the extent that the district controls the hiring of school leaders, it is important to ensure that only leaders who support the provider's service-delivery plans will be hired, and that district policies will support provision of incentives and/or contract extensions to effective leaders.

AUTONOMIES

Another key aspect of working with comprehensive external service providers is determining the areas in which the provider has autonomy and the degree of autonomy granted in each of those areas.

The contract must be specific about autonomies so it is clear what freedom the provider does and does not have in terms of state or district requirements and policies. If waivers or exemptions are expected but are not finalized, the contract should spell out the process and timeline for obtaining them.

Key areas in which autonomy must be determined are as follows:

A. Personnel Decisions

- Includes the selection, management, grievance process, and performance feedback for leaders, teachers, and other staff.
- Includes the provider's authority to hire school leaders or approve the current ones; to hire, place and terminate staff based on their performance and their fit with high-accountability, results-oriented environments.

B. Budgeting and Financial Management

- Includes ability to allocate all financial resources at the school as necessary to successfully implement its plan, including the ability to pay staff for additional time, additional responsibilities, and performance.
- Specify the degree of the provider's authority to raise additional funding to support the improvement effort, including from philanthropic sources.

C. Educational Program

- Includes curriculum design, instructional approaches, and teaching methodologies.
- Flexibility over creation, modification, or elimination of educational programs.
- Freedom to choose textbooks and other instructional materials.

D. Professional development

- Includes freedom to prioritize professional development activities directly related to provider's improvement plan for the school.
- Includes freedom to exempt staff from other district-wide professional development.

E. Scheduling

- Daily, weekly, yearly schedules.
- Freedom to lengthen school year.
- Freedom to change schedules to give teachers common planning time.

F. Governance and Operations.

For example, freedom from traditional public school laws and regulations and collective bargaining agreements.

G. Other

For example, freedom from regulations, policies, and programs regarding parent relationships and student discipline.

RECOMMENDED CONTRACT PROVISIONS⁵

This section includes the specific contract provisions that should be included when working with an EMO or CMO.

The external service provider may be providing a comprehensive reform strategy for a charter school or a traditional public school. The language below uses “district or school” to address both circumstances: a district board managing an external service provider contract or a charter school board managing the contract.

1. After the second year that the external service provider agreement has been in effect, the school must have the option of terminating the contract without cause or a financial penalty.
2. In the case of a charter school, the maximum term of a comprehensive external service provider contract must not exceed the term of the charter.
3. External service provider contracts must be negotiated at ‘arms-length.’ The district or charter school board and external service provider must have independent legal counsel to represent their interests in reaching a mutually acceptable management agreement.
4. No provision of the external service provider contract shall interfere with the district or charter school board’s duty to exercise its statutory, contractual and fiduciary responsibilities governing the operation of the district or school. No provision of the external service provider contract shall prohibit the district or school board from acting as an independent, self-governing public body, or allow decisions to be made other than in compliance with the Colorado Sunshine Law.
5. An external service provider contract shall not restrict the district or school board from waiving its governmental immunity or require a district or school board to assert, waive or not waive its governmental immunity.
6. No provision of an external service provider contract shall alter the district or school board’s treasurer’s legal obligation to direct that the deposit of all funds received by the district or school be placed in the district or school’s account.
7. An external service provider contract must contain at least one of the following methods for paying fees or expenses: 1) the district or school board may pay or reimburse the external service provider for approved fees or expenses upon properly presented documentation and approval by the district or school board; or 2) the school or district board may advance funds to the external service provider for the fees or expenses associated with the district or school’s operation provided that documentation for the fees and expenses are provided for district or school board ratification.
8. External service provider contracts shall provide that the financial, educational and student records pertaining to the district and school are district property and that such records are subject to the provisions of the Colorado Open Records Act. All district and school records shall

⁵ These recommendations are taken from *Colorado Charter School Sample Contract Language and Attachments* developed by the Colorado League of Charter Schools, the Colorado Department of Education, and the Colorado Charter School Institute. This document is available at www.charterschoolquality.org.

be physically or electronically available, upon request, at the district and school's physical facilities. Except as permitted under applicable law, no external service provider contract shall restrict the District's access to the school's records.

9. External service provider contracts must contain a provision that all financial and other records of the external service provider related to the managed school will be made available to the district or school's independent auditor.
10. The external service provider contract must not permit the external service provider to select and retain the independent auditor for the district or school.
11. If an external service provider purchases equipment, materials and supplies on behalf of or as the agent of the district or school, the external service provider contract shall provide that such equipment, materials and supplies shall be and remain the property of the district or school.
12. External service provider contracts shall contain a provision that if the external service provider procures equipment, materials and supplies at the request of or on behalf of the district or school, the external service provider shall not include any added fees or charges with the cost of equipment, materials and supplies purchased from third parties.
13. External service provider contracts must contain a provision that clearly allocates the respective proprietary rights of the district or school board and the external service provider to curriculum or educational materials. At a minimum, external service provider agreements shall provide that the district or school owns all proprietary rights to curriculum or educational materials that (i) are both directly developed and paid for by the district or school; or (ii) were developed by the external service provider at the direction of the district or school governing board with school or grant funds dedicated for the specific purpose of developing such curriculum or materials. All external service provider contracts shall recognize that the external service provider's educational materials and teaching techniques used by the district or school are subject to state disclosure laws and the Open Records Act.
14. External service provider contracts involving employees must be clear about which persons or positions are employees of the external service provider, and which persons or positions are employees of the district or school. If the external service provider leases employees to the district or school, the external service provider agreement must provide that the leasing company accepts full liability for benefits, salaries, worker's compensation, unemployment compensation and liability insurance for its employees leased to the district or school or working on district or school operations. If the district or school is staffed through an employee leasing agreement, legal confirmation must be provided to the district or school board that the employment structure qualifies as employee leasing.
15. External service provider contracts must contain insurance and indemnification provisions outlining the coverage the external service provider will obtain. The external service provider's insurance is separate from and in addition to the insurance for the district or school board that is required under state law. Insurance coverage must take into account whether or not staff at the school are employees of the external service provider or the school.

16. Marketing and development costs paid by or charged to the district or school shall be limited to those costs specific to the school program, and shall not include any costs for the marketing and development of the external service provider.
17. If the district or school intends to enter into a lease, execute promissory notes or other negotiable instruments, or enter into a lease-purchase agreement or other financing relationships with the external service provider, then such agreements must be separately documented and not be a part of or incorporated into the external service provider contract. Such agreements must be consistent with the school's authority to terminate the external service provider contract and continue operation of the school.