

CONTRACT

STATE OF GEORGIA

COUNTY OF FULTON

This contract ("Contract") is made and entered into as of the 11th day of January in the year 2012 by and between the Governor's Office of Student Achievement, hereinafter referred to as "GOSA" or "State Entity," and Atlanta Neighborhood Charter Schools, (688 Grant Street, SE, Atlanta, Georgia, 30315), hereinafter referred to as "ANCS" or the "Contractor".

WHEREAS, GOSA made competitive grants available across the state for entities to implement innovative programs to improve student achievement; and

WHEREAS, upon review of its application, the Atlanta Neighborhood Charter School New Teacher Residency Project was selected as a site for implementation.

NOW, THEREFORE, in consideration of the benefits and duties contained herein, the parties hereby agree as follows:

1. Scope of Services: Contractor shall implement its Race to the Top Innovation Fund project, Atlanta Neighborhood Charter School New Teacher Residency Project, for the purpose of raising student performance by developing an induction program for new teachers.

Contractor's Services are provided in greater detail in the document entitled: *Race To The Top Scope of Work: Atlanta Neighborhood Charter School New Teacher Residency Project* attached hereto and incorporated herein by this reference as "Attachment A". Contractor shall meet all milestones and provide all deliverables described in Attachment A in strict accordance with the schedule and in substantial accordance with the budget indicated in Attachment A.

Contractor shall adhere to all Race to the Top Policies and Procedures implemented by GOSA.

2. Reporting Requirements. Contractor shall provide all reports required under this Contract, or attachment (s) hereto, if any. In addition, unless otherwise provided in the Contract, Contractor shall provide the following reports:

a) Expenditure Report: Contractor shall maintain a record of the expenditures made pursuant to the Contract and shall submit an expenditure report to GOSA along with each request for payment. Contractor shall provide a report of expenditures including, but not limited to the following information: dollar amount of the expenditure, date of expenditure, description of the purpose of the expenditure, name of person/entity to which expenditure was made, and check number.

b) Project Plan and Activity Report: Contractor shall submit an activity report to GOSA along with each request for payment. At a minimum, such activity report shall include the following:

- i. The performance dates encompassed in the report;
- ii. A description of all services/goods provided by the Contractor to GOSA during those dates and the name of the individual(s) providing the services;
- iii. A narrative progress report;
- iv. Whether each project plan milestone and contractual milestone was met by the specified due date.

c) Other Reporting: The New Teacher Residency Project Program Director or his/her designee will provide GOSA with quarterly time sheets for all personnel receiving funding under this contract and all documents related to all policies, processes, procedures, roles, and management decisions relating to the ARRA Section 1512 reporting. The time sheets must include date, duration of time spent on work associated with the project, and a detailed breakdown of tasks accomplished.

3. Payment for Services:

The method of payment for this Contract is as follows:

- a) Two Hundred Sixty-Two Thousand Two Hundred Eighty-Seven Dollars And Thirty-Four Cents (\$262,287.34) by January 30, 2013;
- b) Three Hundred Seventy-Seven Thousand Eighty-Nine Dollars And Fifty-Six Cents (\$377,089.56) by January 30, 2014;
- c) Two Hundred Seventy-Eight Thousand Seven Hundred Fifty-Seven Dollars And Ten Cents (\$278,757.10) by September 30, 2014;

Costs shall be in accordance with the budget provided under Attachment A and the approved project plan budget and must be reasonable, allocable, and allowable.

GOSA shall have the right to withhold or deduct payments in the event of the Contractor's nonperformance or lack of sufficient documentation. At any time during Contract performance, but no later than 6 months after acceptance of all deliverables to be delivered under the Contract, GOSA may require the Contractor to replace or correct work not meeting Contract requirements at no additional cost to GOSA. In no event will the total compensation and reimbursement, if any, to be paid to the Contractor under this Contract, inclusive of all related costs and expenses, exceed the sum of **Nine Hundred Eighteen Thousand One Hundred Thirty-Four Dollars (\$918,134.00)**, unless the Contract is amended in writing signed by both parties.

GOSA's policies and procedures and the Uniform Administrative Requirements for Grants and Cooperative agreements to State and Local Governments (the "**Common Rule**"), and the applicable OMB Circulars cited therein, shall govern the allowability and allocability of costs under this Contract. Travel and subsistence expenses must be in accordance with the State of Georgia Travel Regulation located at: <http://www.audits.state.ga.us/internet/nalgad/trvlpg.html>. Expenses for supplies must be preapproved in writing by GOSA.

Invoice(s) shall be submitted to: Lauren Wright, by mail to 205 Jesse Hill, Jr. Drive SE, 952 Twin Towers East, Atlanta, GA 30334 or by email to lwright@georgia.gov. Contractor's final invoice must be received by GOSA no later than thirty (30) days after the project completion date. GOSA may, at its discretion, disallow payment of all or part of a final invoice received after this deadline.

Incorrect payments by GOSA to the Contractor due to omission, error, fraud, or defalcation shall be recovered from the Contractor by deduction from subsequent payments under this Contract or other contracts between GOSA and the Contractor or as a debt due to GOSA.

4. **Term of Contract:** The Contract period shall be from **January 11, 2012** through **December 31, 2012**, unless the Contract is amended in writing under other provisions of this Contract.
5. **Renewal:** GOSA may, at its sole discretion, renew this Contract up to two additional one (1) year terms. Renewal shall be contingent upon timely completion of all deliverables under the Contract and GOSA approval.
6. **Relationship of the Parties:** The Contractor's employees shall not be considered employees of GOSA while performing these services and will not be entitled to fringe benefits normally accruing to employees of GOSA.
7. **Equipment and Supplies:** Any equipment, supplies, or materials used in the performance of this Contract which are not explicitly required under this Contract to be provided by GOSA, shall be at the expense of the Contractor.
8. **Compliance with the Law:** The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders now or hereafter in effect when performing under the Contract, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as subcontractors or contractors. The Contractor, its employees, agents and subcontractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under the Contract. Contractor and Contractor's personnel shall also comply with all State and State Entity policies and standards in effect during the performance of the Contract, including but not limited to the State Entity's policies and standards relating to personnel conduct, security, safety, confidentiality, and ethics. Further, the provisions of O.C.G.A. Section 45-10-20 et seq. have not and must not be violated under the terms of this Contract.

9. Confidentiality:

- a) Access to Confidential Data. The Contractor's employees, agents and subcontractors may have access to confidential data maintained by the State to the extent necessary to carry out the Contractor's responsibilities under the Contract. The Contractor shall presume that all information received pursuant to the Contract is confidential unless otherwise designated by the State. The Contractor agrees to abide by all state and federal laws, rules and regulations, and GOSA policy respecting confidentiality of records, including but not limited to student records, and divulge no information concerning individual records to any unauthorized person. If it is reasonably likely the Contractor will have access to the State's confidential information, then:
- i. The Contractor shall provide to the State a written description of the Contractor's policies and procedures to safeguard confidential information;
 - ii. Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;
 - iii. The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract; and
 - iv. The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of the Contract.
 - v. The private or confidential data shall remain the property of the State at all times. Some Services performed for GOSA may require the Contractor to sign a nondisclosure agreement. Contractor understands and agrees that refusal or failure to sign such a nondisclosure agreement, if required, may result in termination of the Contract.
- b) No Dissemination of Confidential Data. No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of the State, either during the period of the Contract or thereafter. Any data supplied to or created by the Contractor shall be considered the property of the State. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract, in whatever form it is maintained, promptly at the request of the State.
- c) Subpoena. In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify the State and cooperate with the State in any lawful effort to protect the confidential information.
- d) Reporting of Unauthorized Disclosure. The Contractor shall immediately report to the State any unauthorized disclosure of confidential information.
- e) Survives Termination. The Contractor's confidentiality obligation under the Contract shall survive termination of the Contract.

10. Civil Rights Compliance: The Contractor agrees to comply with the following civil rights statutes: Americans with Disabilities Act (42 U.S.C. 12101, *et seq.*); Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d-4); Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1683); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and the Age Discrimination Act (42 U.S.C. 6101, *et seq.*). Neither party will discriminate against any GOSA or Contractor employee or applicant for employment, or against any applicant for enrollment for a course of study, or against any student in his or her course of study or training related to this Contract because of race, color, gender, national origin, age, or disability.

11. Drug-Free Workplace: In accordance with the federal Drug-Free and Communities Act and Amendment of 1989, the Georgia Drug-Free Workplace Act of 1988 (O.C.G.A. Section 50-24-1, *et seq.*) and State Board of Education Policy GAM, the Contractor declares that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance, marijuana or dangerous drug is prohibited at Contractor locations at which individuals are directly engaged in

the performance of work pursuant to this Contract. In addition, Policy GAM prohibits the unlawful possession, use, manufacture, distribution or sale of alcohol in the workplace.

The Contractor hereby certifies as follows:

- a) Contractor will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of this Contract; and
- b) If Contractor has more than one employee, including Contractor, Contractor shall provide for such employee(s) a drug-free workplace, in accordance with the Georgia Drug-free Workplace Act as provided in O.C.G.A. Section 50-24-1 et seq., throughout the duration of this Contract; and
- c) Contractor will secure from any subcontractor hired to work on any job assigned under this Contract the following written certification: "As part of the subcontracting agreement with (Contractor's Name), (Subcontractor's Name) certifies to the contractor that a drug-free workplace will be provided for the subcontractor's employees during the performance of this Contract pursuant to paragraph 7 of subsection (b) of Code Section 50-24-3.

Contractor may be suspended, terminated, or debarred if it is determined that:

- (i) Contractor has made false certification here in above; or
- (ii) Contractor has violated such certification by failure to carry out the requirements of O.C.G.A. Section 50-24-3(b).

12. Trading with State Employees: The Contractor shall make no payment to any employee of GOSA nor to any business entity in which an GOSA employee maintains an ownership interest of 20% or more without obtaining prior written approval from the State School Superintendent or his designee. The Contractor hereby certifies that this Contract does not and will not violate the provisions of Official Code of Georgia Annotated § 45-10-20, *et. seq.*, which prohibit and regulate certain transactions between certain state officials, employees, and the State of Georgia.

13. Conflicts of Interest: Contractor shall take all reasonable steps to avoid any and all conflicts of interest, including the appearance of a conflict of interest.

14. Recordkeeping Requirements: The Contractor agrees to maintain full and complete records which pertain to this Contract for a period of three (3) years from the date of final payment under this Contract, or until all litigation, claims, or audit findings involving the records have been resolved if such claim or audit is started before the expiration date of the three-year period.

15. Access to records: GOSA or any duly authorized representatives shall have access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract at any time during normal business hours for the term of this Contract and/or three (3) years thereafter for the purpose of making an audit, examination, excerpts, and transcriptions.

16. Intellectual Property: No intellectual property rights or obligations of any kind other than those expressly recited herein are granted to either party or implied by this Contract. The Contractor shall provide GOSA with a non-exclusive, non-transferable, royalty-free license to use and publish any data or reports created pursuant to this Contract for non-commercial purposes.

17. Open Records Act: The Contractor understands that the Georgia Open Records Act ("ORA"), (O.C.G.A. Section 50-18-70, *et. seq.*) is applicable to the services provided pursuant to this Contract and agrees to comply with all provisions of the ORA and to make records pertaining to the performance of services or functions under this Contract available for public inspection upon request, unless otherwise exempt under other provisions of the ORA.

18. Indemnification:

- a) Contractor's Indemnification Obligation. The Contractor agrees to indemnify and hold harmless the State and State officers, employees, agents, and volunteers (collectively, "Indemnified Parties") from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, related to or arising from:
 - i. Any breach of the Contract;
 - ii. Any negligent, intentional or wrongful act or omission of the Contractor or any employee, agent or

subcontractor utilized or employed by the Contractor;

- iii. Any failure of Services to comply with applicable specifications, warranties, and certifications under the Contract;
 - iv. The negligence or fault of the Contractor in design, testing, development, manufacture, or otherwise with respect to the Services provided under the Contract;
 - v. Claims, demands, or lawsuits that, with respect to the goods (if any) or any parts thereof, allege product liability, strict product liability, or any variation thereof;
 - vi. The Contractor's performance or attempted performance of the Contract, including any employee, agent or subcontractor utilized or employed by the Contractor;
 - vii. Any failure by the Contractor to comply with the "Compliance with the Law" provision of the Contract;
 - viii. Any failure by the Contractor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State of Georgia or the United States;
 - ix. Any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right; or
 - x. Any failure by the Contractor to adhere to the confidentiality provisions of the Contract.
- b) Duty to Reimburse State Tort Claims Fund. To the extent such damage or loss as covered by this indemnification is covered by the State of Georgia Tort Claims Fund ("the Fund"), the Contractor (and its insurers) agrees to reimburse the Fund. To the full extent permitted by the Constitution and the laws of the State and the terms of the Fund, the Contractor and its insurers waive any right of subrogation against the State, the Indemnified Parties, and the Fund and insurers participating thereunder, to the full extent of this indemnification.
- c) Litigation and Settlements. The Contractor shall, at its own expense, be entitled to and shall have the duty to participate in the defense of any suit against the Indemnified Parties. No settlement or compromise of any claim, loss or damage entered into by the Indemnified Parties shall be binding upon Contractor unless approved in writing by Contractor. No settlement or compromise of any claim, loss or damage entered into by Contractor shall be binding upon the Indemnified Parties unless approved in writing by the Indemnified Parties.
- d) Patent/Copyright Infringement Indemnification. Contractor shall, at its own expense, be entitled to and shall have the duty to participate in the defense of any suit instituted against the State and indemnify the State against any award of damages and costs made against the State by a final judgment of a court of last resort in such suit insofar as the same is based on any claim that any of the Services constitutes an infringement of any United States Letters Patent or copyright, provided the State gives the Contractor immediate notice in writing of the institution of such suit, permits Contractor to fully participate in the defense of the same, and gives Contractor all available information, assistance and authority to enable Contractor to do so. Subject to approval of the Attorney General of the State of Georgia, the State Entity shall tender defense of any such action to Contractor upon request by Contractor. Contractor shall not be liable for any award of judgment against the State reached by compromise or settlement unless Contractor accepts the compromise or settlement. Contractor shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement shall be binding upon the State unless approved by the State.

In case any of the Services is in any suit held to constitute infringement and its use is enjoined, Contractor shall, at its option and expense:

- i. Procure for the State the right to continue using the Services;
- ii. Replace or modify the same so that it becomes non-infringing; or
- iii. Remove the same and cancel any future charges pertaining thereto.

Contractor, however, shall have no liability to the State if any such patent, or copyright infringement or claim thereof is based upon or arises out of:

- iv. Compliance with designs, plans or specifications furnished by or on behalf of the State Entity as to the Services;
- v. Use of the Services in combination with apparatus or devices not supplied by Contractor;
- vi. Use of the Services in a manner for which the same was neither designed nor contemplated; or

vii. The claimed infringement of any patent or copyright in which the State Entity or any affiliate or subsidiary of the State Entity has any direct interest by license or otherwise.

e) Survives Termination. The indemnification obligation of the Contractor shall survive termination of the Contract.

19. Insurance: Contractor shall maintain at its own expense the following minimum insurance limits subject to normal industry exclusions:

Workers Compensation (WC):	Statutory Limits
Bodily injury by accident – per employee	\$ 100,000
Bodily injury by disease – per employee	\$ 100,000
Policy limits	\$ 500,000
Commercial General Liability (CGL):	
General Aggregate including	
Products & Completed Operations	\$ 1,000,000
Each Occurrence	\$ 1,000,000
Automobile Liability:	
Combined Single Limit	\$ 1,000,000

Additional Insured: The Contractor shall add the “State of Georgia, its officers, employees and agents” as an additional insured under the commercial general and automobile liability policies.

As stated above, Contractor shall procure and maintain insurance which shall protect the Contractor and the state from any claims for bodily injury, property damage, or personal injury which may arise out of operations under the Contract. Contractor shall procure the insurance policies at the contractor's own expense and shall furnish the state an insurance certificate listing the state as certificate holder. The insurance certificate must document that the liability insurance coverage purchased by the Contractor includes contractual liability coverage to protect the state. The certificate shall be furnished no later than ten (10) business days after notification of the State’s intent to award a Contract. In addition, the insurance certificate must provide the following information:

- a. Name and address of authorized agent
- b. Name and address of insured
- c. Name of insurance company (licensed to operate in Georgia)
- d. Description of coverage in standard terminology
- e. Policy period
- f. Limits of liability
- g. Name and address of certificate holder
- h. Acknowledgment of notice of cancellation to the state
- i. Signature of authorized agent
- j. Telephone number of authorized agent
- k. Details of policy exclusions in comments section of insurance certificate

20. Warranties.

- a) Construction of Warranties Expressed in the Contract with Warranties Implied by Law. All warranties made by the Contractor and/or subcontractors in all provisions of the Contract , whether or not the Contract specifically denominates the Contractor’s and/or subcontractors’ promise as a warranty or whether the warranty is created only by the Contractor’s affirmation or promise, or is created by a description of the Services to be provided, or by provision of samples to the State shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade, the warranty of merchantability, and the warranty of fitness for a particular purpose. The warranties expressed in the Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the Services provided by the Contractor. The provisions of this section apply during the term of the Contract and any extensions or renewals thereof.
- b) Warranty – Nonconforming Services and Goods. All Services and any goods delivered by Contractor to the State Entity shall be free from any defects in design, material, or workmanship. If any Services or goods offered by the Contractor are found to be defective in material or workmanship, or do not conform to Contractor’s warranty, the State Entity shall have the option of returning, repairing, or replacing the defective Services or goods at

Contractor's expense. Payment for Services and any goods shall not constitute acceptance. Acceptance by the State Entity shall not relieve the Contractor of its warranty or any other obligation under the Contract.

- c) Compliance with Federal Safety Acts. Contractor warrants and guarantees to the State that the Services provided under the Contract are in compliance with Sections 5 and 12 of the Federal Trade Commission Act; the Fair Packaging and Labeling Act; the Federal Food, Drug, and Cosmetic Act; the Consumer Product Safety Act; the Federal Environmental Pesticide Control Act; the Federal Hazardous Substances Act; the Fair Labor Standards Act; the Wool Products Labeling Act; the Flammable Fabrics Act; the Occupational Safety and Health Act; the Office of Management and Budget A-110 Appendix A; and the Anti-Kickback Act of 1986.
- d) Originality and Title to Concepts, Materials, and Goods Produced. Contractor represents and warrants that all the concepts, materials, goods and Services produced, or provided to the State pursuant to the terms of the Contract shall be wholly original with the Contractor or that the Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and works. The Contractor represents and warrants that the concepts, materials, goods and Services and the State's use of same and the exercise by the State of the rights granted by the Contract shall not infringe upon any other work, other than material provided by the Contractor to the Contractor to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and works will not infringe upon the copyright, trademark, trade name, trade dress patent, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. The Contractor represents and warrants that it is the owner of or otherwise has the right to use and distribute the goods and Services contemplated by the Contract.
- e) Conformity with Contractual Requirements. The Contractor represents and warrants that the Services provided in accordance with the Contract will appear and operate in conformance with the terms and conditions of the Contract.
- f) Authority to Enter into Contract. The Contractor represents and warrants that it has full authority to enter into the Contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to the State and the State Entity.
- g) Obligations Owed to Third Parties. The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to the Contract are or will be fully satisfied by the Contractor so that the State and the State Entity will not have any obligations with respect thereto.
- h) Title to Property. The Contractor represents and warrants that title to any property assigned, conveyed or licensed to the State is good and that transfer of title or license to the State is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance. Title to any supplies, materials, or equipment shall remain in the Contractor until fully paid for by the State Entity. Except as otherwise expressly authorized by the State Entity, all materials produced by Contractor personnel in performance of Services, including but not limited to software, charts, graphs, diagrams, video tapes and other project documentation shall be deemed to be work made for hire and shall be the property of the State of Georgia.
- i) Industry Standards. The Contractor represents and expressly warrants that all aspects of the Services provided or used by it shall at a minimum conform to the standards in the Contractor's industry. This requirement shall be in addition to any express warranties, representations, and specifications included in the Contract, which shall take precedence.
- j) Contractor's Personnel and Staffing. Contractor warrants that all persons assigned to perform Services under this Contract are either lawful employees of Contractor or lawful employees of a subcontractor authorized by the State Entity as specified in the Scope of Work and Attachment A. All persons assigned to perform Services under this Contract shall be qualified to perform such Services. Personnel assigned by Contractor shall have all professional licenses required to perform the Services.
- k) State Security. State Entity requires that a criminal background investigation be made of any and all Contractor

personnel utilized to provide Services to the State. Contractor represents and warrants that Contractor shall refrain from assigning personnel to any task under this Contract if such investigation reveals a disregard for the law or other background that indicates an unacceptable security risk as determined by the State. The Contractor's employees, agents and subcontractors may be granted access to state computers, hardware, software, programs and/or information technology infrastructure or operations to the extent necessary to carry out the Contractor's responsibilities under the Contract. Such access may be terminated at the sole discretion of the State. The Contractor shall provide immediate notice to State Entity of any employees, agents and/or subcontractors suspected of abusing or misusing such access privilege. The Contractor represents and warrants that Contractor shall provide notice to State Entity of the changed status of any employee, agent or subcontractor granted access to state computers, hardware, software, programs and/or information technology infrastructure or operations, including, but not limited to, termination or change of the position or contract relationship.

- l) Use of State Vehicles. Contractor warrants that no State vehicles will be used by Contractor for the performance of Services under this Contract. Contractor shall be responsible for providing transportation necessary to perform all Services.

21. Contractor Staffing. Contractor shall provide and maintain sufficient personnel to perform the services and deliverables hereunder in accordance with the requirements of this Contract. All persons assigned by Contractor to perform any work under this Contract shall be employees or prior approved subcontractors of Contractor and shall be fully qualified to work under this Contract. Personnel commitments made in Attachment A shall not be changed unless approved by the GOSA.

The GOSA Project Manager or his or her designee(s) may, at his or her option, participate in the interview process of any employee or Subcontractor that Contractor considers hiring or retaining to perform the services or satisfy any obligations to GOSA. Contractor shall make available to GOSA such of its employees as may be necessary or appropriate for the timely performance of Contractor's obligations pursuant to this Contract. No employee or agent of Contractor shall undertake or participate in, during the Term, any other engagement which shall interfere with the timely completion by Contractor of the work and services contemplated by this Contract. In addition to any other reporting requirements provided under this Contract, Contractor shall provide to GOSA, on a monthly basis (or as otherwise requested by GOSA), written reports of the names, resumes and work schedules of Contractor's employees and subcontractors who shall be performing services under this Contract.

Contractor shall remove any employee (or any other person working on behalf of Contractor) upon notice that such person does not meet the requirements of GOSA. Contractor shall replace such removed persons' duties with temporary personnel, approved by the GOSA, until an approved equivalent replacement can be assigned. Contractor will have thirty (30) calendar days from the date of removal to find an approved equivalent replacement.

22. Non-profit Contractor: The Contractor agrees to comply with the provisions of the Official Code of Georgia Annotated (OCGA), Sections 50-20-2 through 50-20-8, as applicable. In accordance with this, the Contractor shall submit to GOSA and the state auditor, any reporting packages or financial statements required by these code sections within 180 days after the close of the Contractor's fiscal year, unless waived by the state auditor. The non-profit Contractor understands the auditing and reporting requirements as set forth in Title 50, Chapter 20 of the Official Code of Georgia. Nonprofits that expend \$300,000 or more in **Federal** funds during their fiscal year agree to have a single entity-wide audit conducted for that year in accordance with the provisions of the Single Audit Act Amendments of 1996 (Public Law 104-156) and their implementing regulation, OMB Circular A-133 entitled, "Audits of States, Local Governments, and Nonprofit Organizations". Nonprofits expending \$100,000 or more in **State** funds during their fiscal year agree to have an entity-wide audit conducted for that year in accordance with Generally Accepted Auditing Standards issued by the American Institute of Certified Public Accountants. Nonprofits expending at least \$25,000 but less than \$100,000 in **State** funds during their fiscal year agree to prepare unaudited entity-wide financial statements for that year. The president or person responsible for financial statements must make assertions concerning the basis of financial statement preparation as described in O.C.G.A. Section 50-20-3. The financial statement reporting package shall include a "Schedule of State Awards Expended" which reflects revenues, expenditures, and amounts owed to or due from each state organization by state program and contract number. Amounts listed for each program should include state or federal funds, or both, which pass through state organizations to the nonprofit organization. The nonprofit organization further agrees to submit the required audit or financial statements to the Georgia Department of Audits and each contracting state organization, within 180 days after the close of the non-profit's fiscal year.

The financial statement reporting packages should be sent to the following addresses:

*Governor's Office of Student Achievement
205 Jesse Hill, Jr. Drive SE
952 Twin Towers East
Atlanta, GA 30334
(404) 463-1172*

23. Inability to perform: In the event that either party is unable to fulfill the terms of the Contract due to circumstances beyond their control, including but not limited to, fire, flood, or other acts of nature, or by war or attack by the public enemy or by other act of God, then this Contract shall be terminated by notice of the conditions causing such inability to perform being given to the other party. At such time both parties shall be entitled to the benefits received only to the extent that they have met the terms of the Contract.

24. Termination:

- a). Immediate Termination. Pursuant to O.C.G.A. Section 50-5-64, this Contract will terminate immediately and absolutely if GOSA determines that adequate funds are not appropriated or granted or funds are de-appropriated such that GOSA cannot fulfill its obligations under the Contract, which determination is at GOSA's sole discretion and shall be conclusive. Further, GOSA may terminate the Contract for any one or more of the following reasons effective immediately without advance notice:
 - (i) In the event the Contractor is required to be certified or licensed as a condition precedent to providing the Services, the revocation or loss of such license or certification may result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;
 - (ii) GOSA determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, life, health or safety to be jeopardized;
 - (iii) The Contractor fails to comply with confidentiality laws or provisions; and/or
 - (iv) The Contractor furnished any statement, representation or certification in connection with the Contract or the bidding process which is materially false, deceptive, incorrect or incomplete.
- b). Termination for Cause. The occurrence of any one or more of the following events ("Default Events") shall constitute cause for GOSA to declare the Contractor in default of its obligations under the Contract:
 - (i) The Contractor fails to deliver or has delivered nonconforming Services or fails to perform, to GOSA's satisfaction, any material requirement of the Contract or is in violation of a material provision of the Contract, including, but without limitation, the express warranties made by the Contractor;
 - (ii) GOSA determines that satisfactory performance of the Contract is substantially endangered or that a default is likely to occur;
 - (iii) The Contractor fails to make substantial and timely progress toward performance of the Contract;
 - (iv) The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or GOSA reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
 - (v) The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the Contract;
 - (vi) The Contractor has engaged in conduct that has or may expose GOSA or the State to liability, as determined in GOSA's sole discretion; or

- (vii) The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of GOSA, the State, or a third party.
- c) Notice of Default. If there is a Default Event caused by the Contractor, GOSA shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the GOSA's written notice to the Contractor. If the breach or noncompliance is not remedied within the period of time specified in the written notice, GOSA may:
 - (i) Immediately terminate the Contract without additional written notice; and/or
 - (ii) Procure substitute services from another source and charge the difference between the Contract and the substitute contract to the defaulting Contractor; and/or,
 - (iii) Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.
- d) Termination Upon Notice. Following thirty (30) days' written notice, GOSA may terminate the Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination upon notice, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for Services provided under the Contract to GOSA up to and including the date of termination.
- e) Termination Due to Change in Law. GOSA shall have the right to terminate this Contract without penalty by giving thirty (30) days' written notice to the Contractor as a result of any of the following:
 - (i) GOSA's authorization to operate is withdrawn or there is a material alteration in the programs administered by GOSA; and/or
 - (ii) GOSA's duties are substantially modified.
- f) Payment Limitation in Event of Termination. In the event of termination of the Contract for any reason by GOSA, GOSA shall pay only those amounts, if any, due and owing to the Contractor for the Services actually rendered up to the date specified in the notice of termination for which GOSA is obligated to pay pursuant to the Contract or Purchase Instrument. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to GOSA under the Contract in the event of termination. The State shall not be liable for any costs incurred by the Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract.
- g) The Contractor's Termination Duties. Upon receipt of notice of termination or upon request of GOSA, the Contractor shall:
 - (i) Cease work under the Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters GOSA may require;
 - (ii) Immediately cease using and return to GOSA, any personal property or materials, whether tangible or intangible, provided by GOSA to the Contractor;
 - (iii) Comply with GOSA instructions for the timely transfer of any active files and work product produced by the Contractor under the Contract;
 - (iv) Cooperate in good faith with GOSA and its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor(s); and
 - (v) Immediately return to GOSA any payments made by GOSA for services that were not delivered or

rendered by the Contractor.

25. Funding: Notwithstanding any other provision of this Contract, the parties hereto acknowledge that GOSA may not lawfully pledge the State's credit. In the event that GOSA does not receive funds for this Contract or that the source of payment is insufficient with respect to the services and deliverables under this Contract, the Contract shall terminate without further obligation of GOSA as of that moment. The determination by GOSA of the events stated above shall be conclusive.

26. Publicity: Any publicity given to the services provided under this Contract, including but not limited to, notices, information pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor shall not be released prior to approval by GOSA.

27. Assignment: This Contract shall not be assigned or transferred by the Contractor unless consented to in writing by GOSA.

28. Amendments in Writing: No modifications or alteration of this Contract will be valid or effective unless each modification or alteration is made as an amendment to this Contract and signed by both parties.

29. Choice of Law: This Contract shall be deemed to have been executed in Fulton County, Georgia, and all questions of interpretation and construction shall be governed by the laws of the State of Georgia.

30. Vendor Lobbyist Certification. Contractor hereby certifies that, as of the effective date of this Contract, any lobbyist employed by Contractor has registered with the Georgia State Ethics Commission and complied with the requirements of the Executive Order dated October 1, 2003 ("*Providing for the Registration and Disclosure of Lobbyists Employed or Retained by Vendors to State Agencies*"). This Contract may be declared void at GOSA's sole discretion, if it is determined that Contractor has made false certification hereinabove or has violated such certification by failure to carry out the requirements of such Executive Order.

31. Debarred, Suspended, and Ineligible Status. Contractor certifies that the Contractor and/or any of its subcontractors have not been debarred, suspended, or declared ineligible by any agency of the State of Georgia or as defined in the Federal Acquisition Regulation (FAR) 48 C.F.R. Ch.1 Subpart 9.4. Contractor will immediately notify GOSA if Contractor is debarred by the State or placed on the Consolidated List of Debarred, Suspended, and Ineligible Contractors by a federal entity.

32. Use of Third Parties. Except as may be expressly agreed to in writing by GOSA, Contractor shall not subcontract, assign, delegate or otherwise permit anyone other than Contractor or Contractor's personnel to perform any of Contractor's obligations under this Contract or any of the work subsequently assigned under this Contract. No subcontract which Contractor enters into with respect to performance of obligations or work assigned under the Contract shall in any way relieve Contractor of any responsibility, obligation or liability under this Contract and for the acts and omissions of all subcontractors, agents, and employees. All restrictions, obligations and responsibilities of the Contractor under the Contract shall also apply to the subcontractors. Any contract with a subcontractor must also preserve the rights of GOSA. GOSA shall have the right to request the removal of a subcontractor from the Contract for good cause.

33. Third Party Beneficiaries. There are no third-party beneficiaries to the Contract. The Contract is intended only to benefit GOSA and the Contractor.

34. Parties' Duty to Provide Notice of Intent to Litigate and Right to Demand Mediation. In addition to any dispute resolution procedures otherwise required under this Contract or any informal negotiations which may occur between the State and the Contractor, no civil action with respect to any dispute, claim or controversy arising out of or relating to this Contract may be commenced without first giving fourteen (14) calendar days written notice to the State of the claim and the intent to initiate a civil action. At any time prior to the commencement of a civil action, either the State or the Contractor may elect to submit the matter for mediation. Either the State or the Contractor may exercise the right to submit the matter for mediation by providing the other party with a written demand for mediation setting forth the subject of the dispute. The parties will cooperate with one another in selecting a mediator and in scheduling the mediation proceedings. Venue for the mediation will be in Atlanta, Georgia; provided, however, that any or all mediation proceedings may be conducted by teleconference with the consent of the mediator. The parties covenant that they will participate in the mediation in good

faith, and that they will share equally in its costs; provided, however, that the cost to the State shall not exceed five thousand dollars (\$5,000.00).

All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator or employees of any mediation service, are inadmissible for any purpose (including but not limited to impeachment) in any litigation or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Inadmissibility notwithstanding, all written documents shall nevertheless be subject to the Georgia Open Records Act, O.C.G.A. Section 50-18-70 et seq.

No party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, forty-five (45) calendar days after the date of filing the written request for mediation with the mediator or mediation service, or sixty (60) calendar days after the delivery of the written demand for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties so desire.

35. Integration. The Contract represents the entire agreement between the parties. The parties shall not rely on any representation that may have been made which is not included in the Contract.

36. Headings or Captions. The paragraph headings or captions used in the Contract are for identification purposes only and do not limit or construe the contents of the paragraphs.

37. Not a Joint Venture. Nothing in the Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties thereto. Each party shall be deemed to be an independent contractor contracting for the Services and acting toward the mutual benefits expected to be derived herefrom. Neither Contractor nor any of Contractor's agents, servants, employees, subcontractors or contractors shall become or be deemed to become agents, servants, or employees of the State. Contractor shall therefore be responsible for compliance with all laws, rules and regulations involving its employees and any subcontractors, including but not limited to employment of labor, hours of labor, health and safety, working conditions, workers' compensation insurance, and payment of wages. No party has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to the Contract.

38. Joint and Several Liability. If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of the Contract, and for any default of activities and obligations.

39. Supersedes Former Contracts or Agreements. Unless otherwise specified in the Contract, this Contract supersedes all prior contracts or agreements between the State Entity and the Contractor for the Services provided in connection with the Contract.

40. Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of the State Entity and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.

41. Cumulative Rights. The various rights, powers, options, elections and remedies of any party provided in the Contract shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

42. Severability. If any provision of the Contract is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of the Contract. Further, if any provision of the Contract is determined to be unenforceable by virtue of its scope, but may be made enforceable by a limitation of the provision, the provision shall be deemed to be amended to the minimum extent necessary to render it enforceable under the applicable law. Any agreement of the State Entity and the Contractor to amend, modify, eliminate, or otherwise change any part of this Contract shall not affect any other part of this Contract, and

the remainder of this Contract shall continue to be of full force and effect.

43. Time is of the Essence. Time is of the essence with respect to the performance of the terms of the Contract. Contractor shall ensure that all personnel providing Services to the State are responsive to the State's requirements and requests in all respects.

44. Authorization. The persons signing this Contract represent and warrant to the other parties that:

- a. It has the right, power and authority to enter into and perform its obligations under the Contract; and
- b. It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of the Contract and the Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

45. Successors in Interest. All the terms, provisions, and conditions of the Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

46. Use of Name or Intellectual Property. Contractor agrees it will not use the name or any intellectual property, including but not limited to, State trademarks or logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of the State.

47. Taxes. The State Entity is exempt from Federal Excise Taxes, and no payment will be made for any taxes levied on Contractor's employee's wages. The State Entity is exempt from State and Local Sales and Use Taxes on the services. Tax Exemption Certificates will be furnished upon request. Contractor or an authorized subcontractor has provided the State Entity with a sworn verification regarding the filing of unemployment taxes or persons assigned by Contractor to perform Services, which verification is incorporated herein by reference.

48. Certification Regarding Sales and Use Tax. By executing the Contract, the Contractor certifies it is either (a) registered with the State Department of Revenue, collects, and remits State sales and use taxes as required by Georgia law, including Chapter 8 of Title 48 of the O.C.G.A.; or (b) not a "retailer" as defined in O.C.G.A. Section 48-8-2. The Contractor also acknowledges that the State may declare the Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the State Entity or its representative filing for damages for breach of contract.

49. Delay or Impossibility of Performance. Neither party shall be in default under the Contract if performance is delayed or made impossible by an act of God. In each such case, the delay or impossibility must be beyond the control and without the fault or negligence of the Contractor. If delay results from a subcontractor's conduct, negligence or failure to perform, the Contractor shall not be excused from compliance with the terms and obligations of the Contract.

50. Obligations Beyond Contract Term. The Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to the Contract. All obligations of the Contractor incurred or existing under the Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of the Contract.

51. Counterparts. The State Entity and the Contractor agree that the Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

52. Further Assurances and Corrective Instruments. The State Entity and the Contractor agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of the Contract.

53. Notices: Except as otherwise provided in paragraph 22 above, any notice to be made by either party to the other shall be sufficiently made if delivered in hand, or three (3) calendar days after posting, if sent by registered or certified mail, return receipt requested, to a party hereto at the address set forth below or such other address as a party may designate by notice hereto.

FOR GOSA:

Attention: Program Manager

Lauren Wright
Governor's Office of Student Achievement
205 Jesse Hill, Jr. Drive SE
952 Twin Towers East
Atlanta, GA 30334
(404) 463-1172
lwright@georgia.gov

FOR CONTRACTOR:

[Atlanta Neighborhood Charter School](#)
820 Essie Ave, SE
Atlanta, GA 30316
Attention: Matt Underwood, Executive Director
Phone: 678-904-0051
Fax: 678-904-0052
munderwood@atlncs.org

54. ARRA Requirements: The Contractor is notified that this project will be financed with *American Recovery and Reinvestment Act of 2009* (hereinafter, "ARRA") Funds. The Contractor shall ensure that all subcontracts and other contracts for goods and services for an ARRA-funded project have the mandated provisions of this directive in their contracts. Pursuant to Title XV, Section 1512 of the ARRA, the State shall require that the Contractor provide reports and other employment information as evidence to document the number of jobs created or jobs retained by this contract from the Contractor's own workforce and any sub-contractors. No direct payment will be made for providing said reports, as the cost for same shall be included in the various items in the contract.

Required Contract Provision to Implement ARRA Section 902

Section 902 of the ARRA requires that each contract awarded using ARRA funds must include a provision that provides the U.S. Comptroller General and his representatives with the authority to:

- i. examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and
- ii. interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

Accordingly, the Comptroller General and his representatives shall have the authority and rights prescribed under Section 902 of the ARRA with respect to contracts funded with recovery funds made available under the ARRA. Section 902 further states that nothing in 902 shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

Authority of the Inspector General provision

Section 1515(a) of the ARRA provides authority for any representatives of the United States Inspector General to examine any records or interview any employee or officers working on this contract. Contractor is advised that representatives of the Inspector General have the authority to examine any record and interview any employee or officer of Contractor, its subcontractors or other firms working on this contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General.

Buy American provision

Section 1605 of the ARRA requires that iron, steel and manufactured goods used in public buildings or public works projects be manufactured in the United States. Contractor agrees to abide by this provision and shall maintain records of such purchases for inspections by authorized agents of the State of Georgia and federal agencies. Contractor must obtain

written exception from this provision from the agency issuing the contract.

Wage Rate Provision

Section 1606 of the ARRA requires that all laborers and mechanics employed by contractors and subcontractors with funds from the ARRA shall be paid wages at rates not less than the prevailing wage rate under the Davis-Bacon Act. Contractor agrees that by the submission of a proposal in response to a solicitation funded in whole or in part with recovery funds, continuous compliance will be maintained with the Davis-Bacon Act.

Availability and Use of Funds

Contractor understands and acknowledge that any and all payment of funds or the continuation thereof is contingent upon funds provided solely by ARRA or required state matching funds. Pursuant to Section 1604 of the ARRA, Contractor agrees not to undertake or make progress toward any activity using recovery funds that will lead to the development of such activity as casinos or other gambling establishments, aquariums, zoos, golf courses, swimming pools or any other activity specifically prohibited by the Recovery Act.

Whistleblower Provisions

Contractor understands and acknowledges that Article 14 of Chapter 124, NCGS 126-84 through 126-88 (applies to the State and state employees), Article 21 of Chapter 95, NCGS 95-240 through 85-245 (applies to anyone, including state employees), and Section 1553 of the Recovery Act (applies to anyone receiving federal funds), provide protection to State, Federal and contract employees.

Outsourcing outside the USA without Specific Prior Approval Provision

Contractor agrees not to use any recovery funds from a contract or any other performance agreement awarded by the State of Georgia, its agencies, or political subdivisions for outsourcing outside of the United States, without specific prior written approval from the agency issuing the contract.

Federal, State and Local Tax Obligations

By submission of a proposal, Contractor asserts and self-certifies that all Federal, State and local tax obligations have been or will be satisfied prior to receiving recovery funds.

Anti-Discrimination and Equal Opportunity

Pursuant to Section 1.7 of the guidance memorandum issued by the United States Office of Management and Budget on April 3, 2009, recovery funds must be distributed in accordance with all anti-discrimination and equal opportunity statutes, regulations, and Executive Orders pertaining to the expenditure of funds.

55. Reporting Actual Direct Job Creation . All recipients of ARRA funds for government investment are required to report the jobs retained or created by the funds. These reports will provide information on the direct job creation and retention of this crucial piece of the ARRA. This information will be useful in the overall evaluation of the employment effects of the act.

General Reporting Guidelines

Contractor shall follow OMB guidelines for reporting jobs created or retained. This Contract describes the general approach that will be in the guidelines.

- Primary recipients are required to report an estimate of jobs directly created or retained by project and activity or contract. Grant recipients should report on the employment impact of sub-recipients. Recipients should not attempt to report on the employment impact on materials suppliers (so called "indirect" jobs) or on the local community ("induced" jobs).
- A job created is a new position created and filled; a job retained is an existing position that would not have been

continued were it not for ARRA funding. Only compensated employment should be reported.

- The number of jobs should be expressed as full-time equivalents (FTEs), which are calculated as total hours worked in jobs created or retained divided by the number of hours in a full-time schedule, as defined by the recipient.
- The number reported should represent a reasonable average of FTEs created and retained for the quarter. Such an estimate would ideally be done by taking FTEs for each pay period in the quarter and averaging them. It could also be done at a single point in time, as long as care is taken that the single point is representative of the quarter.
- A brief description of types of jobs created or retained should be provided.

IN WITNESS WHEREOF, the parties state and affirm that they are duly authorized to bind the respected entities designated below as of the day and year indicated.

ATLANTA NEIGHBORHOOD CHARTER SCHOOL

GOVERNOR'S OFFICE OF STUDENT ACHIEVEMENT

By: _____
Matt Underwood
Executive Director
Federal EIN: 58-2435592

By: _____
Bonnie Holliday
Executive Director
Federal EIN: 58-0973190

Date: _____

Date: _____

For Internal GOSA use only:
Total Cost: \$918,134.00
Source of funds: Federal
CFDA number: 84.395

ATTACHMENT A
RACE TO THE TOP SCOPE OF WORK:
[Attachment A is provided as a separate document]