

**Agreement Between the  
Aubrey Independent School District  
and  
AlphaBEST Education, Inc.  
for After-School Child Care Services**

- i. This Agreement is entered into effective as of the 1st day of August 2011 by and between the Aubrey Independent School District (hereafter referred to as the "District"), and AlphaBEST Education, Inc., a North Carolina corporation ("Contractor").

1. *Duties and responsibilities of Contractor:*

- i. Contractor will provide after school child care services at the District schools listed in an attachment to this Agreement, during the term of this Agreement. Contractor will occupy the cafeteria/gym of each listed school (each, a "School") as the designated space during operation of the after school program described herein. Alternate space may be provided should the designated space be needed for school related functions, provided that any alternate space satisfies applicable Texas licensing requirements. Alternate space may, but is not required to, include classroom, music room, art room, and computer lab.
- ii. Contractor's program shall include the features, operating hours and costs as described in the Program Overview and other materials developed by Contractor and delivered to the District (the "Program Materials").
- iii. Contractor will be the sole provider of on-site after school child care at each of the District's elementary schools.
- iv. Contractor, and its employees, representatives, agents and guests, shall comply with the District's Rules and Regulations for the Use of School Facilities.

2. *Duties and responsibilities of the District/School:*

District shall maintain such facilities in a safe and usable condition.

- i. The District will provide reasonable assistance to Contractor to promote availability of the program described in this Agreement to parents of children attending each School, and will allow distribution of Contractor's marketing and recruitment materials approved by the District in accordance with District Board Policy.

- ii. The District will allow Contractor access to the Internet at each School for Contractor's accounting and recordkeeping purposes to the extent such internet is provided and operational at each location. The District shall not provide internet access or service for the Contractor beyond what is currently installed and in existence at each location.

3. *Term:*

- i. This Agreement shall commence on the 1st day of August, 2011, and conclude on the 30th day of July 2012.
- ii. The District shall have the right and option to renew the contract at the end of the first term for a one (1) or two (2) year term.

4. *Program Fees:*

- i. Contractor will charge a fee per participating child per week, payable at times or intervals set at the discretion of the Contractor, as described in the Program Materials. Contractor may elect to charge additional fees to cover enhanced program offerings, costs of special materials, field trips, late payment charges, NSF fees, late pickup fees and other reasonable charges. The parents or guardians of children participating in the program will be responsible for the payment of all fees charged by Contractor, and the District shall not be responsible for payment of any program fees or additional fees.
- ii. Contractor will pay the District the greater of, an incremental revenue share based on enrolled students or \$1,000, to be paid on a monthly basis, payable by the fifteenth (15<sup>th</sup>) day of the following month. For purposes of calculating the incremental revenue share, the fee shall be an amount equal to \$3 per child per week for full time, 5 day enrollments and \$2 per child per week for part time, 3 day enrollments.

5. *Termination:*

- i. Contractor shall have the right to terminate this Agreement with thirty (30) calendar days prior written notice to the District in the event that (i) the District fails to perform any material obligation pursuant to this Agreement, after written notice from Contractor and a period of thirty (30) calendar days to cure the material default, or (ii) enrollment falls below a level at which Contractor does not make a profit. The District shall have the right to terminate this Agreement prior to expiration of the stated term in the event Contractor fails to perform any material responsibility under the terms of this Agreement, provided that prior to termination the District shall give Contractor written notice and a period of thirty (30) calendar days to cure the material default described in the District's notice.

- ii. The parties hereto may terminate this Agreement by mutual written consent after thirty (30) calendar days written notice to the parents of the students participating in the Program, if the school year is on-going, or without prior notice to parents if school is adjourned for summer break.

6. *Compliance with Laws:*

Contractor shall comply in all material respects with any applicable federal, state, or local laws and regulations in providing the services contemplated by this Agreement, provided that the District shall be solely responsible for ensuring that the facilities made available to Contractor for operation of the program comply with all applicable laws related to the use of those facilities for the purposes described in this Agreement. In the event the action, inaction and/or negligence of the Contractor and/or its employees, representatives and/or agents creates a condition at the District causing the facilities to not comply with any applicable laws related to use of the facilities for the purposes described in this Agreement, the Contractor, and not the District, shall be solely liable for repair of such condition.

7. *Notices:*

All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered or sent by hand delivery, recognized overnight courier or registered or certified mail, postage fully prepaid and addressed to the recipient at its address set forth below, or to such other address as a party may by proper notice designate, and shall be deemed given in the case of hand delivery upon delivery to the recipient's address, in the case of overnight courier one (1) day after deposit with such courier and in the case of mailing four (4) days after deposit in the mail. The parties' notice addresses are as set forth below:

- i. Notice to the District shall be sent to:

Attn: Dr. James Monaco - Superintendent  
Aubrey Independent School District  
415 W. Tisdale  
Aubrey, TX 76227

- ii. Notices to Contractor shall be sent to:

Attn: Ms. Melissa Harper, Director of Finance  
1310 Lewisville-Clemmons Road  
Lewisville, North Carolina 27023

8. *Maintenance of Records:*

The books, records, and documents of the respective parties to this Agreement insofar as they relate to work performed or money paid or received under this Agreement, shall be maintained for a period of three (3) full years; or for the period required by law from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by the other party or its duly appointed representatives.

9. *Maintenance of Property:*

Any District property, including but not limited to books, records, and equipment, that is in Contractor's possession shall be maintained by Contractor in good condition and repair, ordinary wear and tear excepted, and shall be returned to District by Contractor upon termination of this Agreement. Any of Contractor's property, including but not limited to books, records, and equipment, that is in the District's possession shall be maintained by the District in good condition and repair, ordinary wear and tear excepted, and shall be returned to Contractor by the District upon termination of this Agreement.

10. *Employment Practices:*

Contractor shall not engage in any employment practices that involve discrimination based on race, creed, color, national origin, age, or sex, or which is in violation of applicable laws concerning the employment of individuals with disabilities.

11. *Non-discrimination:*

Contractor enrolls students in its programs, ages 5 to 13 enrolled in kindergarten through fifth grade enrolled at the District school locations, without discrimination as to race, color, gender, national origin, creed, religious beliefs, or ethnicity. Children with special needs will be eligible on a case by case basis, depending upon Contractor's ability to provide services commensurate with the child's needs and in compliance with federal, state and local requirements. This policy is intended to supplement but not replace any state and federal laws applicable to Contractor's programs.

12. *Insurance:*

During the term of this Agreement, Contractor shall maintain comprehensive general liability insurance with limits of not less than \$1,000,000.00. Prior to commencement of performance of this Agreement, Contractor will deliver to the District a certificate evidencing required insurance coverage, in a form reasonably satisfactory to the District. Throughout the term of this Agreement, Contractor shall provide an updated certificate of insurance coverage upon expiration of the current certificate.

13. *Indemnification*

The Contractor shall accept full and complete responsibility for the operation and supervision of the child-care program it operates at each District School during the term of this Agreement and holds the District free, harmless and indemnified from and against any and all claims, suits, or causes of action resulting from or out of the operation of the Contractor's after-school program at the District's School locations.

*14. Affidavit of Employee Criminal Background Check:*

During the term of this Agreement, Contractor shall maintain records to verify that each employee who is engaged or utilized by Contractor to provide child care services pursuant to this Agreement will have undergone a criminal background check. Evidence of criminal background checks shall be provided to the District prior to commencement of performance of this Agreement. Throughout the term of this agreement, Contractor shall provide updated background checks upon the employment of new personnel. Contractor agrees not to employ in the Program any person who is a registered sex offender, is charged with a crime involving a sexual assault of any type, is charged with or convicted of a felony, or is charged or convicted of an assault on a child of any age. The District reserves the right to refuse entry onto school premises of any agent, representative or employee of Contractor. In the event the District prohibits entry onto school premises of any agent, representative or employee of Contractor, the District shall notify the Contractor's agent and the reason for such refusal of access.

*15. Attorney Fees:*

In the event either party deems it necessary to take legal action to enforce any provision of this Agreement, the non-prevailing party in such legal action shall pay all expenses of such action, including the prevailing party's attorney fees and costs.

*16. Assignment:*

The provisions of this Agreement shall insure to the benefit of and shall be binding upon the respective successors and assigns of the parties hereto, to the extent allowed by law. Any assignment of this Agreement by either party shall not relieve the assigning party from its obligations hereunder unless agreed upon in writing by the other party.

*17. Entire Agreement:*

This Agreement sets forth the entire agreement between the parties with respect to the subject matter herein and shall govern the respective of duties and obligation of the parties.

*18. Modification of Agreement*

This agreement may be modified only by written amendment executed by all parties.

*19. Force Majeure:*

No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by force majeure, meaning any act of God, storm, fire, casualty, unanticipated work stoppage strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of government, act of public enemy, or other cause similar or dissimilar in nature beyond its control.

*20. Governing Law*

The validity, construction and effect of this Agreement and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Texas.

*21. Severability:*

Should any provision of this agreement be declared to be invalid by any court of competent jurisdiction, such provision shall be served and shall not affect the validity of the remaining provisions of this agreement.

IN WITNESS WHEREOF, the authorized representatives of each of the parties, each representing to the other that this Agreement has been duly approved by all required action of the governing body of their represented party and that they have been authorized to execute and deliver this Agreement on behalf of their represented party, have executed this Agreement in the capacities set forth below, effective as of the day and year first above written.

**AlphaBEST Education, Inc.**

By: \_\_\_\_\_  
Melissa Harper, Director of Finance

**Aubrey Independent School District**

By: \_\_\_\_\_  
Dr. James Monaco, Superintendent