

Southwest Educational Development Laboratory

National Partnership for Quality Afterschool Learning

Request For Proposals

ANNOUNCEMENT AND GUIDELINES

FOR

AFTERSCHOOL RANDOMIZED CONTROLLED TRIALS

SUBMISSION DEADLINE:

5:00 pm (CST), Thursday, April 6, 2006

Southwest Educational Development Laboratory
211 East 7th Street
Austin, Texas 78701-3281

March 6, 2006

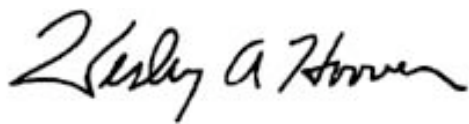
Dear Colleague:

Enclosed is the Request for Proposals (RFP) being issued for Afterschool Randomized Controlled Trials sponsored by the National Partnership for Quality Afterschool Learning at SEDL.

The RFP includes detailed instructions regarding procedures for applying for these subcontracts. Please read the RFP thoroughly and follow all specifications. Be sure to note that the deadline for receipt of proposals is 5:00 pm (CST), Thursday, April 6, 2006. Proposals must be mailed or hand delivered; FAX or electronic submissions will not be accepted.

I am glad to know of your interest in this important research. Good luck, and I look forward to receiving your proposal.

Sincerely,



Wesley A. Hoover
President & CEO

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The National Partnership for Quality Afterschool Learning Southwest Educational Development Laboratory

Rigorous Evaluations of Promising Afterschool Programs Request for Proposals

Introduction

The Southwest Educational Development Laboratory (SEDL) has been working under a contract with the U.S. Department of Education to identify high-quality afterschool programs that have strong academic content links to in-school academic work, and thereby boost student achievement. This work has focused on programs in reading, mathematics, science, the arts, technology, and homework help/tutoring. Part of SEDL's scope of work under this contract also involves supporting a small number of randomized controlled trials (RCT) that could stand individually or collectively as rigorous evidence in the debate about the student-achievement benefits of afterschool interventions. These studies would be designed to provide evidence of whether a high-quality afterschool program, one with strong theoretical and empirical support that included an academic content focus coordinated with that of regular school content, could show evidence of effectiveness on academic outcomes when well-implemented.

SEDL intends to support this work by funding a number of such studies and then supporting their technical execution. Thus, SEDL is looking for candidate high-quality afterschool programs that have already established relationships both with communities and experienced evaluators who would be willing to work with SEDL to conduct such studies over the period June 1, 2006 through August 31, 2008. SEDL would provide funding to support the evaluation work as well as technical support in both designing and carrying out the proposed evaluation.

This Request for Proposals (RFP) represents SEDL's thinking about what potential awardees would need to demonstrate in their submitted proposals. This RFP has been informed by an advisory group of experts in the field and refined based on a meeting of afterschool program providers and evaluators held at SEDL on February 13, 2006. Information from that meeting is available on SEDL's website at: www.sedl.org/afterschool

Requirements for the Proposed Research

This RFP seeks contractors to conduct rigorous evaluations that examine the efficacy and impact of promising afterschool interventions. The research questions addressed in the rigorous evaluations should be well defined and clearly pertinent to the extant theoretical and empirical literature in the field. Proposed research projects should involve efficacy trials using experimental or RCT study designs. The purpose of an efficacy trial is to rigorously test a promising intervention. By efficacy, SEDL means the degree to which an intervention has a net positive impact on the outcomes of interest in relation to the program or practice in which it is being compared for this evaluation. Promising afterschool interventions should include reading

and/or math components and target elementary-aged students (grades 2-5) with a focus on improving student academic outcomes. In the section below, SEDL details the criteria that will be used to evaluate the proposals.

Theoretical and Empirical Rationale. Research projects should be theoretically grounded, both in terms of basic theory as well as program theory relating program structures, processes, and practices to short- and long-term outcomes of interest. Applicants should also review empirical evidence that supports the program theory and evaluate the empirical evidence to date on the effectiveness of the program in terms of key outcomes of interest. A key criterion for successful proposals will be their ability to demonstrate empirical support that the program or program components are promising and, therefore, merits inclusion in an efficacy trial or RCT study. A promising program or program component is fully developed and replicable and has empirically documented gains on intended outcomes of interest. Preference will be given to promising programs or program components that have one or more outcome studies (e.g., using a pre-post test design) documenting improvement in academic outcomes among participants. The theoretical and empirical rationale should, considered together, provide and support a coherent set of research questions that drive the project.

Requirements of the Intervention. The purpose of an efficacy trial is to rigorously test a promising intervention. Applicants must propose to evaluate a promising afterschool intervention that is fully developed, has already been implemented in an education setting, is replicable, and for which a strong case can be made that the study of such an intervention would have important implications for practice and policy. The proposed afterschool intervention should focus on programs or program components focused on reading or math with elementary school students (grades 2-5). Projects should focus on interventions that are designed to improve academic outcomes (e.g., achievement test scores). The intervention should be clearly described, including the subject matter, the grade levels of the students to be targeted, the types of students to be affected, the setting in which it will be delivered, the duration, the intensity (attendance and hours or days per week), the numbers and qualifications of the teachers or other staff who will be involved, and the student outcomes that are targeted.

The application must also include a detailed plan for implementation of the intervention. This includes identifying the school districts and schools or other education settings that have agreed to participate in the study and explain, as completely as possible, how students, teachers, and/or classrooms will be selected to participate in the proposed study. Additionally, the applicant should show how the participation of respondents will be maximized and proposed strategies to minimize attrition. The proposal should indicate how the intervention will be maintained consistently across multiple settings (i.e., classrooms and schools) over time. Particular attention should be placed on how the proposed program implementation will maximize fidelity of implementation across settings and over time, such as providing on-going technical assistance to programs to maximize fidelity or address any problems encountered.

Research Design. Projects should use experimental designs that randomly assign targets of the intervention (e.g., schools, teachers, or students) to treatment and control conditions to test the efficacy of promising afterschool interventions. There is a particular interest in the opportunity to conduct planned variation studies in which the control condition is not “no

treatment” or “treatment as usual” but instead the design includes a contrast that isolates the impact of a particular program component. For example: 1) an afterschool program and a reading component (treatment) versus the afterschool program only (control); 2) an afterschool program and a reading component versus another afterschool program without a strong reading component; or 3) an afterschool program and a reading component versus the afterschool program and a math component. However, a planned variation study is not required nor is it advisable unless the contrast of program components is meaningful from the theoretical and empirical rationale and an operational and programmatic perspective of the participating schools.

The proposal should clearly state the unit of randomization (e.g., student, classroom, teacher, or school) and the rationale for using that unit of randomization. Proposals should explain the procedures for assignment of schools, classrooms, or participants to treatment and control conditions. Proposals should demonstrate how the researchers intend to assess the fidelity of the implementation of the intervention and strategies for avoiding contamination. A clear and complete description should be provided for both the treatment and control conditions. Applicants should demonstrate whether their research design includes sufficient number of settings and/or participants to provide adequate statistical power for detecting meaningful effect sizes for improvements in academic achievement. Preference will be given to proposals that can demonstrate a range of minimal detectable effect sizes supported in the literature and their impact on the study sample size as a justification for their decision regarding sample size. However, given the capability to develop a common protocol of outcome measures and aggregate data across projects, studies will not be judged solely on their ability to have adequate statistical power to detect meaningful effect sizes.

Research Methods and Measures. Proposals must demonstrate that the research methods and proposed measures are appropriate and justify the approach taken in terms of rigor. SEDL encourages, but does not require, that proposals take a mixed-method approach that integrates quantitative and qualitative strategies to address the research questions. All proposals, however, should show consideration of the best methods for addressing their research questions and the limits of any one method or data source. The proposal must supply information on the reliability, validity and appropriateness of the proposed measures. Preference will be given to proposals that include standardized measures of academic achievement in reading and math. Proposals may include observational, survey or qualitative methodologies as a complement to experimental methodologies to assist in the identification of factors that may affect the implementation of the intervention and to provide clues as to how the intervention might be deployed more effectively and efficiently in the future. Proposals may also include measures of mediating or moderating variables for both the intervention and control conditions (e.g., student attendance or time-on-task, teacher quality). However, such methods are not a requirement of this RFP. Successful proposals should also propose a detailed data collection plan including how data collection will be managed and implemented throughout the course of the project. Proposals must also include a data analysis plan that addresses how the researchers will analyze the data to address each of the study’s proposed research questions.

Personnel and Resources. Proposals must demonstrate that their research teams collectively possess the skills and experience to conduct the proposed study design. Preferred skills and experience include design and implementation of RCT studies, demonstrated

substantive knowledge in the afterschool and/or the subject area of the approach or intervention, expertise in statistical analysis, and experience working in education settings with districts, schools, teachers, and students. Partnerships among program personnel and research personnel are strongly encouraged. However, proposals must demonstrate that the involvement of program personnel will not jeopardize the objectivity of the evaluation. Proposals are required to document the availability and cooperation of schools or other education settings that will be required to carry out the research proposed in the application via a letter of commitment. The letter should clearly indicate an acceptance of the responsibilities associated with participating in the study, including agreement to provide a sufficient number of sites, schools, classrooms, and/or students to participate in the study and, in the case of random assignment, an agreement to random assignment of students, classrooms, or schools.

Awards

SEDL anticipates making up to three awards (cost reimbursable contracts beginning June 1, 2006) for up to \$300,000 per year. The base year covers June 1, 2006 through May 31, 2007. Optional Year 2 is anticipated to cover June 1, 2007 through August 31, 2008. Applicants should assume that data collection will begin fall 2006 and go through spring 2008 (covering two school years). Applicants may request larger awards and longer periods of funding but such requests must be carefully and fully justified in the proposal. The size of the award depends on the scope of the project. The contract funds may be used to fund all or some of the cost of implementation, including training teachers or staff and buying materials, but should not exceed 30 percent of the total value of the contract. However, preference will be given to projects that minimize or share the costs of program implementation.

In addition to supporting each project independently, SEDL will provide separate support for capacity-building activities for our contractors. SEDL believes that these capacity-building activities will include bringing project teams of practitioners and researchers together on a regular basis. Before initiation of the full studies (i.e., summer 2006), SEDL anticipates bringing teams together for a period of planning and cross-fertilization of ideas. Possible focal topics for these meetings include developing practitioner-researcher collaborations, developing common measurement protocols across grantees, and providing strategies that can help ensure full implementation of RCT designs in afterschool settings. At later stages, SEDL anticipates bringing teams together to discuss on-going implementation, data collection, and analytic challenges presented by the work as well as explore opportunities to work with the contractors on creating and disseminating the findings from this work collectively. For instance, the consortium could develop a monograph on practical lessons for implementing experimental designs in afterschool settings. For budgeting purposes, contractors should plan on quarterly three-day meetings for two staff in Austin.

Funding Eligibility

Applicants that have the ability and capacity to carry out scientifically valid evaluations and to implement the interventions to be evaluated are eligible to apply. Eligible applicants include, but are not limited to, non-profit and for-profit organizations and public and private agencies and institutions. If a group of eligible parties applies, the members of the group shall designate one

member of the group to apply for the contract, and shall enter into an agreement that details the activities that each member of the group plans to perform, and that binds each member of the group to every statement and assurance made by the applicant in the application. The applicant shall submit the agreement with its proposal.

Application Procedures and Instructions

Proposals must be received by 5 pm (CST) Thursday, April 6, 2006. Five copies (including the original) of the final proposal should be mailed to:

Catherine Jordan
Program Manager
National Partnership for Quality Afterschool Learning
Southwest Educational Development Laboratory
211 E. 7th Street
Austin, TX 78701

Each proposal should comply with the contents and page limitations suggested below and be formatted to include single-spaced 12 point Times New Roman font with 1 inch margins on each 8.5 in. x 11 in. page.

One original (i.e., bearing original signatures) and 4 additional copies of the proposal must be received by the receipt deadline.

All copies must be fastened securely and in a manner that makes it easily stackable with other proposals. The use of such items as binder clips, plastic spiral binders and bound covers is strongly discouraged.

Pages must be numbered.

Applicants must name a project director who will responsible for administration of program activities and budget.

If submitting a collaborative proposal involving two or more agencies or organizations, applicants must designate a single entity to be the contractor and fiscal agent for the project. Successful applicants must submit progress reports at least quarterly beginning September 30, 2006.

Project Abstract (1 page). The abstract is limited to one page and should include the following: 1) Project title; 2) Significance and rationale for the proposed project; 3) the proposed intervention and population(s) from which the participants of the evaluation will be sampled; and 4) the proposed evaluation research design and method(s).

Evaluation Narrative (25 pages). The evaluation narrative should incorporate the requirements outlined under the section on Requirements of the Proposed Research. The evaluation narrative provides the majority of the information on which reviewers will evaluate the proposal.

References (no limit). Please include complete citations, including titles and all authors, for literature cited in the evaluation narrative.

Brief resumes of key personnel (limit to 3 pages each). Abbreviated resumes should be provided for the key personnel proposed. Each resume should be limited to 3 pages and should include information sufficient to demonstrate that personnel possess training and expertise commensurate with their duties. The resumes must adhere to the formatting requirements for the entire proposal.

Appendix A (15 pages). In Appendix A, the applicant may include any figures, charts, or tables that supplement the research text, as well as letters of agreement from partners and consultants.

Appendix B (10 pages). Applicants may include in Appendix B up to 10 pages of descriptions of the interventions or other examples of program materials the applicant believes would be helpful for reviewers to understand the intervention.

Budget (no limit). The applicant must include a budget for each year of support requested and a cumulative budget for the full term of requested support. Year 1 will cover June 1, 2006 through May 31, 2007 and Year 2 will cover June 1, 2007 through August 31, 2008. At a minimum, applicant must provide detail following the “Example Budget Detail” format, included in this proposal as Appendix C.

Budget Justification (no limit). The budget justification must provide sufficient detail to allow reviewers to judge whether reasonable costs have been attributed to the project. It must include the time commitments and brief descriptions of the responsibilities of key personnel. The budget justification should correspond to the itemized breakdown of the project costs provided in the budget.

Level of Effort (no limit). The level of effort schedule by each staff and consultant in terms of total hours proposed must provide sufficient detail to allow reviewers to judge whether reasonable levels of effort have been attributed to the project. The level of effort schedule should correspond to the itemized breakdown of the project costs provided in the budget.

Certifications and Assurances (no limit). Applicants should submit the following certifications and assurances with the proposal:

Note: Questions concerning the Budget, Justification, Level of Effort and Certifications/Assurances should be directed to Arnold W. Kriegel or Cynthia C. Herring at 512-476-6861.

Review Criteria and Process

Proposals that are complete and responsive to this request will be evaluated by a panel of substantive and methodological experts in the field. Each proposal will be assigned to at least two primary reviewers who will complete written evaluations of the application, identifying strengths and weaknesses related to each of the review criteria. Primary reviewers will

independently assign a score for each criterion, as well as an overall score, for each application they review. Each proposal will be scored on an overall 100-point scale that will be based on the extent to which the proposal addresses the requirements for the proposed research. The review criteria will involve four sections that will be scored as follows: 1) Theoretical and empirical rationale: 20 points; 2) Requirements of the intervention: 20 points; 3) Research design, methods, and measures: 40 points; and 4) Personnel and resources: 20 points. Based on the overall scores assigned by primary reviewers, an average overall score for each application will be calculated and a preliminary rank order of applications prepared before the full review panel convenes to complete the review process. The full panel will consider only those applications deemed to have the highest merit, as reflected by the preliminary rank order, and the most competitive proposals will be discussed and scored. A panel member may nominate for consideration by the full panel any proposal that he or she believes merits full panel review but would not have been included in the full panel review based on preliminary rank order.

Inquiries

Applicants should submit questions in writing via email to afterschoolRCT@sedl.org by March 9 at 5 pm (CST). SEDL will post responses to questions on SEDL's website (www.sedl.org/afterschool) no later than March 14 at 5 pm (CST).

Attachment 1

Required Forms

- 1. Proposal Cover Page Sample**
- 2. Example Budget Detail**
- 3. (Section K) Representations and Certifications**

National Partnership for Quality Afterschool Learning at SEDL

PROPOSAL COVER PAGE

Project Title:

Submitting Institution(s);

Institution Serving as Subcontractor and Fiscal Agent:

Address:

Project Director:

Telephone:

Authorized Contact Person (if different from Project Director):

Telephone:

Total funds Requested:

By signing and submitting this proposal, the signator is certifying that the institution and the proposed project are in compliance with all applicable federal and state laws and regulations, and that the proposed project is not currently being funded/has not been promised funding.

<p>Category of applicant (check all that apply): <input type="checkbox"/> school district <input type="checkbox"/> nonpublic school <input type="checkbox"/> state controlled college or university <input type="checkbox"/> private university <input type="checkbox"/> private nonprofit organization <input type="checkbox"/> other:</p>
--

Authorized Institutional Representative

Date

**EXAMPLE
BUDGET DETAIL Year 1**

SALARIES				
Title				
Name	3200 /mo. @	100 % x	12 mo.	38400
Title				
Name	2300 /mo. @	75 % x	12 mo.	<u>20700</u>
Total Salaries				59100
BENEFITS	59100	X	31 %	18321
CONSULTANT FEES				
Name and work to be performed	750 /day X	6 da. X	8 con	36000
Name and work to be performed	750 /day X	3 days		<u>2250</u>
Total Consultant Fees				38250
STAFF TRAVEL (from/to - for the purpose of...)				
Air Fare	475 /tr. X	2 tr. X	2 stf	1900
Meals & Incidentals	51 /day X	2 da. X	4 tr.	408
Lodging	120 /nt. X	1 nt. X	4 tr.	480
Other Travel Costs	25 /day X	2 da. X	4 tr.	<u>200</u>
Total Staff Travel				2988
CONSULTANT TRAVEL (from/to - for the purpose of...)				
Air Fare	475 /tr. X	2 tr. X	8 twgs	7600
Meals & Incidentals	51 /day X	2 da. X	16 tr.	1632
Lodging	120 /nt. X	1 nt. X	16 tr.	1920
Other Travel Costs	25 /day X	2 da. X	16 tr.	<u>800</u>
Consultant Travel				11952
FACILITIES RENT	1077.24 /mo/FTE x	12 mo.x	1.75 FTE	22622
COMMUNICATIONS	134.88 /mo/FTE x	12 mo.x	1.75 FTE	2832
Additional Communications for...				<u>300</u>
Total Communications				3132
POSTAGE	39.22 /mo/FTE x	12 mo.x	1.75 FTE	824
REPRODUCTION	51.11 /mo/FTE x	12 mo.x	1.75 FTE	1073
SUPPLIES	14.82 /mo/FTE x	12 mo.x	1.75 FTE	311
Additional Supplies for...	1020 X	0.02 Pan		<u>20</u>
Total Supplies				331
OTHER DIRECT COSTS				
	item and purpose			<u>4300</u>
TOTAL DIRECT COSTS				162893
INDIRECT COSTS	162893 X		23.7 %	<u>33074</u>
TOTAL COST/IDC				<u><u>195967</u></u>

K.1 310-1 REPRESENTATION AUTHORITY (JANUARY 2005)

Based on a FAR change, specifically in reference to FAR clauses 52.204-8, Annual Representations and Certifications, and 52.212-3, Offeror Representations and Certifications - Commercial Items, vendors are required to use the Online Representations and Certifications Application (ORCA), a new, web-based, Federal Integrated Acquisition Environment (IAE) initiative that centralizes and standardizes the collection, storage and viewing of many of the representations and certifications required by the Federal Acquisition Regulations (FAR) and previously found in Section K. Vendors should go to <http://orca.bpn.gov/> to complete the requirements of Section K of the solicitation. However, all FAR and ED clauses NOT in ORCA should still be completed. The offeror makes the following Representations and Certifications as part of its proposal (check or complete all appropriate boxes or blanks on the following pages).

Name of Offeror)

Article I.

(RFP No.)

_____ (Date) _____
 (Signature of Authorized Individual)

(TYPED NAME OF AUTHORIZED INDIVIDUAL)

Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001. The Representations and Certifications must be executed by an individual authorized to bind the offeror.

K.2 310-10 GENERAL FINANCIAL AND ORGANIZATIONAL INFORMATION (APRIL 1984)

Offerors or quoters are requested to provide information regarding the following items in sufficient detail to allow a full and complete business evaluation. If the question indicated is not applicable or the answer is none, it should be annotated. If the offeror has previously submitted the information, it should certify the validity of that data currently on file at ED or update all outdated information on file.

(A) Contractor's Name:

(B) Address (If financial records are maintained at some other location, show the address of the place where the records are kept):

(C) Telephone Number:

(D) Individual(s) to contact re this proposal:

(E) Cognizant Government:
 Audit Agency:

Address: Department of Education

Auditor:

(F) (1) Work Distribution for the Last Completed Fiscal

Accounting Period:

Sales:

Government cost-reimbursement type prime contracts and subcontracts:

Government fixed-price prime contracts and subcontracts:

Commercial Sales:

Total Sales:

(2) Total Sales for first and second fiscal years immediately preceding last completed fiscal year.

Total Sales for First Preceding Fiscal Year

Total Sales for Second Preceding Fiscal Year

(G) Is company an ED rate entity or division?

If a division or subsidiary corporation, name parent company:

(H) Date Company Organized:

(I) Manpower:

Total Employees:

Direct: _____

Indirect: _____

Standard Work Week (Hours):

(J) Commercial Products: See attached catalogue and Web site listings at

<http://www.sedl.org/pubs/store.html>

(K) Attach a current organizational chart of the company.

(L) Description of Contractor's system of estimating and accumulating costs under Government contracts. (Check appropriate blocks.)

	Estimated/ Actual Cost	Standard Cost
Estimating System		
Job Order	_____	_____
Process	_____	_____
Accumulating System		
Job Order	_____	_____
Process	_____	_____

Has your cost estimating system been approved by any Government agency? Yes _____ No _____
 If yes, give name and location of agency:

Has your cost accumulation system been approved by any Government agency? Yes _____ No _____
 If yes, give name and address of agency:

(M) What is your fiscal year period?
 (Give month-to-month dates):

What were the indirect cost rates for your last completed fiscal year?

Fiscal Year	Indirect Cost Rate	Basis Allocation
Fringe Benefits	_____	_____
Overhead	_____	_____
G&A Expense	_____	_____
Other	_____	_____

(N) Have the proposed indirect cost rate(s) been evaluated and accepted by any Government agency? Yes _____ No _____

If yes, name and location of the Government agency:

Date of last pre-award audit review by a Government agency:

(If the answer is no, data supporting the proposed rates must accompany the cost or price proposal. A breakdown of the items comprising overhead and G&A must be furnished.)

(O) Cost estimating is performed by:

Accounting Department: _____

Contracting Department: _____

Other (describe) _____

(P) Has system of control of Government property been approved by a Government agency? Yes _____ No _____

If yes, name and location of the Government agency:

(Q) Purchasing Procedures:

Are purchasing procedures written? Yes _____ No _____

Has your purchasing system been approved by a Government agency? Yes _____ No _____

If yes, name and location of the Government agency:

(R) Does your firm have an established written incentive compensation or bonus plan? Yes _____ No _____

K.3 310-16 POST EMPLOYMENT CONFLICT OF INTEREST (MARCH 1985)

The contractor certifies that in developing a proposal in response to the solicitation for this contract, it has not utilized the services of any former Education Department (ED) employee who, while working for the Government, participated personally and substantially in, or was officially responsible for, the development or drafting of the

solicitation for this contract. The contractor further certifies that it did not utilize the services of such an ED employee in assisting or representing the offeror at negotiations for this contract.

K.4 310-6 DUPLICATION OF COST (MARCH 1985)

The offeror represents and certifies that any charges contemplated and included in its estimate of cost for performance are not duplicative of any charges against any other Government contract, subcontract, or other Government source.

K.5 310-9 APPROVAL OF ACCOUNTING SYSTEM (MARCH 1985)

The offer does, does not, have an approved accounting system for purposes of cost reimbursement under this requirement. If so, specify the approving government audit agency or office and the date of approval.

K.6 52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APR 1991)

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989--

- (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;
- 2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and
- (3) He or she will include the language of this certification in all subcontract awards at any tier and require that

all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(End of provision)

K.7 52.204-5 WOMEN-OWNED BUSINESS (OTHER THAN SMALL BUSINESS) (MAY 1999)

(a) "Definition." "Women-owned business concern," as used in this provision, means a concern that is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) "Representation." [Complete only if the offeror is a women-owned business concern and has not represented itself as a small business concern in paragraph (b)(1) of FAR 52.219-1, Small Business Program Representations, of this solicitation.] The offeror represents that it/ /is a women-owned business concern.

(End of provision)

K.8 52.209-5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (DEC 2001)

(a)

(1) The Offeror certifies, to the best of its knowledge and belief, that--

(i) The Offeror and/or any of its Principals--

(A) Are / / are not / / presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have / / have not / /, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are / / are not / / presently indicted for, or

otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.

(ii) The Offeror has/ / has not / /, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(End of provision)

K.9 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

(a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating

areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

(End of clause)

K.10 52.223-6 DRUG-FREE WORKPLACE (MAY 2001)

(a) "Definitions." As used in this clause--

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall- within 30 days after award (unless a longer period is agreed to in writing for contracts

of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration--

- (1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- (2) Establish an ongoing drug-free awareness program to inform such employees about--
 - (i) The dangers of drug abuse in the workplace;
 - (ii) The Contractor's policy of maintaining a drug-free workplace;
 - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (3) Provide all employees engaged in performance of the contract with a copy of the statement required by paragraph (b) (1) of this clause;
- (4) Notify such employees in writing in the statement required by paragraph (b) (1) of this clause that, as a condition of continued employment on this contract, the employee will--
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;
- (5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b) (4) (ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
- (6) Within 30 days after receiving notice under subdivision (b) (4) (ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
 - (i) Taking appropriate personnel action against such employee, up to and including termination; or
 - (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and
- (7) Make a good faith effort to maintain a drug-free

workplace through implementation of paragraphs (b) (1) through (b) (6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.

(End of clause)

Attachment 2

Property and Equipment, Other Administrative Details, and Responsibility of Prospective Subcontractor Guidelines

PROPERTY AND EQUIPMENT

Subcontractor shall provide the description and estimated cost of each item, and whether Subcontractor proposes to acquire the item(s) with these proposed funds. Such description shall include the following elements for individual items which exceed \$5,000 in cost:

1. A brief statement of function;
2. manufacturer and manufacturer's brand name, model or part number; and;
3. vendor and its proposed price.

Provide a list of Government-owned property that will be used in the proposed scope of work.

OTHER ADMINISTRATIVE DETAILS

1. Persons authorized to conduct negotiations are as follows (please provide name(s) and phone numbers):

RESPONSIBILITY OF PROSPECTIVE SUBCONTRACTOR

Provide the following:

1. Financial Capability/Accounting System & Controls;
2. Statement of Capability to Meet Delivery or Performance Schedules;
3. Record of Past Performance and Listing of References with Contract and Grant Numbers and the Address and Phone Numbers of Those with Whom SEDL Has Most Recently Conducted Business;
4. Statement of Business Integrity;
5. Statement of Possession of Necessary Organization, Experience, and Technical Skills, or the Ability to Obtain Them;
 - A. Evidence of Subcontractor's Capability to Conduct the Work Specified in the RFP;
 - B. Experience Working with Other Organizations Across the Region;
 - C. Evidence of SEDL's Ability to Manage and Evaluate Complex Projects with High Technical Quality; and
 - D. Evidence of SEDL's Ability to Improve Organizational Performance and Staff Development.
6. Statement of Possession of Necessary Facilities, or the Ability to Obtain Them;
7. Compliance with Subcontract Requirements; and
8. OTHER SPECIAL CONSIDERATIONS INVOLVED IN THE ACQUISITION

Attachment 3:
Sample Subcontract Agreement

EXAMPLE
SUBCONTRACT AGREEMENT
BETWEEN
SOUTHWEST EDUCATIONAL DEVELOPMENT LABORATORY
AND
“NAME OF SUBCONTRACTOR”

THIS AGREEMENT (hereinafter referred to as the “Agreement”) is entered into and effective as of June 1, 2006 by and between **SOUTHWEST EDUCATIONAL DEVELOPMENT LABORATORY**, a Texas Non-Profit Corporation having its principal place of business at 211 East Seventh Street, Austin, Texas 78701-3281, by and through its directors, officers, and employees (hereinafter referred to as “SEDL”), and “**name of subcontractor**” (hereinafter referred to as “**NAME OF SUBCONTRACTOR**”), having its principal place of business at “address”.

BACKGROUND

This Background is included to assist in interpreting this agreement and to understand the basis upon which certain terms and conditions have been included in this Subcontract. It is not intended, nor should it be construed, to supersede or amend specifically, recited terms and conditions.

SEDL has been awarded the U.S. Department of Education Contract ED-03-CO-0048 for the purpose of providing certain services and accomplishing certain projects in furtherance of, or related to, public education in the U.S. (the “Prime Contract”). SEDL desires to engage the services of “**NAME OF SUBCONTRACTOR**” to assist it in performing the tasks it has agreed to accomplish and “**NAME OF SUBCONTRACTOR**” has agreed to Subcontract with SEDL to perform a portion of those tasks. The purpose of this Agreement then is to memorialize the agreement between SEDL and “**NAME OF SUBCONTRACTOR**” with respect to the terms and conditions upon which “**NAME OF SUBCONTRACTOR**” will perform those services.

AGREED TERMS & CONDITIONS

1.0 APPENDICES, EXHIBITS, AND SCHEDULES. The following Exhibits and Schedules are attached hereto, made a part of this Agreement and incorporated herein by reference:

- Schedule 1 – Statement of Work
- Schedule 2 – Payment Milestones and Scheduled Payments
- Schedule 3 – Organizational Conflicts of Interest
- Schedule 4 – Contractor’s Debarred, Suspended, or Proposed for Debarment Certification
- Schedule 5 – Contractor’s Annual Audit Reports Certification
- Schedule 6 – Certificate of Current Cost and Pricing Data
- Appendix A – Applicable FAR and EDAR Provisions
- Appendix B – Proprietary Information Agreement
- Appendix C – Assignment Of Rights, Consent To Publication And Release – Photographs

2.0 SUBCONTRACT IDENTIFICATION. For the purpose of identification only, all correspondence related to or referencing this Agreement and all invoices submitted for payment under this Agreement shall recite in a conspicuous place the SEDL Identification Number P.O. _____ in the correspondence or on the invoice.

3.0 “NAME OF SUBCONTRACTOR” TO PERFORM. “NAME OF SUBCONTRACTOR” shall perform the tasks and projects and provide the services listed on Schedule 1, Statement of Work, of this Agreement (the “Subcontract Task(s)” or “Task(s)”). “NAME OF SUBCONTRACTOR” shall perform the Subcontract Tasks in the highest academic and professional manner.

- 3.1 “NAME OF SUBCONTRACTOR” shall perform each of the Subcontract Tasks in a timely manner such that each Task shall be completed on or before the Milestone established for completing the Task that is listed on Schedule 2, Payment Milestones and Scheduled Payments. Should “NAME OF SUBCONTRACTOR” anticipate a delay in a deliverable/milestone due to outside circumstances, “NAME OF SUBCONTRACTOR” shall notify SEDL prior to the due date in order to negotiate a revised due date.
- 3.2 “NAME OF SUBCONTRACTOR” shall not assign nor Subcontract any Subcontract Task to any third party without the express written consent of SEDL.
- 3.3 When requested by “NAME OF SUBCONTRACTOR”, SEDL shall provide guidance and reasonable assistance to “NAME OF SUBCONTRACTOR” in its performance of the Subcontract Tasks. However, notwithstanding SEDL’s guidance and assistance, “NAME OF SUBCONTRACTOR” shall at all times remain responsible for the timely and complete performance of all Subcontract Tasks. SEDL shall also provide timely review and acceptance of each Task when completed by “NAME OF SUBCONTRACTOR”.
- 3.4 Upon completion of each Task, “NAME OF SUBCONTRACTOR” shall provide to SEDL the Deliverable, whether one or more, associated with the specific Task. A “Deliverable” is herein defined as the tangible output to be generated from a specific Task. For example a Deliverable may be a report or a written program or a specific device.

4.0 PAYMENT. For its performance of the Subcontract Tasks, “NAME OF SUBCONTRACTOR” shall be reimbursed its costs incurred in performing the Subcontract Tasks. All cost reimbursement hereunder shall adhere to the guidelines established in the Federal Acquisition Regulations 31.3, Cost Accounting Standards Applicable to Educational Institutions. Only such costs as would be reimbursed by the U.S. Government pursuant to the referenced guidelines will be reimbursed to “NAME OF SUBCONTRACTOR” by SEDL pursuant to this Agreement.

- 4.1 Payment shall be made to “**NAME OF SUBCONTRACTOR**” by SEDL upon completion of each Milestone set forth on Schedule 2 in the following manner:
- 4.1.1 Upon completion of a Milestone and the delivery to SEDL of any Deliverable associated with the Milestone, “**NAME OF SUBCONTRACTOR**” shall submit to SEDL an invoice reciting the SEDL Identification Number, a description of the Subcontract Task performed, the Milestone completed, and a copy of any associated Deliverable called for under the Milestone.
- 4.1.2 Upon receipt, SEDL shall have fifteen (15) days to review the invoice and accept the invoice and attachments. Unless SEDL objects to the invoice and/or rejects the associated Deliverable within this timeframe as set forth in Section 4.1.3 below, SEDL shall pay to “**NAME OF SUBCONTRACTOR**” the amount associated with Subcontract Task performed, the Milestone completed, and the associated Deliverable called for under the Milestone (the “Scheduled Payment”), as agreed to and set forth on Schedule 2. Failure to object to the invoice and/or reject the associated Deliverables within this timeframe shall be deemed an acceptance by SEDL of the associated Deliverable.
- 4.1.3 SEDL reserves the right to reject the performance of a Task, or the completion of a Milestone or Deliverable, and withhold payment for that Task until such time as any discrepancies in best reasonable performance by “**NAME OF SUBCONTRACTOR**” have been rectified or otherwise resolved, but in no event longer than thirty (30) days.
- 4.2 Based upon availability of funding from the ED, the total of all reimbursable costs to be paid to “**NAME OF SUBCONTRACTOR**” by SEDL pursuant to this Agreement shall not exceed “amount” (the “Maximum Subcontract Price”) for the period, June 1, 2006 through May 31, 2007. All expenses related to “**NAME OF SUBCONTRACTOR’S**” subcontract work under this agreement are included as a part of this agreement (i.e., staff time, consultants, travel, supplies, equipment, etc.).

5.0 TERM OF THE AGREEMENT. This Agreement shall commence on June 1, 2006 and terminate on May 31, 2007 unless sooner terminated as hereafter provided. An optional Year 2 award covering the period June 1, 2007 through August 31, 2008 is anticipated to be awarded, subject to continued funding through ED. Any such award will be made through a separate subcontract agreement.

6.0 SPECIAL TERMS AND CONDITIONS.

- 6.1 Each of the clauses and provisions of the Federal Acquisition Regulations (“FAR”) and the Department of Education Acquisition Regulations (“EDAR”) set forth on Appendix A - Applicable FAR and EDAR Provisions are specifically made a part of this Agreement and incorporated herein by reference. “**NAME OF SUBCONTRACTOR**” agrees to abide by such provisions and clauses the same as if each of such provisions or clauses were recited verbatim herein. “**NAME OF SUBCONTRACTOR**” specifically represents

and warrants to SEDL that current and complete copies of the FAR and EDAR are reasonably available to it.

6.2 **“NAME OF SUBCONTRACTOR”** agrees that any and all of such provisions and clauses from the FAR and EDAR will be incorporated into and made a part of any contract, subcontract or agreement between **“NAME OF SUBCONTRACTOR”** and any third-party, wherein any third-party will undertake to perform all or any part of a subcontracted Task.

7.0 INSPECTION OF WORK AND PREMISES OF WORK. SEDL and ED, or their authorized agents, attorneys and/or auditors shall have the right to inspect and evaluate any and all work being performed in furtherance of any Subcontract Task and any and all premises where such work is being performed or was performed or will be performed. Such inspection and audit may be made upon reasonable prior notice at all reasonable times and places and in a manner which will not unduly interrupt or delay **“NAME OF SUBCONTRACTOR’s”** work on the Subcontract Tasks.

7.1 **“NAME OF SUBCONTRACTOR”** agrees that the above provision allowing inspection and evaluation of work and premises will be incorporated into and made a part of any contract, subcontract or agreement between **“NAME OF SUBCONTRACTOR”** and any third-party, wherein the third-party will undertake to perform part of a Subcontract Task.

7.2 **“NAME OF SUBCONTRACTOR”** agrees, on its own behalf and on behalf of any of its subcontractors, it will supply reasonable facilities and assistance as necessary for SEDL or ED to exercise its rights set forth herein.

8.0 MULTIPLE PAYMENTS FOR THE SAME PERIOD OF TIME. If an officer, employee, or agent of **“NAME OF SUBCONTRACTOR”** or any of **“NAME OF SUBCONTRACTOR’s”** subcontractors is involved in two or more projects, at least one of which is supported by federal funds, he or she may not be compensated for more than one hundred percent of his or her time during any part of the period of dual, or multiple involvement and must reasonably apportion costs for the work performed pursuant to this Agreement and any other project. That is, an individual is prevented from receiving double or multiple payment for any given period or amount of work.

9.0 OWNERSHIP OF INTELLECTUAL PROPERTY. All Intellectual Property produced exclusively by **“NAME OF SUBCONTRACTOR”** pursuant to its performance of the Subcontract Tasks shall become the property of **“NAME OF SUBCONTRACTOR”** subject to the license rights of SEDL and ED set forth below. The term "Intellectual Property" means any tangible or intangible property that is subject to being copyrighted, patented or trademarked, including, but not limited to, all Deliverables. All such Intellectual Property is hereafter referred to as the Subject Data. ED may use, duplicate or disclose the Subject Data in any manner and for any purpose whatsoever and may have or permit others to do so; SEDL may do the same but only in order to meet the Prime Contract requirements and obligations to ED.

- 9.1 Furthermore, to the extent that Subject Data is copyrighted, **“NAME OF SUBCONTRACTOR”** does hereby grant to ED an irrevocable, worldwide, royalty-free, non-exclusive license to use, duplicate, copy, distribute and/or dispose of such data for non-commercial purposes; again, same is given to SEDL but only in order to meet the Prime Contract requirements and obligations to ED. However, if in order to grant such license, **“NAME OF SUBCONTRACTOR”** becomes liable to pay compensation (royalties) to others solely because of the Subcontract, then ED or SEDL, at their option, may decide to acquire the license by making the required payment(s) to the third-parties.
- 9.2 **“NAME OF SUBCONTRACTOR”** shall mark all Subject Data with the SEDL Identification Number set forth above and the name and address of the party generating the data. **“NAME OF SUBCONTRACTOR”** shall not affix any unreasonably restrictive markings upon any Subject Data and if such markings are affixed, ED or SEDL shall have the right (with the exception of copyright notices) to remove, obliterate or ignore such markings in order to meet the Prime Contract requirements and obligations.
- 9.3 **“NAME OF SUBCONTRACTOR”** agrees that the above rights in ED or SEDL shall be incorporated into any Subcontract with any third party who will perform any Subcontract Task or any part of any Subcontract Task.
- 9.4 The use of any Subject Data jointly produced by SEDL and **“NAME OF SUBCONTRACTOR”**, when such use is for purposes other than fulfillment of the Prime Contract requirements and obligations to ED must be agreed to in writing by both parties (SEDL and **“NAME OF SUBCONTRACTOR”**) prior to such use. In the event that the parties wish to enter into such an agreement, such agreement shall be negotiated and executed within ninety (90) days. If the parties are unable to reach agreement within this time, each party may pursue any option it has as a joint owner of such Subject Data under U.S. Copyright or Patent Law. SEDL and **“NAME OF SUBCONTRACTOR”** may each produce derivative works for research or teaching purposes without permission from the other, so long as such works do not include the other parties’ Proprietary Information and do not contain any identifiers of human subjects participating in this project.

10.0 ORGANIZATIONAL CONFLICTS OF INTEREST.

- 10.1 Except as specifically recited on Schedule 3 of this Agreement and to the best of its knowledge and belief, **“NAME OF SUBCONTRACTOR”** warrants and represents that there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as that term is defined in the FAR, Subpart 9.5.
- 10.2 **“NAME OF SUBCONTRACTOR”** further agrees that if an actual or potential organizational conflict of interest is discovered or arises after the Effective Date of this Agreement, **“NAME OF SUBCONTRACTOR”** will make a full disclosure, in writing, to SEDL. The disclosure shall include the nature of the conflict, the reasons that the conflict were not earlier discovered and disclosed on Schedule 3, a description of the

actions “**NAME OF SUBCONTRACTOR**” has taken or proposes to take to avoid, mitigate or neutralize the actual or potential conflict.

- 10.3 SEDL may terminate this Agreement, in whole or in part, if it is determined that such termination is necessary to avoid an organizational conflict of interest involving “**NAME OF SUBCONTRACTOR**”.

11.0 PROPRIETARY INFORMATION.

- 11.1 The Parties agree that concurrent with the execution of this Agreement, they will enter into the Proprietary Information Agreement, Appendix B of this Agreement, which will establish the terms and conditions upon which the parties will have access to Proprietary Information belonging to the other party and the uses to which such Proprietary Information may be put.
- 11.2 If “**NAME OF SUBCONTRACTOR**”, or anyone receiving information by or through “**NAME OF SUBCONTRACTOR**”, desires to publish any data or information resulting from the research accomplished as part of this Agreement, then a copy of the proposed publication shall be submitted to SEDL sufficiently in advance of publication to allow SEDL to review the proposed publication to determine whether it contains Proprietary Information belonging to SEDL. If the publication is found to contain SEDL’s Proprietary Information, then the disposition of the use of such information shall be governed by the terms and conditions of the Proprietary Information Agreement.

12.0 EARLY TERMINATION.

- 12.1 This Agreement shall terminate upon the first occurrence of any of the following events:
- a. Mutual agreement of the parties;
 - b. Completion of all Subcontract Tasks;
 - c. Termination of the Prime Contract between SEDL and the ED;
 - d. Termination of this Agreement at the request of ED; or
 - e. Non-Receipt of Full Prime Contract Funding.
- 12.2 Upon termination of this Agreement for any reason not resulting from the non-performance or default on the part of “**NAME OF SUBCONTRACTOR**” or SEDL, then “**NAME OF SUBCONTRACTOR**” shall immediately cease work on any Tasks then being performed, unless such immediate termination would result in irreparable harm to SEDL or ED, in which case “**NAME OF SUBCONTRACTOR**” shall cease work on that Task as soon as is reasonably practicable. “**NAME OF SUBCONTRACTOR**” shall as reasonably soon thereafter as is practicable, but in no event later than seventy-five (75) days after the termination of this Agreement, submit a final invoice for all costs which have been incurred by “**NAME OF SUBCONTRACTOR**”, including uncancelable obligations, in performance of this Agreement, but which have not previously been invoiced. If, in “**NAME OF SUBCONTRACTORS**” opinion, it has certain intangible or indirect costs that result from the early termination of the Agreement, but which would

not otherwise be reimbursable under this Agreement, it may submit to SEDL a written request for reimbursement of those costs (an "Equitable Adjustment") which request will cite all of the grounds in support of the Equitable Adjustment. If the parties are unable to reach an agreement as to the amount or propriety of an Equitable Adjustment, then the matter will be resolved under the Disputes provision of this Agreement.

- 12.3 Upon early termination of this Agreement for whatever reason or purpose, "**NAME OF SUBCONTRACTOR**" shall invoice SEDL all costs remaining due up to and including the date of termination along with copies of all Deliverables (whether or not completed), documents, materials, and/or records produced as part of the performance of this Agreement. SEDL shall submit payment pursuant to Section 4.1.2 above. "**NAME OF SUBCONTRACTOR**" shall also forward to SEDL all personal property belonging to SEDL in the possession of "**NAME OF SUBCONTRACTOR**". In addition, SEDL shall also forward to "**NAME OF SUBCONTRACTOR**" all personal property belonging to "**NAME OF SUBCONTRACTOR**" in the possession of SEDL.
- 12.4 Upon receipt of final payment under this Agreement by "**NAME OF SUBCONTRACTOR**" and receipt of all Deliverables and other personal property belonging to SEDL, and the acceptance of all work by ED, "**NAME OF SUBCONTRACTOR**" and SEDL shall execute mutual releases which release each other, their directors, regents, trustees, officers, employees, agents and independent contractors from and against any further liability, claim or obligations arising under this Agreement, except the obligation as to indemnify the other party as herein provided, which obligation shall survive the termination of this Agreement.
- 12.5 It shall be a condition precedent to the payment of the final invoice submitted hereunder, that "**NAME OF SUBCONTRACTOR**" shall have assigned to SEDL and ED all rights due to SEDL and ED by virtue of this Agreement or otherwise.
- 13.0 INDEMNIFICATION.** Each party agrees to indemnify and hold the other harmless from any and all costs, liability, claim, disputes, and/or causes of action ("Liability") arising between a party and any third party, which liability results from the negligent act or failure to act or from an intentional, unlawful act on the part of a party. To the extent allowed by law, each party shall obtain one or more policies of insurance to cover its risk of liability arising from this covenant, in amounts that would reasonably be anticipated to cover the damages that would accrue from such liability. "**NAME OF SUBCONTRACTOR**" shall name SEDL as an additional insured on any such insurance policy.
- 14.0 DISPUTES.** The parties agree that any disputes between the parties concerning the interpretation of this Agreement, the performance of any Subcontract Task or any other matter will be submitted to mediation in accordance with the commercial mediation rules of the American Arbitration Association, and if mediation does not totally resolve the dispute, then the dispute may be resolved by any other recourse available to the parties.
- 15.0 PRESS RELEASES.** Neither party shall make reference to the other party, without its prior approval, in a press release or any other written statement in connection with work performed

under this agreement, if it is intended for use in the public media, except as required by local, state, or federal regulation.

16.0 “NAME OF SUBCONTRACTOR” TO OBTAIN RELEASES. “NAME OF SUBCONTRACTOR” agrees that if it takes a photographic image (including, but not limited to, a movie or videotape image) of any person and the image is used by “NAME OF SUBCONTRACTOR” in any Deliverable or other document produced as a result of this Agreement and which Deliverable or document is intended to be published, then “NAME OF SUBCONTRACTOR” shall obtain a Release and Consent to use the image in a form substantially similar to the form of Appendix C – Assignment of Rights, Consent to Publication and Release - Photographs.

17.0 MODIFICATIONS OF THIS AGREEMENT.

17.1 No amendments, alterations, changes or modifications of this Agreement shall be valid or enforceable unless they are reduced to writing and executed by persons with authority to contractually bind the parties.

17.2 In no way limiting the generality of the foregoing provisions, “NAME OF SUBCONTRACTOR” shall obtain specific prior written approval from SEDL to institute any of the following additions, modifications or changes:

- a. any revision to the Statement of Work, Schedule 1, which would result in the need for additional funding;
- b. any revision to the scope or objectives of the Subcontract (regardless of whether there is an associated budget revision requiring prior approval); and/or
- c. any request to extend the budget period of the Subcontract.

18.0 SOLE CONTRACT. This Agreement supercedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter of this Subcontract, and contains all of the covenants and agreements between the parties with respect to the subject matter. Each party to this Subcontract acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, that are not set forth in this Subcontract, and that no agreement, statement, or promise not contained in this Subcontract shall be valid or binding.

19.0 INDEPENDENT CONTRACTOR. In performing services under this Subcontract, “NAME OF SUBCONTRACTOR” is an independent contractor and nothing herein is to be construed as establishing an employer-employee relationship. “NAME OF SUBCONTRACTOR” agrees that all work will be performed in accordance with the highest academic and professional standards.

20.0 CONTRACT TO INURE. This Agreement inures to the benefit of the parties, their successors and assigns.

21.0 ASSIGNMENT. A party may not assign its obligations or duties under this Agreement, in whole or in party, without the express written consent of the other party.

22.0 ILLEGAL PROVISION. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

23.0 AUTHORIZED REPRESENTATIVES. The parties agree that the following named individuals or the successor to the position, shall have the authority to bind their respective organization with respect to the area or matter so designated.

23.1 For Technical Matters:

C.

D. SEDL: Ms. Catherine Jordan
Program Manager
Southwest Educational Development Laboratory
211 East Seventh Street
Austin, Texas 78701
(512) 476-6861 (extension 210)
(800) 476-6861
(512) 476-2286 (fax)
cjordan@sedl.org

E. “NAME OF SUBCONTRACTOR”:

F. _____
Name
Title
Company Name
Address
Phone
Fax
email

23.2 For Business Matters:

G.

H. SEDL: Mr. Arnold W. Kriegel
Vice President and CFO
Southwest Educational Development Laboratory
211 East Seventh Street
Austin, Texas 78701
(512) 476-6861 (extension 231)
(800) 476-6861
(512) 476-2286 (fax)
akriegel@sedl.org

I. **“NAME OF SUBCONTRACTOR”:** _____

J. _____
Name
Title
Company Name
Address
Phone
Fax
email

23.3 For Contractual Matters:

K.

L. SEDL: Dr. Wesley A. Hoover
President and CEO
Southwest Educational Development Laboratory
211 East Seventh Street
Austin, Texas 78701
(512) 476-6861 (extension 200)
(800) 476-6861
(512) 476-2286 (fax)
whoover@sedl.org

M. **“NAME OF SUBCONTRACTOR”:** _____

N. _____
Name
Title
Company Name
Address
Phone
Fax
email

THIS AGREEMENT is entered into as of the 1st Day of June 2006.

(“NAME OF SUBCONTRACTOR”)

TIN: (Tax id #)

By: _____ Date: _____
Name
Title

Article II. SOUTHWEST EDUCATIONAL DEVELOPMENT LABORATORY (SEDL)

By: _____ Date: _____
Wesley A. Hoover, Ph.D.
President and CEO

Schedule 1

Article III. Statement of Work

B. Statement of Purpose/Scope of Work

“TEXT” outlining the scope-of-work to be performed and the corresponding anticipated due dates of deliverables

Schedule 2

PAYMENT MILESTONES AND SCHEDULED PAYMENTS

“NAME OF SUBCONTRACTOR” may invoice more frequently than monthly but no less than quarterly. The **“NAME OF SUBCONTRACTOR”** invoice shall recite the SEDL Identification Number P.O. _____. A breakdown of all costs referencing (including staff level of effort) for each period being invoiced will be included. SEDL shall submit payment within 5 days of receipt of its payment from the U.S. Department of Education.

Schedule 3

C. ORGANIZATIONAL CONFLICTS OF INTEREST

To the best of my knowledge and belief, “**NAME OF SUBCONTRACTOR**” ____ has ____ doesn’t have organizational conflicts of interest.

If “has” is checked, the following are organizational conflicts of interest or potential organizational conflicts of interest:

(“**NAME OF SUBCONTRACTOR**”)

TIN: (Tax id #)

By: _____

Date: _____

Name
Title

Schedule 4

D. Contractor's Debarred, Suspended, or Proposed for Debarment Certification

Pursuant to FAR 52.209.6, "**NAME OF SUBCONTRACTOR**" herein certifies it is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency. If, at any time during the period of performance of this Subcontract, "**NAME OF SUBCONTRACTOR**" becomes debarred, suspended, proposed for debarment, declared ineligible or voluntarily excludes itself from covered transactions by any Federal department or agency, it shall notify SEDL in writing immediately.

("NAME OF SUBCONTRACTOR")

TIN: (Tax id #)

By: _____

Date: _____

Name
Title

Schedule 5

E. Contractor’s Annual Audit Reports Certification

Contractor (**circle one and initial**)

IS an Institution of Higher Education or Other Non-Profit Organization (complete items “a” and/or “b” below)

IS NOT an Institution of Higher Education or Other Non-Profit Organization

a.
Pursuant to OMB Circular A-133 “Audits of Institutions of Higher Education and Other Nonprofit Organizations”, “**NAME OF SUBCONTRACTOR**” herein certifies it currently expends \$500,000.00 or more in Federal funding from all sources and shall provide SEDL with reports of it’s annual audits as required.

(“**NAME OF SUBCONTRACTOR**”)

TIN: (Tax id #)

By: _____ Date: _____
Name
Title

And/or

b.
“**NAME OF SUBCONTRACTOR**” certifies that it currently does not expend \$500,000.00 or more in Federal funding from all sources and, if at any time during the period of performance of this Subcontract, “**NAME OF SUBCONTRACTOR**” commences receiving more than \$500,000.00 or more in Federal funding from all sources, it shall notify SEDL in writing immediately and will then provide SEDL reports of it’s annual audits as required by OMB Circular A-133 “Audits of Institutions of Higher Education and Other Nonprofit Organizations”.

(“**NAME OF SUBCONTRACTOR**”)

TIN: (Tax id #)

By: _____ Date: _____
Name
Title

Schedule 6

F. Certificate of Current Cost and Pricing Data

“NAME OF SUBCONTRACTOR” certifies that, to the best of its knowledge and belief, the cost or pricing data (as defined in section 15.401 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4) submitted, either actually or by specific identification in writing, to SEDL to assist in the conduct of the project entitled “Supporting of Program Quality in 21st Century Community Learning Centers” as a subcontractor under U.S. Department of Education Contract Number ED-03-CO-0048 are accurate and complete as of September 22, 2004. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the subcontractor and SEDL that are part of the proposal.

(“NAME OF SUBCONTRACTOR”)

TIN: (Tax id #)

By: _____

Date: _____

Name
Title

Appendix A

FEDERAL ACQUISITION REGULATION

Note: All references to the Government or the Contracting Officer shall mean Southwest Educational Development Laboratory (“SEDL”), and all references to the contractor shall mean (“NAME OF SUBCONTRACTOR”); However, this substitution of nomenclature shall not include Data Rights, Patent Rights, Audit or Cost Accounting Standards. In the aforementioned clauses, “Government” shall mean the Government, not SEDL. Regarding Data and Patents, SEDL shall have a license for internal use to meet prime contract requirements clauses apply only to the extent the thresholds set forth in the FAR are met by this subcontract award.

COST REIMBURSEMENT FAR/EDAR CLAUSES

1. APPLICABLE TO ALL ORDERS

- 52.215-17 Waiver of Facilities Capital Cost of Money
- 52.216-7 Allowable Cost & Payment (substitute 31.3 for 31.2 in (a))
- 52.217-9 Option to Extend the Term of the Contract
- 52.223-14 Toxic Chemical Release Reporting
- 52.224-1 Privacy Act Notification
- 52.224-2 Privacy Act
- 52.225-11 Buy American Act...Construction Materials
- 52.227-1 Authorization and Consent
- 52.227-11 Rights in Data – Patent Rights – Retention by the Contractor (Short Form)
- 52.227-14 Rights in Data – General (Alt IV)
- 52.227-15 Representation of Limited Rights Data and Restricted Computer Software
- 52.232-9 Limitation on Withholding of Payments
- 52.232-20 Limitation of Cost
- 52.232-22 Limitation of Funds (Incrementally Funded)
- 52.232-25 Prompt Payment
- 52.233-1 Disputes
- 52.233-1 Disputes (Alt I)
- 52.233-3 Protest After Award – (Alt I)
- 52.237-3 Continuity of Services
- 52.242-1 Notice of Intent to Disallow Costs (FP only if incentive)
- 52.242-15 Stop Work Order – (Alt I)
- 52.243-2 Change – Cost Reimbursement (ALT I)
- 52.244-2 Subcontracts
- 52.244-2 Subcontracts (ALT II)
- 52.245-5 Government Property (Cost Reimbursement, Time & Materials or Labor Hour Contract) (Alt I)
- 52.246-5 Inspection of Services – Cost Reimbursement
- 52.247-34 F.O.B. Destination
- 52.247-63 Preference for U.S.-Flag Carriers
- 52.249-5 Termination for Convenience of the Government (Educational and Other Nonprofit institutions)
- 52.249-6 Termination (Cost Reimbursement)
- 52.249-14 Excusable Delays
- 52.252-2 Clauses Incorporated by Reference
- 52.253-1 Computer Generated Forms

2. APPLICABLE TO ALL ORDERS OVER \$10,000

- 52.222-26 Equal Opportunity
- 52.222-35 Affirmative Action for Disabled Veterans & Veterans of the Vietnam Era
- 52.222-36 Affirmative Action for Workers with Disabilities
- 52.222-37 Employment Reports on Disabled Veterans & Veterans of the Vietnam Era

3. APPLICABLE TO ALL ORDERS OVER \$25,000

- 52.209-6 Protecting the Government’s Interest When Subcontracting with Contractor’s Debarred, Suspended, or Proposed for Debarment
- 52.222-3 Convict Labor
- 52.232-23 Assignment of Claims

4. APPLICABLE TO ALL ORDERS OVER \$100,000

- 52.203-3 Gratuities

- 52.203-5 Covenant Against Contingent Fees
- 52.203-6 Restrictions on Subcontractor Sales to Government
- 52.203-7 Anti-Kickback Procedures
- 52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity
- 52.203-10 Price or Fee Adjustment for Illegal or Improper Activity
- 52.203-12 Limitation on Payments to Influence Certain Federal Transactions
- 52.204-4 Printing/Copying Double-Sided on Recycled Paper
- 52.215-2 Audit & Records – Negotiations (ALT II)
- 52.219-8 Utilization of Small, Small Disadvantaged, and Woman-Owned Small Business Concerns
- 52.219-16 Liquidated Damages – Subcontracting Plan
- 52.222-2 Payment for Overtime Premiums
- 52.227-2 Notice & Assistance Regarding Patent & Copyright Infringement (Use ALT I for Research & Development)
- 52.242-13 Bankruptcy
- 52.244-5 Competition in Subcontracting [but see FAR 44.204(a)(3)(i) – (iii)]
- 52.246-23 Limitation of Liability
- 52.246-25 Limitation of Liability - Services
- 52.248-1 Value Engineering
- 52.248-1 Value Engineering (Alt I)

5. APPLICABLE TO ALL ORDERS OVER \$500,000

- 52.215-10 Price Reduction for Defective Cost or Pricing Data
- 52.215-11 Price Reduction for Defective Cost or Pricing Data -- Modifications
- 52.215-12 Subcontractor Cost or Pricing Data
- 52.215-13 Subcontractor Cost or Pricing Data - Modification
- 52.215-15 Pension Adjustment & Asset Revisions
- 52.215-18 Reversion of Adjustment of Plans for Post Retirement Benefits (PRR) other than pensions
- 52.215-19 Notification of Ownership Changes
- 52.215-21 Requirement for Cost or Pricing Data or Information Other than Cost or Pricing Data – Modifications
- 52.230-5 Cost Accounting Standards (Educational Institution)

6. APPLICABLE TO ORDERS SPECIFIED IN THE EDAR CLAUSES

- EDAR 3452.202-1 Definitions
- EDAR 3452.208-70 Printing
- EDAR 3452.215-33 Order of Precedence (Contract)
- EDAR 3452.216-70 Additional Cost Principles
- EDAR 3452.216-71 Negotiated Indirect Cost Rates - Fixed
- EDAR 3452.227-70 Publication and Publicity
- EDAR 3452.227-71 Paperwork Reduction Act
- EDAR 3452.227-72 Advertising of Awards
- EDAR 3452.228-70 Required Insurance *
- EDAR 3452.232-70 Prohibition Against Use of ED Funds to Influence Legislation or Appropriations
- EDAR 3452.232-72 Method of Payment
- EDAR 3452.237-71 Services of Consultants
- EDAR 3452.242-70 Litigation and Claims **
- EDAR 3452.242-71 Notice to the Government of Delays
- EDAR 3452.242-72 Withholding of Contract Payments
- EDAR 3452.242-73 Accessibility of Meetings, Conferences, and Seminars to Persons With Disabilities
- EDAR 3452.243-70 Key Personnel
- EDAR 3452.247-70 Foreign Travel

* See attached letter dated 12/1/92

** Subject to the laws and the Constitution of the State of Texas and Statutory duty of the Texas Attorney General

Appendix B

PROPRIETARY INFORMATION AGREEMENT

THIS AGREEMENT is entered into this 1st day of June 2006 between **SOUTHWEST EDUCATIONAL DEVELOPMENT LABORATORY**, a Texas Non-profit Corporation having its principal place of business at 211 E. Seventh St., Austin, TX 78701 (hereinafter referred to as SEDL) and “**NAME OF SUBCONTRACTOR**”, having its principal place of business at “address”.

Article IV. Recitals

WHEREAS, SEDL and “**NAME OF SUBCONTRACTOR**” desire to enter into discussions concerning the Project (as hereafter defined); and

WHEREAS, in the course of such discussions, and as necessary to those discussions, a Party may have access to, and become familiar with, various trade secrets and/or confidential information of the other Party; and

WHEREAS, in order to promote free and open discussions concerning the Project, the Parties desire that any trade secrets and/or confidential information disclosed during or pertinent to those discussion, be retained in confidence by the Party receiving the information,

NOW, THEREFORE, in consideration of the obligations and covenants created herein, the Parties mutually agree as follows:

1. DEFINITIONS.

- a. **CONFIDENTIAL INFORMATION.** The term "Confidential Information" means any information owned by or concerning a Party, that does not constitute a Trade Secret, but which the Party is desirous of not disclosing or making available to the public. Examples of confidential information would include financial, accounting, customer, and personnel information, or information which would prove embarrassing to the Party, or information, which if disclosed, would cause the Party to lose a competitive advantage.
- b. **DISCLOSING PARTY.** The term "Disclosing Party" shall refer to a Party when that Party has made a disclosure of its Proprietary Information.
- c. **PARTY.** The term "Party" shall refer to either SEDL or “**NAME OF SUBCONTRACTOR**”. The term "Parties" shall refer to both SEDL and “**NAME OF SUBCONTRACTOR**”.

- d. **PROJECT.** The term "Project" shall mean the work performed and discussions surrounding the performance of that one certain contract entitled "AGREEMENT BETWEEN THE SOUTHWEST EDUCATIONAL DEVELOPMENT LABORATORY AND "Name of Subcontractor" entered into between the parties effective the 1st day of June 2006.
- e. **PROPRIETARY INFORMATION.** The term "Proprietary Information" means all Trade Secrets and Confidential Information of a Party.
- f. **RECEIVING PARTY.** The term "Receiving Party" shall refer to a Party when that Party is in possession of Proprietary Information of the other Party, irrespective of the manner in which the Receiving Party obtains the Proprietary Information.
- g. **TRADE SECRETS.** The term "Trade Secrets" means devices, secret inventions, processes, and compilations of information, records, and specifications that are owned by the Party and that are regularly used in the operation of the business of that Party and are not available to the public or do not constitute public information.

2. **NON-DISCLOSURE AND RESTRICTIONS ON USE OF PROPRIETARY INFORMATION.**

- a. The Receiving Party agrees to receive and hold all Proprietary Information in strict confidence and to disclose same within its own organization only to its employees having a need to know the information in furtherance of the Project. The Receiving Party may also disclose Proprietary Information to its authorized contractors (whether one or more), when such contractors (i) are directly assigned to the Project; (ii) have a bona fide need to know and use such Proprietary Information; and either (iii) have executed an agreement with the Receiving Party which encompass the essential terms of this Agreement, or (iv) have agreed in writing to be bound by the terms of this Agreement. The Receiving Party will exercise no less care to safeguard Proprietary Information of the Disclosing Party than the Receiving Party exercises in safeguarding its own Trade Secrets or Confidential Information, but in no instance shall its duty of care be less than that reasonably required to prevent unauthorized disclosure of the Proprietary Information.
- b. Proprietary Information of the Disclosing Party, in whole or in part, for any purposes other than those expressly permitted herein. The Receiving Party agrees that it will not disclose such Proprietary Information to any third party, commercially exploit the information in any manner whatsoever, or use the information for its benefit or for the benefit of any third party without the express written consent of the Disclosing Party, except that it may be disclosed by the Receiving Party to the U.S.

Government for evaluation of and in proposals submitted in response to the Project provided any such disclosure bears the restrictive legend of FAR 52.215-12 or a substantially identical successor provision. The Receiving Party shall not perform or permit others to perform decompilation or disassembly of any items of software or hardware which are Proprietary Information. Violation of the terms of this Agreement shall be cause for appropriate injunctive relief to stop such unauthorized disclosure, in addition to any other available legal or equitable remedy.

- c. The Parties understand and mutually represent one to the other that notwithstanding that certain information is generally known to the public, a Party may still be desirous of keeping confidential the fact that the Party uses such information. Therefore, notwithstanding anything to the contrary, the Receiving Party shall at all times maintain the confidentiality of Proprietary Information in accordance with the terms of this Agreement. However, if an officer, employee, or agent of the Receiving Party or of an authorized contractor of the Receiving Party makes a disclosure of such information to a third party, or the Receiving Party uses or exploits the information for its own benefit or for the benefit of any third party, it shall be a defense to liability hereunder if, at the time of the disclosure or use, no reference was made, whatsoever concerning the Disclosing Party's use of the information, and the information:
 - i. was known to the Receiving Party prior to receipt from the Disclosing Party; or
 - ii. was general public knowledge, or became so, without breach of the Receiving Party's obligations hereunder; or
 - iii. was independently developed by the Receiving Party without resort to Proprietary Information provided by the Disclosing Party; or
 - iv. was information as to which the Receiving Party has received express written consent from an authorized officer of the Disclosing Party to disclose or use.
- d. Furthermore, the Receiving Party shall be relieved from any liability for the disclosure of Proprietary Information hereunder if it is required to disclose Proprietary Information by applicable law, statute, regulation, subpoena, or court order. In such an event, the Receiving Party shall immediately notify the Disclosing Party of the requirement to disclose the information and all facts and particulars giving rise to the required disclosure, and shall, to the extent reasonably and lawfully practicable, refrain from making a disclosure of such Proprietary Information until the Disclosing Party has had a reasonable opportunity to intervene in such action or take such

lawful action as the Disclosing Party deems necessary to prevent or protect the disclosure of such information.

3. IDENTIFICATION OF PROPRIETARY INFORMATION.

- a. The Disclosing Party, when making a disclosure of its Proprietary Information, shall, in good faith, notify the Receiving Party that the disclosed information constitutes Proprietary Information and, when feasible, all disclosed Proprietary Information shall be disclosed in a written, graphic, or other permanent, tangible form conspicuously labeled as "Proprietary" or "Company Confidential," or, if disclosed orally, reduced to a written form and appropriately labeled as soon as is practicable after the disclosure. Notwithstanding the obligation to label Proprietary Information, the failure of the Disclosing Party to identify or label information as Proprietary Information shall not relieve the Receiving Party of its obligation under Section 2 of this Agreement if the Receiving Party knows, or has reason to believe, that the information is Proprietary Information. If the Receiving Party has reason to believe that information is Proprietary Information, the Receiving Party is under a duty to inquire of the Disclosing Party whether or not the information is Proprietary Information, and if the information is Proprietary Information, the Receiving Party will thereafter label any written or documentary Proprietary Information as "Proprietary to [the Disclosing Party]."
- b. Except as recited above, information which is not Proprietary to the Disclosing Party shall not be so claimed or marked. The Parties shall endeavor, in good faith, to keep to an absolute minimum the amount of Proprietary Information disclosed hereunder.

- 4. NOTICES.** All information appropriately marked as Proprietary or Confidential and disclosed hereunder shall be mailed via certified mail or hand delivered and addressed to the Receiving Party as follows:

If to "**NAME OF SUBCONTRACTOR**":

Name
Title

If to SEDL:

Wesley A. Hoover
President & CEO

5. PATENTS AND OTHER RIGHTS.

- a. The furnishing of Proprietary Information hereunder by the Disclosing Party to the Receiving Party shall not constitute or be construed as a grant of any express or implied license or other right under any of the Disclosing

Party's patents or other intellectual property rights, except as specifically set forth in this Agreement.

- b. The Receiving Party shall not, without the Disclosing Party's prior written consent, apply for any patent or design registration with respect to Proprietary Information furnished by the Disclosing Party or any invention or design contained therein or based thereon, or submit or apply to the U.S. Patent and Copyright Office or any other national or international patent or copyright office for property right protection for any Proprietary Information furnished by the Disclosing Party.
- c. Each Party shall retain all right, title, and interest in and to its Proprietary Information. The disclosure of Proprietary Information is not intended to, and shall not, convey any right, title, or interest in and to the Proprietary Information to the Receiving Party.

6. TERM AND TERMINATION.

- a. This Agreement shall commence as of the day and year first written above and shall continue with respect to any disclosures of Proprietary Information made by the Disclosing Party to the Receiving Party within two (2) years thereafter, the end of which time this Agreement shall expire, unless terminated earlier by either Party at any time on fifteen (15) days prior written notice to the Party. Upon expiration or termination of this Agreement, the Receiving Party shall immediately cease any and all disclosures or uses of Proprietary Information acquired from the Disclosing Party (except to the extent relieved from restrictions pursuant to Paragraph 2.c.(i) through (v) above); and at the Disclosing Party's request, the Receiving Party shall promptly return all written, graphic, or other tangible forms of the Proprietary Information and all copies thereof made by the Receiving Party. If the Proprietary Information is disclosed in a writing which also contains information which is not Proprietary, and return of the entire document or writing would not be reasonable, then the Receiving Party may retain the writing after redacting it so as to remove the Proprietary Information. If the Proprietary Information is disclosed in an electronic medium (e.g., computer disk, computer tape, etc.), the Disclosing Party may require in writing, that the Receiving Party return the original of the electronic medium and require that all electronic copies and electronic records containing the Proprietary Information be deleted. The Disclosing Party may also require that the Receiving Party provide written certification, signed by a corporate officer or other responsible individual, attesting to the fact that all Proprietary Information of the Disclosing Party has been returned to the Party, redacted or deleted.
- b. The obligations of the Receiving Party respecting non-disclosure and use of Proprietary Information acquired from the Disclosing Party shall survive

expiration or termination of this Agreement and shall continue for a period of three (3) years thereafter. After such time, the Receiving Party shall be relieved of all such obligations, except for any Trade Secrets, which shall not be subject to such time limitation and shall continue to survive expiration or termination of this Agreement.

- 7. **GOVERNING LAW.** This Agreement shall be deemed to have been executed in, governed by and interpreted in accordance with the laws of the State of Texas without regard to its choice of law rules.
- 8. **PUBLICATIONS.** Neither Party shall make news releases, public announcements, advertisements, or publicity whatsoever pertaining to this Agreement or the Project without prior written approval of the other.
- 9. **ASSIGNMENT.** Neither shall assign their respective rights or duties under this Agreement to a third party without the prior written consent of the other Party.
- 10. **MERGER.** This Agreement contains the entire understanding between the Parties relative to the protection of Proprietary Information and supersedes any prior and collateral communications, reports, and understandings, if any, between the Parties. No changes, modifications, alterations, or additions to any provision hereof shall be binding unless contained in writing signed by the Parties hereto. This Agreement shall apply in lieu of and notwithstanding any specific legend or statement associated with any Proprietary Information and the duties of the Parties shall be determined exclusively by the terms and conditions of this Agreement.

Each Party acknowledges its acceptance of this Agreement by the signature below of its authorized officer on duplicate originals of the Agreement, one of which fully executed original is to be retained by each Party.

(“NAME OF SUBCONTRACTOR”)

TIN: (Tax id #)

By: _____ Date: _____
Name
Title

Article V. SOUTHWEST EDUCATIONAL DEVELOPMENT LABORATORY (SEDL)

By: _____ Date: _____
Wesley A. Hoover, Ph.D.
President and CEO

Appendix C

ASSIGNMENT OF RIGHTS, CONSENT TO PUBLICATION AND RELEASE - PHOTOGRAPHS

KNOW ALL PERSONS BY THESE PRESENTS:

That I, the individual identified whose signature, name and residence address are subscribed below, for and in return for sufficient, good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do hereby forever assign, transfer and sell to **SOUTHWEST EDUCATIONAL DEVELOPMENT LABORATORY**, hereinafter "SEDL", any and all my rights, of every kind and character whatsoever, relating to Photographs taken of my person at the direction of SEDL, whether I am photographed alone or with other persons, whether male or female, in any setting. I expressly consent to the commercial or non-commercial publication of such photographs by SEDL.

Although it is my understanding that the Photographs are intended to be used for the purpose hereafter stated, I understand that by execution of this agreement, I am relinquishing all my rights to such photographs and to any future compensation for publication, use or sell of same. I also understand that SEDL may treat such Photographs as sole owner, including the right to resell same and to publish same in any medium, including, but not limited to, movies or videotapes, reproduction of same, magazines, newspapers, e-mail and the Internet or World Wide Web. I understand and agree that by execution hereof, I lose any and all rights to duplicate, give or sell such Photographs to any other person. The transfer to SEDL includes my right, if any, to copyright such Photographs and to enjoy all rights provided to copyright holders.

Further, I do hereby release and forever discharge SEDL and its directors, officers, employees, agents, successors and assigns, and their, or any of their, respective heirs, personal representatives, affiliates, successors and assigns, and any and all persons, firms or corporations liable or who might be claimed to be liable, whether or not herein named, from any and all liability for the ownership, publication and use of such Photographs.

This Agreement applies to all Photographs taken of my person on or between the following dates: _____ and _____.

I hereby warrant and represent to SEDL that I am over the age of eighteen (18) years, and if I am not, I hereby warrant and represent to SEDL that my legal guardian has consented on my behalf to the terms and conditions recited in this agreement.

I do not retain the right to view or approve such Photographs prior to publication by SEDL, as this agreement applies to all photographs taken within the terms hereof.

As used in agreement the term "Photograph" means one or more pictures or likenesses obtained by photography, whether by traditional means or digital formats, including pictures or likenesses taken by motion picture camera or videotape camera.

Additional provisions (if any) of this agreement are contained at the end of this document.

EXECUTED this ___ day of _____, 20____.

Article VI. Signature

Residence Address

Print Name

City, State, Zip Code

Witnesses:

Signature

Signature

Print Name

Print Name

Address

Address

City, State, Zip

City, State, Zip

[The following Consent of Guardian is only required to be signed if the subject of the Photograph is a minor or otherwise unable to contract.]

Consent of Guardian

I, _____, hereby represent and warrant to SEDL that I am the _____ [father, mother, legal guardian] of _____, a minor and the individual who is granting this release and assignment for the use of his/her Photograph. I have read and understood the above and foregoing **ASSIGNMENT OF RIGHTS, CONSENT TO PUBLIC ATION AND RELEASE – PHOTOGRAPHS** and consent to the terms and conditions recited therein on the behalf of the minor.

Article VII. Signature

Print Name

Address

City, State, Zip

Article VIII. Additional Provisions

It is intended by SEDL that the Photographs will be used for the following purpose: _____

This agreement shall be governed and interpreted by the laws of the State of Texas.