

STATE OF INDIANA) IN THE MARION COUNTY SUPERIOR COURT
) SS:
 COUNTY OF MARION) CAUSE NO. **49D11 12 07 PL 0 29036**

STATE OF INDIANA *ex rel.*)
 EDISONLEARNING, INC.,)
)
 Plaintiff,)
)
 v.)
)
 GARY COMMUNITY SCHOOL)
 CORPORATION,)
)
 Defendant.)

FILED
 (751) JUL 23 2012
Christy R. White
 CLERK OF THE MARION COUNTY COURT

**VERIFIED COMPLAINT FOR MANDATE, DECLARATORY
 AND INJUNCTIVE RELIEF**

Comes now the Plaintiff, the State of Indiana *ex rel.* Edison Learning, Inc., by counsel, and for its Verified Complaint for Mandate, Declaratory Judgment and Injunctive Relief against the Defendant, the Gary Community School Corporation, would show the Court as follows:

PARTIES AND JURISDICTION

1. The Plaintiff, Edison Learning, Inc., is a corporation organized under the laws of the state of New York and is licensed to do business in Indiana (“Edison”).
2. The Defendant, the Gary Community School Corporation (“GCSC”) is a school district authorized, formed and governed by the applicable laws of the State of Indiana with its principal place of business located at 620 East 10th Place, Gary, Indiana 46402.
3. Pursuant to Indiana’s School Improvement Statute, I.C. § 20-31-9-1 *et seq.*, the Indiana Department of Education (“IDOE”) and the Indiana State Board of Education (“SBOE”) are authorized to identify and designate certain struggling public schools as “turnaround academies” and to assign a special management team to operate those turnaround academies if

necessary. A copy of this statute and the accompanying regulations is attached under as Exhibit “A”.

4. Pursuant to the provisions of I. C. § 20-31-9-4, the State of Indiana and Edison have entered into a turnaround agreement, which has been approved by the IDOE, Edison, and the Attorney General of Indiana, and is a valid contract under Indiana law. Attached hereto as Exhibit “B” is a copy of the fully executed turnaround agreement which is comprised of twenty-two (22) pages.

5. This Court has jurisdiction over this action pursuant to I.C. Sections 34-14-1-1, et seq., and 34-27-1-1, et seq.

6. Venue is proper in this Court pursuant to Trial Rule 75(A)(5).

STATEMENT OF FACTS COMMON TO ALL CAUSES OF ACTION

7. In 2011, Theodore Roosevelt Career and Technical Academy (“Roosevelt”), a public school operated by the GCSC, was identified by the IDOE and the SBOE as a failing school. They determined that the best option for the students attending Roosevelt was to “[a]ssign[] a special management team to operate all or part of the school” as a turnaround academy pursuant to the provisions of I.C. § 20-31-9-4(b)(1)(B).

8. In 2011, following public hearings, the SBOE selected Edison as the special management team to act as the turnaround operator for Roosevelt.

9. The turnaround project was broken into four separate phases involving an initial review process, an identification of the problems, a discussion of proposed remedies, and an implementation phase. Following the successful completion by Edison of the preliminary phases of the project, in March of 2012 the SBOE approved Edison’s proposals, and the State of Indiana

and Edison entered into negotiations on the final terms of a turnaround agreement for the operational phase of the project.

10. As the turnaround operator for Roosevelt, Edison “shall perform all duties and obligations necessary to operate [Roosevelt]. Unless otherwise excepted by law, the services provided by the Contractor to operate the School shall be consistent with those services a local education agency must provide to operate a public school in Indiana.” (Exhibit “B”, p 1).

11. Under I. C. § 20-31-9.5-2 the GCSC is required to permit the use of existing buildings, equipment and materials by the turnaround operator and to provide transportation to students attending the turnaround academy. The statute further provides that “[t]he school corporation shall consult with the special management team regarding these matters.”

12. I.C. § 20-31-9.5-6 entitled “Rules” states that “[t]he state board may adopt rules under IC 4-22-2 to implement this chapter.” Consistent with this provision, the SBOE has adopted a series of rules to implement the turnaround statute which may be found at 511 IAC 6.2-9-1 *et seq.*

13. In order to implement the mandate in I. C. § 20-31-9.5-2 “[t]he school corporation shall consult with the special management team” the SBOE has promulgated 511 IAC 6.2-9-6 which requires that a public school designated by the IDOE as a turnaround candidate shall enter into a transitional or operating agreement with the turnaround operator that delineates the duties of the public school and the turnaround operator with respect to certain specified subjects such as student transportation and facilities issues. *See* I.C. § 20-31-9.5-7 and 511 IAC 6.2-9-5.

14. Pursuant to 511 IAC 6.2-9-6(b) this operating agreement (hereinafter referred to as the “memorandum of understanding” or “MOU”) must, at a minimum, specify the length of

time, level of services, and entity responsible for providing necessary services to the school and students in the school, including, but not limited to the following services:

- 1) transportation;
- 2) food service;
- 3) educational and administrative technology and technology support;
- 4) special education services;
- 5) career and technical education services;
- 6) custodial, maintenance, groundskeeping, and other services;
- 7) instructional services;
- 8) textbooks and supplemental materials;
- 9) student services;
- 10) extracurricular activities.

15. The rule further provides that “[t]he corporation and special management team may enter into a contract or contracts for additional services” and that “[t]he department shall resolve disputes that arise in negotiation or execution of the contract under subsection (b). The decision of the department shall be the final administrative decision.” 511 IAC 6.2-9-6(c) & (d).

16. Recognizing the importance of cooperation and dilatory effect that roadblocks might impose on student achievement and the turnaround process, the SBOE also promulgated 511 IAC 6.2-9-8 entitled “[a]ctions adverse to special management team; real and personal property; failure to fulfill requirements of rule.” This rule provides that “[t]he school corporation shall take no action adverse to the special management team's operation of the school.”

17. Consistent with the foregoing rules, since March of 2012 Edison, with the assistance of the IDOE, at the direction of the SBOE has diligently sought to negotiate an MOU with the GCSC governing the issues identified in 511 IAC 6.2-9-6(b).

18. Despite the specific obligations imposed under the turnaround statute including but not limited to: (1) providing transportation services for students; (2) maintaining and repairing Roosevelt’s buildings and grounds at a level consistent with the GCSC’s maintenance

and repair of other school buildings and grounds; and (3) cooperating with Edison so that Edison can provide an enriching, effective, and safe educational environment for Roosevelt's students, the GCSC has failed to discuss in good faith these issues. They have done this notwithstanding the fact that the statutorily imposed duties include the requirement to consult and cooperate with Edison so it can fulfill its obligations to the IDOE and Roosevelt's students. I.C. § 20-31-9.5-2(a).

19. In addition to failing to fulfill its obligations to negotiate in good faith on transitional issues, the IDOE has also found the GCSC in violation of Indiana law by taking a variety of "adverse actions" with respect to Edison's attempts to operate the turnaround academy. Moreover, the district has declined to remedy these adverse actions, and indeed has, on occasion, compounded them.

20. Edison brings this action to compel the GCSC to comply with its statutory obligations and to cease and desist from the adverse actions it has taken which prevent Edison from performing its duties under the turnaround agreement.

A. Unlawful Removal of Student Records, Equipment and Materials

21. The GCSC has illegally removed and failed to return student records, equipment and materials from Roosevelt.

22. Under Indiana law the GCSC was required to leave all student records at Roosevelt for any and all students who were enrolled at Roosevelt at the conclusion of the 2011-12 school year. I.C. §20-33-2-10(b).

23. The GSCS was also required to leave all of the building's contents, equipment and supplies for use by Edison, the special management team. I.C. §20-31-9.5-2(a)(1).

24. However, as explained in the attached affidavit of Todd McIntire, Edison has conducted thorough reviews of Roosevelt's property, facilities, and grounds and learned that virtually all of the student records from Roosevelt were unlawfully removed from the School by the GCSC. Additionally, the GCSC has removed or allowed to be removed from the building computers, musical instruments, presentation equipment and athletic equipment.

25. Pursuant to its authority under 511 IAC 6.2-9-8(a) in a letter dated July 16, 2012 the IDOE has determined that the district's actions in this regard constitute an "adverse action" in violation of Indiana law and directed the GCSC to immediately produce the records. The GCSC has failed to do so despite repeated requests for these records from Edison. A true, accurate, authentic and complete copy of this letter is attached as Exhibit "C".

26. The GCSC's removal of these documents has irreparably harmed Edison and the students enrolled at Roosevelt as without them, Edison will be unable to complete even the most basic planning regarding transportation, special education, staffing and related matters for the upcoming school year which starts on August 15, 2012, just a few weeks from today.

27. The GCSC's removal of computers, musical instruments, presentation and athletic equipment also has irreparably harmed Edison and the students enrolled at Roosevelt as without the equipment, Edison cannot properly implement the instructional and extra-curricular programs that require this equipment.

B. False and unlawful notifications to Roosevelt families about student "reassignments"

28. The GCSC's illegal actions in removing the student records from Roosevelt and its refusal to return them when requested appears to be part of a systemic effort by the GCSC to disrupt Edison's efforts to provide increased educational opportunities for Roosevelt students.

29. A second manner in which the GCSC has sought to adversely impact the turnaround process involves the GCSC's improper contacts with Roosevelt student families to falsely inform them that unless the families took affirmative actions by June 20, 2012, the students of those families would be transferred automatically to another GCSC school and out of Roosevelt.

30. These contacts were made via letters and so called "robo-calls." A transcription of these "robo-calls" advises Roosevelt families:

"If we have not heard from you by June 20th, your child will be placed in either the Lew Wallace STEM academy or the West Side Leadership Academy if they are in grades 7-12."

This information provided by the GCSC to parents and students that the students would be automatically transferred out of Roosevelt unless they took affirmative steps to prevent their reassignment was false and was contrary to Indiana law.

31. The IDOE investigated the GCSC's actions in this regard and determined that the GCSC was engaged in a systemic effort of disruption by providing false information about automatic reassignments. In a letter dated June 22, 2012, the IDOE advised the GCSC as follows:

The reports received by IDOE demonstrate that GCSC's actions constitute a systematic effort to reassign students attending Roosevelt within GCSC. . . . Given the express prohibition regarding reassignment in the administrative regulation and the impact that such automated reassignment has on students' rights as well as the Turnaround Academy, it is IDOE's position that GCSC's attempts to reassign students constitutes an adverse action to Edison Learning's operation of Roosevelt.

A true, accurate, authentic and complete copy of this letter is attached as Exhibit "D".

32. Thus, as with the student records issue, the IDOE has also determined that the GCSC mailings and telephone calls to existing Roosevelt students violated the adverse action provision of 511 IAC 6.2-9-8(a).

33. Moreover, as noted in the IDOE's second adverse action letter, the July 16, 2012, letter, the GCSC failed to comply with the IDOE's directives in the June 22, 2012 adverse action letter. *See* Exhibit "C", p. 1-2.

C. GCSC's Refusal to Correct Serious Health and Safety Violations and Roosevelt and failure to enter into MOU.

34. Pursuant to I.C. § 20-31-9.5-2 "[i]f the state board assigns a special management team under IC 20-31-9-4 to operate a school as a turnaround academy, for as long as the special management team operates the turnaround academy: (1) the special management team shall continue to use the school building, the accompanying real property, and the building's contents, equipment, and supplies; (2) the school corporation shall continue to: ... (B) maintain and repair the buildings and grounds consistent with the maintenance and repair to the school corporation's other buildings and grounds."

35. As part of its due diligence in preparation for operating Roosevelt, Edison conducted a series of inspections, walk-throughs, and inventories of the Roosevelt facilities and grounds.

36. Those efforts included specific inspections of facilities at Roosevelt to ensure the health and safety of students and staff. Literally dozens of health and safety issues were discovered during these inspections by various experts retained by Edison. These violations were so severe that, when reported to the SBOE during a public meeting, the SBOE immediately

contacted the State Fire Marshall and ordered an immediate inspection of Roosevelt for life threatening health and safety issues.

37. Following that inspection several immediate issues were addressed such as the padlocking of fire escapes, but many other violations persist.

38. As required under I.C. § 20-31-9.5-2(a) Edison sought to consult with the GCSC regarding remedying these matters as part of the development of the MOU. Edison has met with the GCSC Board, administrators, and employees regarding these issues many times since March of 2012, and has provided the GCSC with a detailed proposed MOU that addresses these issues. A true, accurate, authentic and complete copy of this proposed MOU is attached as Exhibit "E".

39. Attached as Exhibit "B" to the proposed MOU was a summary of the major health and safety defects found at Roosevelt that Edison sought to be corrected prior to the commencement of the 2012-13 school year on August 15, 2012. (Building Survey, Larson & Darby, Exhibit B to MOU).

40. These identified defects include the following items that have been identified to the GCSC for at least six (6) months but which the GCSC has declined to immediately address:

Exterior Items:

- a) The brick parapet located at the SE corner of the gymnasium exhibits significant signs of distress creating a **dangerous condition that must be remedied immediately**. This was noted in a Memorandum to Edison Learning, inc. dated 4.12.12. Repair the brick parapet at the gym.
- b) The concrete walkways leading to and located near the 25th Avenue entrances are in need of repair. There are areas of concern that should be addressed very soon. There are significant cracks in several areas that have created tripping hazards. We recommend that these be addressed as soon as possible.
- c) ADA access to these entrances are not properly constructed and do not meet the letter of the law.

- d) The main entrance steps are in very poor condition and are in need of major repair, there are no handrails installed as required per the building code.
- e) All of the masonry located around (especially above) this entrance must be closely inspected to determine the soundness of all attachments to the supporting structure. There is evidence of significant deterioration that would have to be fixed prior to reopening this entrance.
- f) The roof is leaking and mold has been discovered in one of the buildings at Roosevelt.

Interior Items:

- a) The elevator is nonfunctional, disabled students must be carried by a janitor from floor to floor and no provision for emergency egress.
- b) Remove all hazardous materials such as asbestos floor tile and lead paint. This is an obvious life safety issue.
- c) Replace all handrails to meet the current ADA standards. Handrails are currently non-compliant.
- d) Remove all chains and padlocks from doors. This is a building code violation and a life safety hazard.
- e) Remove all stored materials from the stair towers. File cabinets and furniture were noted. This is a building code violation and a life safety hazard as it prevents emergency egress.
- f) Replace all Fire Extinguishers and cabinets. This is a life safety issue. Provide tamper dye and alarm cover pull stations.
- g) Install a complete fire sprinkler and detection system that would be monitored by the fire department.

See Proposed MOU, Exhibit "E", and Exhibit "B" to MOU.

41. The GCSC has declined to engage in any meaningful discussion of these health and safety issues, declined to execute the MOU, and declined to address the issues simply stating that Edison should prepare a work order and see what happens, all in violation of obligations imposed under I.C. § 20-31-9.5-2.

D. GCSC's Refusal to Provide Critical Transportation Plans and comply with other mandatory duties imposed by law.

42. Pursuant to I.C. § 20-31-9.5-2 "[i]f the state board assigns a special management team under IC 20-31-9-4 to operate a school as a turnaround academy, for as long

as the special management team operates the turnaround academy: ... (2) the school corporation shall continue to: (A) provide transportation for students attending the turnaround academy at the same level of service the school corporation provided before the school became a turnaround academy.”

43. Rather fulfill its statutory obligations, the GCSC has taken a variety of adverse actions designed to preclude the fulfillment of these responsibilities. For example, as noted earlier, the GCSC has unlawfully removed all student records from Roosevelt, making it all but impossible for Edison to appropriately plan for transportation needs. (Affidavit of Todd McIntire). As with the facility health and safety issues, the GCSC has refused to work with Edison in any fashion prepare to transport the students. Indeed, during the discussions of the proposed MOU, the GCSC’s counsel refused to even provide to Edison a pick up time at Roosevelt for transporting children home. Moreover, she deleted essentially the entire transportation section from the proposed MOU including the proposed 3:45 pm pick up time with no counterproposal. A true, accurate, authentic and complete copy of the GCSC’s counsel’s response to the proposed MOU is attached as Exhibit “F”.

44. Consistent with its established pattern of taking adverse action in order to derail Edison’s efforts, the GCSC’s legal counsel has refused to enter into an MOU or even engage in substantive discussion as required by I.C. § 20-31-9.5-2 which mandates that “[t]he school corporation shall consult with the special management team regarding these matters.”

MOU.

45. As with the facilities issues, the GCSC has declined to engage in any meaningful discussion of these transportation issues, declined to execute the MOU, and declined to address the issues simply putting it off again and again, apparently attempting to make it

impossible for Edison to begin school on time, all in violation of obligations imposed under I.C. § 20-31-9.5-2.

CAUSES OF ACTION

COUNT I: ACTION FOR MANDATE

46. Edison brings this action pursuant to I.C. § 34-27-1-1.

47. I.C. §34-27-3-1 authorizes the prosecution of an action for mandate against any inferior tribunal, corporation, public or corporate officer or person to compel the performance of any act that the law specifically requires or any duty resulting from any office, trust or station.

48. As noted in the factual narrative, the GCSC has failed to perform its legal obligations as set forth by statute and regulation.

49. The GCSC's failures include, but are not limited to: removal and failure to return student records of Roosevelt students; failure to provide transportation services to Roosevelt students; failure to correct serious health and safety violations at Roosevelt; and failure to enter into an agreement or MOU with Edison for the purpose of effectuating a smooth transition for the benefit of Roosevelt's students.

50. The GCSC's failure to perform these legal duties has resulted in and will continue to cause delay in the preparation of Roosevelt for the 2012-2013 school year.

51. If these statutory violations are not remedied immediately, they could preclude the opening of Roosevelt on time and effectively deprive hundreds of Gary school children with an education.

52. The Court should compel GCSC to perform each of its duties as set forth in I.C. § 20-31-9.5-2 and 511 IAC 6.2-9-8.

COUNT II: DECLARATORY JUDGMENT

53. This Court has the authority under the Indiana Uniform Declaratory Judgment Act (I.C. § 34-14-1-1 to -1.) to determine the relative rights and obligation of Edison and GCSC under I.C. § 20-31-9.5 and 511 IAC 6.2-9-5 and -8.

54. Edison has a substantial present interest in the GCSC's compliance with applicable statutes and regulations, including but not limited to I.C. § 20-31-9.5, *et seq.* and 511 IAC 6.2-9-5, 511 IAC 6.2-9-8.

55. There is an actual controversy between the parties concerning GCSC's obligations under these statutes and regulations.

56. A declaratory judgment is necessary for the purpose of settling and affording relief from uncertainty with respect to the rights, status, and future legal relations between Edison and the GCSC.

57. Edison seeks and is entitled to a declaration by this Court, pursuant to Indiana Code §34-14-1-1, *et seq.*, that the GCSC is required to perform the duties set forth in I.C. §20-31-9.5, 511 IAC 6.2-9-5 and 511 IAC 6.2-9-8.

COUNT III: INJUNCTIVE RELIEF

58. The GCSC has a duty to comply with I.C. 20-31-9.5 and 511 IAC 6.2-9-5 and 511 IAC 6.2-9-8.

59. The GCSC's failure to comply with these provisions has caused and will continue to cause irreparable harm to Edison and to the students of Roosevelt because GCSC's conduct has thwarted and delayed Edison's ability to conduct an orderly and efficient transition of Roosevelt. As a result, Edison will not be able to complete the transition in time for beginning of the school year and the arrival of Roosevelt students.

60. As a result of the GCSC's failure to comply with its statutory obligations and its adverse actions in connection with the Roosevelt turnaround, Edison has and will continue to suffer irreparable harm. Specifically, the GCSC's failures and adverse actions have delayed and will continue to delay Edison's ability to prepare for the opening of the school year at Roosevelt

61. Edison does not have an adequate remedy at law for the harm resulting from the GCSC's continued violation of statutory and regulatory obligations in connection with the Roosevelt turnaround.

62. To try to avoid the harm, Edison has, among other things, repeatedly attempted to negotiate with the GCSC to secure the return of student records and other Roosevelt property, to secure the provision by the GCSC of transportation for Roosevelt students, and to secure the performance by the GCSC of repairs and maintenance necessary for the health and safety of students. Edison's efforts in this regard have not been successful, as the GCSC continues to refuse to perform its statutory duties.

63. The Court should enter an order of preliminary and permanent injunctive relief and/or an order of specific performance requiring the GCSC to comply with I.C. 20-31-9.5 and 511 IAC 6.2-9-5 and 511 IAC 6.2-9-8.

64. Additionally, the Court should enter an order preliminarily and permanently enjoining the GCSC from taking any adverse actions in violation of 511 6.2-9-8.

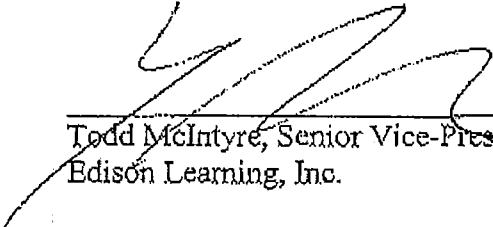
WHEREFORE, Edison requests that this Court grant the following relief:

1. Enter an Order compelling GCSC to take the following actions as required by law:
 - a. Provide transportation services for Roosevelt students as required by I.C. §20-31-9.5-2; and

- a. Provide transportation services for Roosevelt students as required by I.C. §20-31-9.5-2; and
 - b. Immediately return to Edison's custody all Roosevelt student records and other Roosevelt property including computers, musical instruments, presentation equipment and athletic equipment as required by I.C. §20-31-9.5-1; and
 - c. Complete the repairs identified in the Larson and Darby report before the first day of school; and
 - d. Execute an MOU proposed by Edison as required by 511 IAC 6.2-9-6; and
2. Enter an Order declaring GCSC's obligations under I.C. §20-31-9.5-2(a)(1) and (2);
 3. Enter an Order preliminarily and permanently enjoining GCSC from taking any adverse action as set forth in 511 IAC 6.2-9-8, including conducting "robocalls" to or otherwise soliciting Roosevelt students;
 4. Award all other proper relief, including attorney fees and allowable costs.

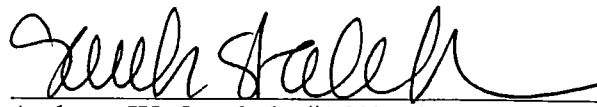
VERIFICATION

I, Todd McIntyre, Senior Vice-President of Edison Learning, Inc., under the penalties for perjury, state that the foregoing factual allegations are true and correct.



Todd McIntyre, Senior Vice-President
Edison Learning, Inc.

FROST BROWN TODD LLC

By: 
Anthony W. Overholt, #16481-49
Sarah Steele Riordan, #17517-53

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West's Annotated Indiana Code Currentness

Title 20. Education

▣ Article 31. Accountability for Performance and Improvement

▣ Chapter 9. Consequences

→→ **20-31-9-4 School placed in lowest category or designation; fifth year**

Sec. 4. (a) This section applies if, in the fifth year after initial placement in the lowest category or designation, a school still remains in the lowest category or designation.

(b) The state board shall do the following:

(1) Hold at least one (1) public hearing in the school corporation where the school is located to consider and hear testimony concerning the following options for school improvement:

(A) Merging the school with a nearby school that is in a higher category.

(B) Assigning a special management team to operate all or part of the school.

(C) The department's recommendations for improving the school.

(D) Other options for school improvement expressed at the public hearing, including closing the school.

(E) Revising the school's plan in any of the following areas:

(i) Changes in school procedures or operations.

(ii) Professional development.

(iii) Intervention for individual teachers or administrators.

(2) If the state board determines that intervention will improve the school, implement at least one (1) of the options listed in subdivision (1).

(c) Unless the school is closed or merged, a school that is subject to improvement under this section becomes a

IC 20-31-9-4

Page 2

turnaround academy under IC 20-31-9. 5.

CREDIT(S)

As added by P.L.1-2005, SEC.15. Amended by P.L.229-2011, SEC.189.

Current with all 2012 legislation

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END OF DOCUMENT

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* RUSH *



EXECUTIVE DOCUMENT SUMMARY

State Form 41221 (R10/4-08)

Instructions for completing the EDS and the Contract process.

1. Please read the guidelines on the back of this form.
2. Please type all information.
3. Check all boxes that apply.
4. For amendments / renewals, attach original contract.
5. Attach additional pages if necessary.

Received

JUL 09 2012

DOA Contracts

6/24
ML

1. EDS Number: A58-3-130T-0910	2. Date prepared: 7/3/2012
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3. CONTRACTS & LEASES	
<input checked="" type="checkbox"/> Professional/Personal Services <input type="checkbox"/> Grant <input type="checkbox"/> Lease <input type="checkbox"/> Attorney <input type="checkbox"/> MOU <input type="checkbox"/> QPA	<input type="checkbox"/> Contract for procured Services <input type="checkbox"/> Maintenance <input type="checkbox"/> License Agreement <input type="checkbox"/> Amendment # _____ <input type="checkbox"/> Renewal # _____ <input type="checkbox"/> Other _____

FISCAL INFORMATION	
4. Account Number: 14930-59B00	5. Account Name: TRIP TO ST SCHOOL TUITION
6. Total amount this action: \$4,143,993.96	7. New contract total: 4,143,993.96
8. Revenue generated this action: \$0.00	9. Revenue generated total contract: \$0.00

10. New total amount for each fiscal year:	
Year 2013	\$4,143,993.96
Year _____	\$ _____
Year _____	\$ _____
Year _____	\$ _____

TIME PERIOD COVERED IN THIS EDS	
11. From (month, day, year): 7/1/2012	12. To (month, day, year): 6/30/2016
13. Method of source selection: <input type="checkbox"/> Bid/Quotation <input type="checkbox"/> Emergency <input type="checkbox"/> Negotiated <input checked="" type="checkbox"/> RFP# IDOE #4 <input type="checkbox"/> Other (specify) _____ <input type="checkbox"/> Special Procurement	

AGENCY INFORMATION

14. Name of agency: Department of Education	15. Requisition Number: 000007489
16. Address: DOE-ACCOUNTING 151 WOHIO ST INDIANAPOLIS, IN 46204	

AGENCY CONTACT INFORMATION

17. Name: Richard McKnight	18. Telephone #: 232-0510
19. E-mail address: rmcknight@doe.in.gov	

COURIER INFORMATION

20. Name: Jim Holdeman	21. Telephone #: 232-0517
22. E-mail address: jholdeman@doe.in.gov	

VENDOR INFORMATION

23. Vendor ID # : 0030207500	
24. Name: EDISON LEARNING INC.	25. Telephone #: (212) 419-1332
26. Address: 900 S GAY ST STE 1000 KNOXVILLE, TN 37932	

27. E-mail address: Aileen.Phillbrick@edisonlearning.com	28. Is the vendor registered with the Secretary of State? (Out of State Corporations must be re-registered) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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29. Primary Vendor: M/WBE Minority: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Women: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	30. If yes, list the %: Minority: _____ % Women: _____ %
--	--

31. Sub Vendor: M/WBE Minority: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Women: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	32. If yes, list the %: Minority: _____ % Women: _____ %
--	--

33. Is there Renewal Language in <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	34. Is there a "Termination for Convenience" clause in the agreement? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
--	---

35. Will the attached document involve data processing or telecommunications system	Yes: IOT or Delegate has signed off on contract
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36. Statutory Authority (Cite applicable Indiana or Federal Codes): IC 20-18-3-6

37. Description of work and justification for spending money. (Please give a brief description of the scope of work included in this agreement.) The contractor will serve as a special management team and operate Theodore Roosevelt Technical and Career Academy in Gary, Indiana. As part of its duties, with the exception of providing transportation and building maintenance and repair, the contractor will be responsible for operating the school. The contractor's duties include, but are not limited to; implementing an instructional program, hiring and retaining highly effective teachers and leaders, developing curriculum and ultimately, driving substantive school improvement.
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38. Justification of vendor selection and determination of price reasonableness: Based on applicant scoring, seven applicants were invited to deliver a formal oral presentation, which included an intense Q&A from the committee. An oral evaluation was conducted in at least one school operated by each of the five semifinalists. This evaluation included focus groups with school leaders, students, teachers, community members, and families, as well as focused classroom observations. Based on the applicant presentations and site visits, three finalists were selected. Price reasonableness factors included turnaround school entrance work based on number of students in the school as well as additional fees for the services outlined in the scope of work.

39. If this contract is submitted late, please explain why: (Required if more than 30 days late) This contract was submitted as soon as all details were finalized.
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40. Agency fiscal officer or representative approval <i>KK</i>	41. Date Approved 07/06/2012	42. Budget agency approval <i>ML</i>	43. Date Approved 7/11/12
44. Attorney General's Office approval <i>M. Ladd</i>	45. Date Approved 7/12/12	46. Agency representative receiving from AG	47. Date Approved

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OAG-ADVISORY



CONTRACT FOR THE OPERATION OF TURNAROUND ACADEMY

EDS #A58-3-1300T-0910

This Contract ("Contract"), entered into by and between the Indiana Department of Education ("State" or "IDOE") and EdisonLearning, Inc., a Delaware corporation whose principal address is located at 485 Lexington Avenue, New York, New York ("Contractor") is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Duties of the Contractor

In addition to any other duties and obligations set forth herein, the Contractor shall perform all duties and obligations necessary to operate Theodore Roosevelt High School (the "School" or "Turnaround Academy"). Unless otherwise excepted by law, the services provided by the Contractor to operate the School shall be consistent with those services a local education agency must provide to operate a public school in Indiana. These services include, but are not limited to:

1. Transportation for special education students and students covered under the McKinney-Vento Homeless Assistance Act;
2. Food service;
3. Education and administrative technology and technology support;
4. Special education services under IC 20-35 and 511 IAC 7;
5. Career and technical education services under IC 20-20 and 511 IAC 8;
6. Custodial, maintenance, grounds keeping, and other services;
7. Instructional services in a particular curriculum area;
8. Textbooks and supplemental materials under IC 20-26-12, and 511 IAC 9;
9. Student services under 511 IAC 4;
10. Extracurricular activities.

In addition to and consistent with the services identified above, the Contractor shall provide all services identified in the Final Turnaround Plan submitted to and approved by IDOE's Office of School Improvement and Turnaround ("Final Turnaround Plan"), which is attached hereto as **Exhibit A** and incorporated herein by reference, which the Contractor is contractually obligated to provide to IDOE pursuant to the Professional Services Contract executed by the parties on October 14, 2011 (EDS #A58-2-12DL-0261). The Contractor shall provide all services in accordance with all applicable federal, state and local laws and/or rules relating to the operation of public schools in Indiana and pursuant to any written guidance provided to the Contractor by IDOE.

The State shall provide, at its sole cost, technical assistance to the Contractor for special education services that the Contractor is required to provide to students attending the Turnaround Academy ("Technical Assistance Contractors"). The Contractor shall work with the State and its Technical Assistance Contractors. The Contractor shall consider the recommendations, guidance, and action plans offered by the State or its Technical Assistance Contractors with respect to the Individuals with Disabilities Education Act and 511 IAC 7. For the avoidance of all doubt, the State shall pay and be responsible for all costs and expenses incurred by and payable to the Technical Assistance Contractors, and such payments by the State shall neither reduce the funds payable to the Turnaround Academy under Section 2 of this Contract nor adversely impact the amount of the fees payable to the Contractor under this Contract.

The services outlined above shall constitute the scope of work to be performed by the Contractor and shall hereinafter be referred to in the Contract as "the Work" or "Services." The Contractor shall not be responsible for any omissions of Services and/or failure to achieve goals as described in the Final Turnaround Plan that are due to the School's failure to receive all funding expected under Ind. Code 20-31-9.5-3.

2. State and Other Funding of School Operations

A. The School Operations shall be funded as follows:

1. from state tuition support as provided under Ind. Code 20-31-9.5-3;
2. from all federal funds (including but not limited to "Race to the Top" and School Improvement Grant funds), to which the Turnaround Academy or its students are entitled and from funds that would be provided for the benefit of the same, as well as any other funds for which the Contractor is eligible as a result of the Services provided under this Contract;
3. subject to any necessary application and approval, from such other federal, state and local funds available to the Turnaround Academy, its students or the Contractor; and
4. from grants (public or private) and any other funding to which the Turnaround Academy, its students or the Contractor may be entitled.

B. The list provided in Section 2A of this Contract shall not limit the funding or funding sources of the Turnaround Academy; its students or the Contractor. The Contractor shall be eligible to receive federal funds consistent with the Turnaround Academy being defined as the local educational agency ("LEA") for purposes of federal funding and contingent upon the Contractor or the Turnaround Academy, as the case may be, completing the necessary application(s) and obtaining approval of the application(s). When appropriate and if necessary under federal grant requirements, the State will apply for the benefit of the Turnaround Academy. The Contractor shall also be entitled to apply for and receive funding from other sources, including state level grants, as part of its operation of the Turnaround Academy.

C. The parties agree to work cooperatively to ensure that any property or equipment located in or assigned to the Turnaround Academy at the beginning of the 2011-2012 school year shall remain at the Turnaround Academy or otherwise for use by the Contractor. To the extent that Contractor determines that the actions or inactions of the Gary Community School Corporation ("GCSC") are materially and adversely impacting the Contractor's ability to perform under this Contract, including, without limitation, that the property or equipment located in or assigned to the Turnaround Academy has been improperly removed, the Contractor shall immediately notify the State of the same in writing and provide all documentation substantiating the same. Upon the State's receipt of the documentation from Contractor, the State shall: (i) immediately contact the GCSC and attempt to resolve the matter consistent with the intent of this Contract and IC 20-31-9.5, et. seq.; and (ii) in the event the GCSC is unable or unwilling to so resolve the matter, the State will bring an action before the Indiana State Board of Education under 511 IAC 6.2-9-8.

D. The parties agree that the Turnaround Academy shall serve as the school corporation of legal settlement for students who reside within the Turnaround Academy's attendance zone as prescribe by applicable law.

3. Term

This Contract shall be effective for a period of four (4) years ("Initial Term"). The Initial Term shall commence on **July 1, 2012** and shall remain in effect through **June 30, 2016**. Throughout this Contract "Term" shall mean the Initial Term and each "Renewal Term," as defined in Section 37 of this Contract.

4. Access to Records

The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records and other evidence pertaining to all costs incurred under this Contract. It shall make such materials available at its respective offices at all reasonable times during this Contract for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.

5. Assignment; Successors

The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent provided that the Contractor may assign this Contract to a successor (entity) that acquires, through a corporate reorganization, substantially all of the Contractor's assets and liabilities. Prior to such an assignment, the State shall have the opportunity to review and consent to the assignment; however, such consent shall not be unreasonably withheld. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that the Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party. Effective as of the date of this Contract and subject to the second and third sentences in the second paragraph of Section 23 of this Contract, the State hereby consents to the Contractor's appointment of Theodore Roosevelt Career and College Academy, Inc., a wholly owned subsidiary of EdisonLearning, Inc., to serve as the subcontractor with respect to the Contractor's performance of the obligations under Sections 2, 4, 6, 9, 12, 27, 29, 34, 44 and 49 of this Contract and the Final Turnaround Plan.

The State shall have the authority to assign to the executive of a city or county certain duties and obligations set forth herein upon the State by sending written notification (pursuant to Section 31 of this Contract) of the assignment to the Contractor sixty (60) days prior to the effective date of the proposed assignment. Contractor shall have thirty (30) days after its receipt of written notice of the State's assignment in which to consent or object to such assignment. Contractor's consent with respect to the assignment shall not be unreasonably withheld. If Contractor does not consent to such assignment by the State or if, despite the Contractor's objection, the State is otherwise required by applicable law (including, without limitation, a final order or decree issued by a court of competent jurisdiction) to make an assignment to the executive of a city or county, then Contractor may terminate this Contract, which shall be effective on June 30th following the notification of the assignment. With the exception of the obligations under Section 12 of this Contract, the Contractor shall have no further obligation under this Contract after the effective date of termination. The Contractor shall be compensated by the State for all Services properly rendered prior to the effective date of termination. The Contractor shall be compensated for all Services herein provided, but in no case shall total payment made to the Contractor exceed the original contract price.

In no event will the State assign its funding and payment obligations under Section 2 of this Contract. In the event the State assigns any of its other duties and obligations under this Contract to the executive of a city or county and the Contractor consents to such assignment, then, as of the effective date of such assignment, the State shall have no further obligation to the Contractor with respect to those duties and obligations (except with respect to the State's obligations under Section 2 of this Contract), unless and

until such assignment is modified or terminated. Any obligation to the Contractor with respect to the assigned duties and obligations shall be borne by the assignee. In the event the assignment is terminated, the State shall resume obligation for the previously assigned duties and obligations and shall notify the Contractor of the same.

6. Audits

The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1, *et seq.*, and audit guidelines specified by the State.

Where applicable, where any federal funds are received by the Contractor or the Contractor's subcontractor following the expiration of this Contract, the Contractor shall arrange for a financial and compliance audit of funds provided by the State pursuant to this Contract. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the Indiana State Board of Accounts), and performed in accordance with Indiana State Board of Accounts publication entitled "Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources," and applicable provisions of the Office of Management and Budget Circulars A-133 (Audits of States, Local Governments, and Non-Profit Organizations). The Contractor is responsible for ensuring that the audit and any management letters are completed and forwarded to the State in accordance with the terms of this Contract. Audits conducted pursuant to this paragraph must be submitted no later than nine (9) months following the close of the Contractor's fiscal year. The Contractor agrees to provide the Indiana State Board of Accounts and the State an original of all financial and compliance audits. The audit shall be an audit limited to funds paid through this Contract to the actual entity, or distinct portion thereof that is the Contractor, and not of a parent, member, or subsidiary corporation of the Contractor, except as otherwise required by applicable federal law. The audit shall include a statement from the Auditor that the Auditor has reviewed this Contract and that the Contractor is not out of compliance with the financial aspects of this Contract.

The State acknowledges that the Contractor is a privately held corporation and is under no obligation to make its non-public financial information available to any third party. Notwithstanding the foregoing, upon written request by the State, the Contractor agrees to provide the State information reasonably sufficient to confirm that the Contractor is solvent and financially secure, such information to be considered confidential ("Contractor's Financial Information") unless the Contractor identifies such information as non-confidential and publicly disclosable by marking it as "Contractor's Non-Confidential Financial Information." The Contractor's Financial Information, when provided to the State, shall be exempt from public disclosure by the State as "confidential information received upon request" or other applicable exemption under the Indiana's Access to Public Records Act, and shall otherwise be exempt from disclosure under any other applicable federal or state law. In the event the State receives a request from a third party ("Third Party Request") for any of the Contractor's Financial Information (by way of example and not a limitation, from a third party, federal agency, or another agency other than the State agency to whom the Contractor initially disclosed Contractor's Financial Information), the State shall immediately notify the Contractor in writing of the Third-Party Request and the State shall not comply with such request before the earlier of: (a) the period required in a final and unappealable order issued by a court of competent jurisdiction indicating that the requested information is not exempt from public disclosure; or (b) the date on which the Contractor notifies the State in writing that such information may be disclosed. The Contractor shall indemnify the State for all reasonable attorneys' fees, penalties and costs incurred by the State or as assessed against the State as a result of the State's compliance with the Contractor's written request to protect the Contractor's Financial Information from disclosure.

7. Authority to Bind Contractor

The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding when his/her signature is affixed, and accepted by the State.

8. Changes in Work

The Contractor shall not commence any additional work or change the Work or Services until authorized in writing by the State. The Contractor shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

9. Compliance with Laws

- A. The Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein which are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State to determine whether the provisions of this Contract require formal modification.
- B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC 4-2-6, *et seq.*, IC 4-2-7, *et seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <http://www.in.gov/ethics/>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44-1-3, and under any other applicable laws.
- C. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The Contractor agrees that any payments currently due to the State of Indiana may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State. Authority to withhold payments is found in IC 4-13-2-14.5 for contractors on the tax warrant list for delinquent taxes.
- D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.
- E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration ("IDOA") following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC 5-17-5.
- F. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety,

and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.

- G. The Contractor affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.
- H. As required by IC 5-22-3-7:
- (1) The Contractor and any principals of the Contractor certify that:
 - (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of:
 - (i) IC 24-4.7 [Telephone Solicitation Of Consumers];
 - (ii) IC 24-5-12 [Telephone Solicitations]; or
 - (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines];in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
 - (B) the Contractor will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.
 - (2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor
 - (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
 - (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

10. Condition of Payment

All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of any federal, state or local statute, ordinance, rule or regulation. The State agrees to pay the Contractor for Services properly rendered within the scope of Exhibit A.

11. Confidentiality of State Information

The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that data, material, and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract, will not be disclosed to or discussed with third parties without the prior written consent of the State.

The parties acknowledge that the services to be performed by Contractor for the State under this contract may require or allow access to data, materials, and information containing Social Security numbers maintained by the State or Turnaround Academy in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the Contractor and the State agree to comply with the provisions of IC 4-1-10 and IC 4-1-11. If any Social Security number(s) is/are disclosed by Contractor, Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this contract.

12. Continuity of Services

A. The Contractor recognizes that the Service(s) to be performed under this Contract are vital to the State and must be continued without interruption and that, upon termination or expiration of the Contract, a successor, either the State or another contractor, may continue them. In the event of the termination or expiration of this Contract, the Contractor agrees that at the State's written request and in consideration for the fee described in subparagraph D of this Section 12A, the Contractor will:

1. Furnish phase-in training; and
2. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

B. The Contractor shall, upon the State's written notice:

1. Furnish phase-in, phase-out services for up to sixty (60) days in the event of default or after this Contract expires; and
2. Negotiate in good faith a plan with the State to determine the nature and extent of phase-in, phase-out services required.

The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

C. The Contractor, at the State's sole cost, shall allow as many personnel as practicable to remain on the job during the provision of the phase-in, phase-out services to help the successor maintain the continuity and consistency of the services required by this Contract. If the Contractor agrees in writing and in its sole and absolute discretion to permit its employees to become employees of the successor, then the Contractor shall: (i) disclose necessary personnel records as permitted by the Contractor's policy with respect to such records; (ii) allow the successor to conduct on-site interviews with these employees; and (iii) if selected employees are agreeable to the change, release the employees at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

D. The State shall pay the Contractor a mutually agreed upon fee, including, without limitation, for all reasonable phase-in, phase-out costs (including direct support provided by Contractor). Direct support shall be limited to external non-school based personnel of the Contractor whose onsite services are necessary for phase in/phase out, which create transportation and human resources costs.

13. Debarment and Suspension

A. The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

B. The Contractor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

14. Default by State

If the State, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract and institute the appropriate measures to collect monies due up to and including the date of termination.

15. Disputes

- A. Should any disputes arise between the Contractor and the State with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
- B. Except as stated in Section 5 of this Contract with respect to assignments by the State, the Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Except as stated in Section 5 of this Contract with respect to assignments by the State, should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs.
- C. If Contractor or the State is not satisfied with the progress toward resolving a dispute, either party must notify in writing the other party of this dissatisfaction. Upon written notice, the parties have ten (10) working days, unless the parties mutually agree to extend this period, following the notification to resolve the dispute. If the dispute is not resolved within ten (10) working days, a dissatisfied party will submit the dispute in writing according to the following procedure:
 1. The Contractor and the State agree to resolve such matters through submission in writing of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the State within ten (10) working days after presentation of such dispute for action. The presentation may include a period of negotiations, clarifications, and mediation sessions and will not terminate until the Commissioner or one of the parties concludes that the presentation period is over. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration or mediation for a determination. If a party is not satisfied with the Commissioner's ultimate decision and no resolution is reached at mediation, the dissatisfied party may submit the dispute to an Indiana court of competent jurisdiction.
 2. Except as stated in Section 5 of this Contract with respect to assignments by the State, the State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for the Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

16. Drug-Free Workplace Certification

The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor in the State of Indiana has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this

certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Contract is in excess of \$25,000.00, the Contractor hereby further agrees that this Contract is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Contractor and made a part of the contract or agreement as part of the contract documents.

The Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them 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;
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring 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
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

17. Employment Eligibility Verification

The Contractor affirms under the penalties of perjury that he/she/it does not knowingly employ an unauthorized alien.

The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.

The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.

The Contractor shall require his/her/its subcontractors, who perform work under this contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The State may terminate for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

18. Employment Option

If, during any Term of this Contract, the State determines that it would be in the State's best interest to hire an employee of the Contractor and the Contractor in its sole and absolute discretion, which shall not be unreasonably withheld, agrees to permit the State to hire such employee, the Contractor will release the requested employee from any non-compete agreements that may be in effect. This release will be at no cost to the State or the employee.

19. Force Majeure

In the event either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, the obligations that the party is unable to perform as a result of the Force Majeure Event shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate the performance of the obligations relating to the Force Majeure Event.

20. Funding Cancellation

When the Director of the State Budget Agency ("SBA") or applicable federal agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be cancelled. A written determination by the Director of SBA or applicable federal agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive. The State shall immediately notify the Contractor in writing of any such determination by the Director of SBA or the applicable federal agency. Notwithstanding any of the foregoing, the Contractor shall be entitled to receive and the State shall pay the Contractor for all services properly rendered under this Contract prior to the later of the date of cancellation of the Contract or Contractor's receipt of the notification by State, which shall be made pursuant to Section 31.

21. Governing Laws

This Contract shall be construed in accordance with and governed by the laws of the State of Indiana, and suit, if any, must be brought in the State of Indiana.

22. Indemnification

The Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by

any act or omission of the Contractor and/or its respective subcontractors, if any, in the performance of this Contract. Pursuant to the Indiana Constitution Article X, Section 3 the State is precluded from and shall **not** provide such indemnification to the Contractor.

23. Independent Contractor

Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of another party.

The Contractor may utilize subcontractors to perform the duties and obligations set forth in this contract. The Contractor shall be responsible for ensuring that the subcontractors' performance is in compliance with applicable law. The Contractor shall not be relieved by nonperformance of any subcontractor(s). The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees.

24. Information Technology Enterprise Architecture Requirements

If the Contractor provides any information technology related products or services to the State, the Contractor shall comply with all IOT standards, policies and guidelines, which are online at <http://iot.in.gov/architecture/>. The Contractor specifically agrees that all hardware, software and services provided to or purchased by the State shall be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 794d) and IC 4-13.1-3. Any deviation from these architecture requirements must be approved in writing by IOT in advance. The State may terminate this Contract for default if the Contractor fails to cure a breach of this provision within a reasonable time.

25. Insurance

- A. For each Turnaround Academy Contractor is assigned, Contractor shall secure and keep in force during the term of this Contract, the following insurance coverage, covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from Contractor's performance under this Contract:
1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of \$700,000 per person and \$5,000,000 per occurrence unless additional coverage is required by the State. The State is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.
 2. Automobile liability with minimum liability limits of \$700,000 per person and \$5,000,000 per occurrence. The State is to be named as an additional insured on a primary, non-contributory basis.
 3. Errors and omissions liability coverage with minimum liability coverage of \$3,000,000 per occurrence or per claim made and \$5,000,000 in the aggregate. The Contractor shall immediately notify the State in the event the Contractor changes its insurer.
 4. The Contractor shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this Contract and proof of Workers compensation coverage meeting all statutory requirements of IC 22-3-2. In

addition, proof of an "all states endorsement" covering claims occurring outside the State is required if any of the services provided under this Contract involve work outside of Indiana.

B. The Contractor's insurance coverage must meet the following additional requirements:

1. The insurer must have a certificate of authority issued by the Indiana Department of Insurance.
2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.
3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this Contract shall not be limited by the insurance required in this Contract.
4. The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State agency.

C. Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the State to immediately terminate this Contract. The Contractor shall furnish a certificate of insurance and all endorsements to the State before the commencement of this Contract.

26. Key person(s) (This clause deleted by agreement of the parties)

27. Licensing Standards

The Contractor, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules, or regulations governing services to be provided by the Contractor pursuant to this Contract. The State will not pay the Contractor for any services performed when the Contractor, its employees or subcontractors are not in compliance with such applicable standards, laws, rules, or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification, or accreditation, the Contractor shall notify the State immediately and the State, at its option, may immediately terminate this Contract.

28. Merger & Modification

This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, except by written agreement signed by all necessary parties.

29. Minority and Women's Business Enterprises Compliance

The Contractor agrees to comply fully with the provisions of 25 IAC 5 and the Subcontractor Commitment submitted to the State. No changes may be made to the commitment without the written approval of the Minority and Women's Enterprises Division of IDOA.

The Contractor shall provide the following information for each minority or women's business enterprise ("MBE/WBE") annually to the State by August 1st of each year: (1) the name of the MBE/WBE; (2) the phone number for each MBE/WBE; (3) the company name; (4) the scope of products or services provided; (5) utilization date; and (6) amount.

The Contractor agrees to submit a copy of the agreement entered into between the Contractor and each MBE/WBE subcontractor where the State took the selection of the MBE/WBE by the Contractor into

consideration when issuing the procurement award. The copy of the agreement must be submitted to the MWBE Division in IDOA within ninety (90) days of the execution of the contract between the Contractor and the State. The Contractor also agrees to send all amendments, changes, and terminations to these agreements to the MWBE Division in IDOA within ninety (90) days of their execution. Failure to provide a copy of the agreement or subsequent amendment, change, and termination may result in exclusion from future State procurements. If the Contractor is not excluded from future procurements, the actions or inactions of the Contractor with regard to the above will be taken into account in all phases and scoring in future procurements. In addition, the Contractor must obtain the approval of the Division before changing any MBE/WBE participation plan submitted in connection with this Contract.

30. Nondiscrimination

This covenant is enacted pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. Breach of this covenant may be regarded as a material breach of this Contract, but nothing in this covenant shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Contractor or any subcontractor.

Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of Services.

The Contractor understands that the State is a recipient of federal funds, and therefore, where applicable, Contractor and any subcontractors agree to comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246.

31. Notice to Parties

Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to:

Dr. Tony Bennett
Superintendent of Public Instruction
Indiana Department of Education
151 West Ohio Street
Indianapolis, IN 46204
Fax Number: 317-232-8004

- and -

Mr. Matthew Voors
General Counsel
Indiana Department of Education
151 West Ohio Street

Indianapolis, IN 46204
Fax Number: 317-232-8004

B. Notices to the Contractor shall be sent to:

485 Lexington Avenue – 2nd Floor
New York, NY 10017
e-mail: todd.mcintire@edisonlearning.com
fax: 484-422-8149

- and -

Mr. Thomas Jackson
Chief Operating & Legal Officer
EdisonLearning, Inc.
485 Lexington Avenue – 2nd Floor
New York, NY 10017
e-mail: thom.jackson@edisonlearning.com
fax: 212-656-1607

- C. As required by IC 4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the Indiana Auditor of State.
- D. All notices required or permitted by this Contract shall be in writing and shall be either personally delivered or sent by nationally-recognized overnight courier, facsimile, electronic mail, or by registered or certified U.S. mail, postage prepaid, addressed as set forth above (except that a Party may from time to time give notice changing the address for this purpose). A notice shall be effective on the date personally delivered, on the date delivered by a nationally-recognized overnight courier, on the date set forth on the receipt of a telecopy or facsimile, on the date set forth on the electronic mail identifying when the electronic mail was sent or upon the earlier of the date set forth on the receipt of registered or certified mail or on the fifth day after mailing.

32. Order of Precedence; Incorporation by Reference

Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) This Contract, (2) exhibit(s) to this Contract; (3) Contractor's response to RFP #IDOE-4; and (4) the RFP #IDOE-4 issued by the IDOE found at http://www.doe.in.gov/turnaround/docs/rfp_idoe_turnaround_school_operator_11-19-final.pdf (RFP). All of the foregoing incorporated fully by reference.

33. Ownership of Documents and Materials

The Contractor owns and shall continue to own all instructional materials, training materials, teaching methodologies, school management methodologies, including but not limited to assessment methodologies, curriculum, lesson plans and any other materials developed by the Contractor, its employees, agents or subcontractors prior to or during execution of this Contract ("Contractor's Materials"). Data collected by the Contractor for the State under this Contract during Phase 1, Assessment, Phase 2 Human Capital Planning Phase and Phase 3, Evaluation, as described in the Scope of Work (the "Data"), shall be considered "work for hire" and the Contractor transfers any ownership claim of such Data to the State and shall be the property of the State. At the expiration of the Contract or upon termination thereof, Contractor shall provide the State the Data in a format usable by the State. Use of the Data, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited; provided, however, that the Contractor may use the Data in an

aggregated form for evaluative and analytical purposes associated with understanding the efficacy of its products and services. Contractor's use of the Data for such evaluative and statistical purposes shall not include any personally identifiable data and shall be in accordance with the applicable provisions of the Family Educational Rights and Privacy Act of 1974, as amended. The Contractor shall provide the State full, immediate, and unrestricted access to the Data during the term of this Contract.

34. Payments and Use of Funds

A. Section 2(A)(1) funds payable to the Contractor hereunder shall be paid to the Contractor by the State in accordance with the schedule established by the State Budget Director commencing in July 2012 through the balance of the Contract. The Contractor shall be paid as follows:

1. For July 1, 2012 through December 31, 2012, Contractor shall receive monthly payments in the amount of \$690,665.66.
2. The amount paid from January 1, 2013 to December 31, 2013 shall be based upon the September 2012 ADM count as provided for under Ind. Code 20-43.
3. The amount paid from January 1, 2014 to December 31, 2014 shall be based upon the September 2013 ADM count as provided for under Ind. Code 20-43.
4. The amount paid from January 1, 2015 to December 31, 2015 shall be based upon the September 2014 ADM count as provided for under Ind. Code 20-43.
5. The amount paid from January 1, 2016 to June 30, 2016 shall be based upon September 2015 ADM count as provided for under Ind. Code 20-43.

The formula for Section 34(A)(2) through Section 34(A)(4) may be modified by legislative action which is applicable to all public schools.

- B. All other funds shall be paid pursuant to the terms and conditions of their funding source. Such other funds to which Contractor may be entitled by virtue of Contractor being defined as an LEA for federal funding purposes shall be paid to the Contractor pursuant to all applicable laws, rules and regulations and in accordance with Section 2 herein.
- C. All funds shall be remitted to the Contractor, who shall use the funds to operate the Turnaround Academy pursuant to Section 2 of this Contract.
- D. Contractor shall complete and submit the form(s) prescribed by the State no later than the first of each month. After the State receives the prescribed form(s), the State shall process and make monthly payments pursuant to Section 34(A). All funds payable to the Contractor hereunder shall be paid to the Contractor by the State pursuant to IC 20-43 and IC 20-31-9.5 and sent to the Contractor by the 20th day of each month. Payment by the State shall commence in July 2012 through the balance of the Contract. All other funds shall be paid pursuant to the terms and conditions of their funding source.

35. Penalties/Interest/Attorney's Fees

The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC 5-17-5, IC 34-54-8, and IC 34-13-1.

Notwithstanding the provisions contained in IC 5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

36. Progress Reports and Public Meetings

- A. The Contractor shall submit reports, plans and other deliverables, as set forth in the Scope of Work attached hereto as Exhibit A, to assure the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date(s).
- B. Pursuant to IC 20-31-9.5-2(c) and IC 20-31-9.5-7(a), the Contractor shall conduct a joint public meeting with the school corporation in which the Turnaround Academy is located at least two (2) times each year to discuss the following:
 - 1. issues concerning the School;
 - 2. progress of the School;
 - 3. student achievement of affected students;
 - 4. the condition of the School property; and
 - 5. issues relating to the School property.

37. Renewal Option

The Parties may renew this contract for an additional period, as mutually agreed in writing.

38. Security and Privacy of Information

A. Health Information

The Contractor agrees to comply with all requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) in all activities related to this Contract, to maintain compliance throughout the life of this Contract, to operate any systems used to fulfill the requirements of this Contract in full compliance with HIPAA and to take no action which adversely affects the State's HIPAA compliance.

The parties acknowledge that the Department of Health and Human Services has issued the Final Rule, as amended from time to time, on the Standards for Privacy of Individually Identifiable Health Information, as required by HIPAA. To the extent required by the provisions of HIPAA and regulations promulgated thereunder, the Contractor covenants that it will appropriately safeguard Protected Health Information (PHI), as defined by the regulations, which is made available to or obtained by the Contractor in the course of its work under this Contract. The Contractor agrees to comply with applicable requirements of law relating to PHI with respect to any task or other activity it performs for the State as required by the final regulations.

B. Student Information

In accordance with Contractor's responsibilities under Sections 1 and 2D hereof, the State hereby designates Contractor as the educational agency for purposes of the Family Educational Rights and Privacy Act ("FERPA"). The Contractor shall determine which of its subcontractors, approved in accordance with Section 5 hereof, have a legitimate educational interest in accordance with 20 U.S.C. §1232g and 34 CFR Part 99. For the avoidance of all doubt, as the educational agency and for the duration of a student's enrollment in the Turnaround Academy, the Contractor shall have the care, custody, and control of and complete access to the educational records of all students enrolled in the Turnaround Academy on the last day of the 2011-12 school year, except for the following:

- 1. Students who graduated in 2012;
- 2. Students who were formally withdrawn from the Turnaround Academy as evidenced by a written document signed by their parent or legal guardian prior to July 1, 2012; and

3. Students for whom, prior to July 1, 2012, GCSC received a written notice signed by the student's parent or legal guardian indicating the intent to enroll in a school other than the Turnaround Academy. With respect to students whose parent or legal guardian indicate in writing the intent to enroll in another school after July 1, 2012, Contractor shall be responsible for ensuring that all educational records pertaining to such student are transferred to the school identified in the parent's or legal guardian's written intent to enroll, and Contractor's responsibilities with respect to such educational records under FERPA shall end on the date the educational records are transferred.

The Contractor assures that it and its subcontractors will comply with all FERPA requirements regarding student educational records, including but not limited to: (i) maintaining the confidentiality of personally identifiable student information; (ii) permitting access to and disclosure of information in a student's educational record solely as prescribed and with the requisite consent; and (iii) the maintenance and storage of educational records. The Contractor assures that no student data or information obtained during Contractor's performance of the Contract will be used for any purpose other than that specified in the Contract without the prior written consent of the appropriate Consenting Party. After the completion or termination of the Contract, Contractor shall return or transfer all student educational records to the appropriate entity. The State shall notify the Contractor, in writing, of the appropriate entity to which the educational records shall be transferred.

39. Severability

The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

40. Substantial Performance

This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

41. Taxes

The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

42. Termination for Convenience (This clause deleted by agreement of the parties)

43. Default and Termination

A. **State Termination for Cause.** The State may terminate this Contract for cause prior to the end of the Term for the reasons set forth below:

1. If Contractor substantially breaches any of the material terms and conditions of this Contract and fails to remedy such breach within sixty (60) days after receipt of written notice of such breach from the State. The State may extend the time to correct or cure the breach beyond the time period set forth above if the State determines progress is being made and the extension is agreed to by the parties in writing;
2. The Contractor is liquidated or dissolved;
3. The Contractor makes any assignment of its assets for the benefit of a creditor;
4. The Contractor files a voluntary petition under any federal, state, or local bankruptcy statute; and

5. A third party files an involuntary petition against the Contractor under any federal, state, or local bankruptcy statute, which involuntary petition has not been dismissed or withdrawn with ninety (90) days of the date of filing.
- B. **Procedures.** The following procedures shall apply to any termination pursuant Section 43A, with the exception of termination due to serious health, safety and welfare risks to students. The State shall give the Contractor written notice of its intent to terminate this Contract at least sixty (60) days prior to the effective date of termination stated in the notice. The cause for termination shall immediately be submitted to the Contractor for consideration and discussions to attempt to resolve the matter. If the matter is unresolved, then termination shall become effective in accordance with the State's termination notice. Notwithstanding the foregoing, any termination will not become effective until the end of a School Year unless:
1. the material breach by Contractor occurs within sixty (60) days of the end of a School Year and remains uncured as of June 30 of such School Year, then this Contract shall be terminated on June 30 of the School Year in which the material breach occurred; or
 2. there are unusual and compelling circumstances that justify the disruption to the educational program and the students caused by a mid-year termination.
- C. **Acceleration due to Health, Safety, and Welfare.** If the grounds for termination relate to a serious health, safety, or welfare risk to students, then notwithstanding any provision to contrary set forth herein, the period to remedy such breach shall not exceed ten (10) days. If Contractor fails to remedy such breach, then the State shall give the Contractor written notice of its intent to terminate this Contract at least seven (7) days prior to the effective date of termination stated in the notice. The State may extend the time to correct or cure the breach beyond the time period set forth above if the State determines that an extension is both warranted and will not create a further health, safety or welfare risk.
- D. **Contractor Termination for Cause.** Contractor may terminate this Contract for cause prior to the end of the term for the following reasons:
1. If the State substantially breaches or fails to comply with any of the material terms and conditions of this Contract and fails to remedy such breach within sixty (60) days after receipt of written notice of such breach from the Contractor. For this purpose, a material breach may include, but is not limited to, failure to make payments as required under Sections 2 and 34 of this Contract, unless the required payment is subject to reasonable dispute or a material breach of the Contract as defined under Section 43A of this Contract. Contractor may extend the time to correct or cure the breach beyond the thirty (30) days if the Contractor determines progress is being made and the extension is agreed by the parties in writing;
 2. The enactment, repeal, promulgation or withdrawal of any federal, state, or local law, regulation, or court or administrative decision or order which has a material adverse effect on the Contractor's ability to operate the Turnaround Academy in accordance with its budget, except that Contractor may not terminate this Contract based on a change in state funding so long as the state funding allocated to Contractor is calculated in accordance with Ind. Code 20-31-9.5-3 and is no less than the per pupil funding received by the GCSC.
- E. **Procedures.** The following procedures shall apply to any termination pursuant this section. Contractor shall give the State written notice of its intent to terminate this Contract at least sixty (60) days prior to the effective date of the termination stated in the notice. The cause of termination shall immediately be submitted to the State for consideration and discussions to attempt to resolve the matter. If the matter is unresolved, then termination shall become effective in accordance with

Contractor's termination notice. Notwithstanding the foregoing, any termination will not become effective until the end of a School Year unless:

1. the material breach by the State occurs within sixty (60) days of the end of a School Year and remains uncured as of June 30 of such School Year, then this Contract shall be terminated on June 30 of the School Year in which the material breach occurred; or
2. there are unusual and compelling circumstances that justify the disruption to the educational program and the students caused by a mid-year termination.

F. Within thirty (30) days of the termination or expiration of this Contract for any reason, the State shall pay to Contractor any and all amounts due to Contractor hereunder, unless such amount is in dispute and subject to resolution pursuant to Section 15 in which case the payment of such amounts shall be resolved in accordance with Section 15 hereof. In the event of termination or at the expiration of the Contract, the State, at its option, may assume leases entered into by the Contractor for equipment used by Contractor at the Turnaround Academy. The State shall notify Contractor of its desire to assume any leases thirty (30) days prior to the expiration or termination of the Contract. All assets purchased by the Contractor solely with its own funds shall remain the property of Contractor. All assets purchased by the Contractor with the funds described in Section 2 of this Contract, whether in whole or in part, shall remain the property of the Turnaround Academy upon termination, or as may otherwise be required by applicable Law.

G. The sole remedies for breaches of this Contract shall be specific performance of the obligations outlined herein or termination of this Contract in accordance with this Section 43; provided, however, that with respect to the State's breach of its obligation to make monetary payments, the remedy shall be the State's payment in full of such monetary obligation.

44. Travel

No expenses for travel will be reimbursed unless specifically permitted under the scope of services or consideration provisions. Expenditures made by the Contractor for travel will be reimbursed at the current rate paid by the State and in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular. Out-of-state travel requests must be reviewed by the State for availability of funds and for appropriateness per Circular guidelines.

All travel expenses associated with Contractor's services are included in budget submitted by the Contractor. The State shall not separately reimburse Contractor for any travel expenses that may be incurred by Contractor during its performance under the Contract.

45. Waiver of Rights

No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the State's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract.

46. Work Standards

The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State

may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.

47. State Boilerplate Affirmation Clause

I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted the State's Boilerplate contract clauses (as contained in the 2011 OAG/ IDOA *Professional Services Contract Manual*) in any way except for the following clauses which are named below:

1. Duties of the TSO Contractor (Modified)
2. Consideration (State and Other Funding of School Operations) (Modified)
3. Term (Modified)
4. Access to Records (Modified)
5. Assignment; Successors (Modified)
6. Audits (Modified)
7. Authority to Bind TSO Contractor (Modified)
8. Changes in Work (Modified)
9. Compliance with Laws (Modified)
10. Condition of Payment (Legal Compliance) (Modified)
11. Confidentiality of State Information (Modified)
12. Continuity of Services (Modified)
14. Default by State (Default and Termination) (Modified)
15. Disputes (Modified)
18. Employment Option (Modified)
19. Force Majeure (Modified)
20. Funding Cancellation (Modified)
22. Indemnification (Modified)
23. Independent Contractor (Modified)
25. Insurance (Modified)
26. Key Person(s) (Deleted by Agreement of the Parties)
29. Minority and Women's Business Enterprises Compliance (Modified)
30. Nondiscrimination (Modified)
31. Notice to Parties (Modified)
32. Order of Precedence; Incorporation by Reference (Modified)
33. Ownership of Documents and Materials (Modified)
34. Payment and Use of Funds (Modified)
36. Progress Reports and Public Meetings (Modified)
37. Renewal Option (Modified)
38. Security and Privacy of Information (Modified)
42. Termination for Convenience (Deleted by Agreement of the Parties)
43. Termination for Default (Modified-See Section 14)
44. Travel (Modified)
45. Waiver of Rights (Modified)
48. Expanded Criminal Background Check (Clause Added)
49. Hiring of Licensed Teachers (Clause Added)
50. Performance Bond (Clause Added)

48. Expanded Criminal Background

Contractor shall perform expanded criminal history checks as defined in IC 20-26-2-1.5. Such criminal history checks shall be done on all Contractor's employees or individuals employed by its subcontractors that are likely to have direct, ongoing contact with children within the scope of the individual's employment. Contractor further agrees to follow all federal, state and/or local laws, rules and regulations, as well as any and all policies adopted by any applicable school corporation, relating to conducting criminal history checks and as part of hiring of employees and contracting with contractors and subcontractors.

49. Hiring of Licensed Teachers

All student instruction provided by Contractor shall be done by teachers licensed under IC 20-28-5.

50. Performance Bond

Contractor agrees to provide a performance bond in the amount of \$250,000 ensuring that Contractor meets all performance targets set forth in the Scope of Work attached hereto as Exhibit A. The State agrees to release the obligations under the performance bond at the end of the third year of operation if the Contractor meets the targets set forth in the scope of work.

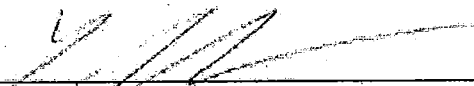
THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.

Non-Collusion and Acceptance


The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the properly authorized representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

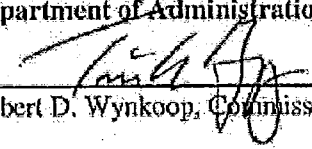
In Witness Whereof, Contractor, EdisonLearning and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below hereby agree to the terms thereof.

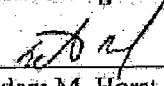
EdisonLearning, Inc.:

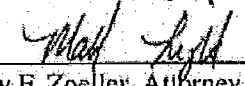
By: 
Printed Name: TODD MCINTIRE
Title: SVP Operations East
Date: 7/2/12

Attested By: _____

Indiana Department of Education:
By: 
Dr. Tony Bennett
Superintendent of Public Instruction
Date: 7-2-2012

Department of Administration

Robert D. Wynkoop, Commissioner
Date: 7/5/12

State Budget Agency
 (for)
Adam M. Horst, Director
Date: 7/11/12

APPROVED as to Form and Legality:
Office of the Attorney General
 (for)
Gregory F. Zoeller, Attorney General
Date: 7/12/12

REQUISITION

Ship To: Indiana Department of Education
151 W OHIO ST
INDIANAPOLIS IN 46204

Requisition No. 0000007489	Date 07/06/2012	Required Date	Page 1 of 1
Fund/Account:	14930 / 531010		
Dept Number:	023056		
Project Number:			
Requisition Number:	0000007489		
Requestor:	K240006 Carr, Kriss-700		
Agency Number:	00700 Department of Education		
Facility:			

Bill to: IN Department of Education
Accounting Dept.
151 W OHIO ST
INDIANAPOLIS IN 46204

MUST COMPLETE FOR ICPR

Print REQ
 Streamline Eligible

Line	Item	Description	Quantity	UOM	Unit Price	Ext Amt
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The contractor will serve as a special management team and operate Theodore Roosevelt Technical and Career Acadmey in Gary, Indiana. As part of its duties, with the exception of providing transportation and building maintenance and repair, the contractor will be responsible for operating the school. The contractors duties include, but are not limited to implementing an instructional program, hiring and retaining highly effective teachers and leaders, developing curriculum and ultimately, driving substantive school improvement. ENCUMBER FUNDS RECEIVE BY AMOUNT ONLY.

1-1		A58313OT0910	1.0000	EA	4,143,993.9600	4,143,993.96
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Vendor: 0000287590 EDISON LEARNING INC

The following UN/CEFACT Unit of Measure
Common Codes are used in this document:
EA Each

Requisition Total \$ 4,143,993.96

I certify that the Item[s] requested is [are] necessary for the operation of this State Agency.		
Requestor Signature M. Covey	Printed Name of Agency Head or Authorized Employee Beverly Flanagan	Authorized Signature



Indiana Department of Education
SUPPORTING STUDENT SUCCESS

July 16, 2012

VIA E-MAIL AND CERTIFIED MAIL

Attorney Tracy A. Coleman
Gary Community School Corporation
620 E 10th Place
Gary, IN 46402

Dear Attorney Coleman:

This letter serves as notice from the Indiana Department of Education (“IDOE”) to Gary Community School Corporation’s (“GCSC”) of GCSC’s noncompliance with 511 IAC 6.2-9-8 as it relates to actions by a school corporation that are adverse to a special management team’s operation of a turnaround academy. This letter addresses four issues. First, this letter addresses GCSC’s plan to automatically enroll Theodore Roosevelt High School Career and Technical Academy (“Roosevelt”) students in other GCSC schools and its failure to cure the potential adverse action described in my June 22nd letter (“Notice of Noncompliance”). Second, this letter reiterates that GCSC must consider those students who were enrolled at Roosevelt on the last day of student attendance for the 2011-2012 school year and who have not elsewhere affirmatively enrolled elsewhere to be enrolled at the Turnaround Academy, Roosevelt. Third, this letter addresses GCSC’s failure to provide student records as required under Indiana state law and as permitted under Family Educational Rights and Privacy Act (“FERPA”). The failure to provide records has hindered the operation of the Turnaround Academy’s in its ability to plan for the upcoming school year, constituting adverse action. Finally, pursuant to GCSC’s request, the IDOE has attached a copy of the contract between the IDOE and Edison Learning for the operation of Roosevelt (“Contract”). The Contract is provided as a public record and should not be interpreted as agreement by the IDOE that provision of the Contract is or was necessary for GCSC to share the required student records.

I. GCSC Plan to Automatically Enroll Roosevelt Student in Other GCSC Schools is not Permissible

- A. GCSC has stopped the automated calls, but has failed to notify parents of Roosevelt Students as requested in the Notice of Non-Compliance.

In your July 6th letter, you explained that “GCSC denies the allegations by Edison that we are enrolling students automatically in Lew Wallace Science Technology Engineering Mathematics Academy or West Side Leadership Academy.” Your letter further asserts that “[t]he school corporation is not taking any action to automatically enroll students at West Side or Lew Wallace unless students have chosen to go to these schools.”

today, continue to be students at Roosevelt, which is GCSC practice.³ The administrative regulations, 511 IAC 6.2-9-9, also requires this result, mandating that “[t]he school corporation shall not, without the agreement of the special management team, change the assignment of students to schools in the school corporation in such a way that the number or grade level or levels of student are assigned to the school are changed significantly.” Students must continue in their original assignment/choice unless they affirmatively choose to attend another school.

II. Indiana statute mandates the sharing of student records; Gary Community School Corporation is not prevented by FERPA from sharing records.

Indiana statute mandates that GCSC provide student records for those students that are initially enrolled at any of the schools subject to intervention. Indiana Code 20-33-2-10(b) requires a school in which the student is initially enrolled to request student records from the school the student previously attended within fourteen (14) days. Subsection (d) further provides that the school receiving the request shall “send the records promptly to the requesting school.” Pursuant to Ind. Code 20-33-2-10(b), once EdisonLearning has requested the students’ records (as it did on June 28th), GCSC must provide records promptly for students who: (1) indicated that they plan to attend Roosevelt; or (2) attended Roosevelt last year and have not formally enrolled at Roosevelt and have not enrolled elsewhere, withdrawn, or graduated. While this provision does not apply to any students who have indicated that they are not attending Roosevelt for the next year, it does apply to all students identified above. The state statutory language requiring EdisonLearning to share educational records is consistent with the permissible sharing under FERPA.

FERPA does not prevent the sharing of student records to EdisonLearning. Under FERPA, an LEA *may* provide educational records to a school in which a student seeks or intends to enroll if (1) the LEA has given notice in its yearly disclosure of FERPA rights that it will disclose in this situation; or (2) the LEA gives notice before it releases the records. Accordingly, when a student enrolls or has been deemed enrolled at a Turnaround Academy, the FERPA exception applies. GCSC may send that student’s records to EdisonLearning, even without a signed consent and before the student actually begins attending the school.

III. Corrective Action by GCSC

As you are aware, 511 IAC 6.2-9-8(a) forbids a school corporation from taking “action adverse to the special management team's operation of the school.” Further, 511 IAC 6.2-9-8(d) provides that if “...the state board determines that the school corporation has taken [adverse action against a special management team in its operation of a turnaround academy] the board may order the department to withhold additional state funds otherwise to be distributed to the school corporation....” Please be advised that to the extent GCSC fails to take the following corrective action below, the IDOE may initiate formal action under 511 IAC 6.2-9-8.

1. GCSC shall treat all students attending Roosevelt at the end of 2011-2012, who have not formally enrolled elsewhere, graduated or withdrawn, as enrolled at Roosevelt for the 2012-2013 school year;

³ Please see enclosed Gary Community School Corporation, Guide to Elementary and Secondary School Boundaries (noting that “No Change. Students will remain at the same school....”).



Indiana Department of Education

151 West Ohio Street
Indianapolis, Indiana 46204

June 22, 2012

VIA E-MAIL, FACSIMILE TRANSMISSION AND CERTIFIED MAIL

Dr. Edwyna Hord, Interim Superintendent
Gary Community School Corporation
620 E 10th Pl
Gary, IN 46402

Dear Dr. Hord:

Please allow this letter to serve as notice by the Indiana Department of Education (“IDOE”) of Gary Community School Corporation’s noncompliance with 511 IAC 6.2-9-8 relating to actions by a school corporation that are adverse to a special management team’s operation of a turnaround academy (“Turnaround Academy”).

IDOE recently received reports from parents and community members that Gary Community School Corporation (“GCSC”) is using an autodialer to contact parents of students that live in the Theodore Roosevelt Career and Technical Academy (“Roosevelt”) attendance area. Specifically, GCSC is advising parents that if they do not affirmatively notify GCSC that their son or daughter plans to attend Roosevelt by June 20, 2012, GCSC will automatically enroll the student in Lew Wallace Science Technology Engineering Mathematics Academy or West Side Leadership Academy. The content of these messages may, as applied to students who reside within Roosevelt’s attendance area, violate Indiana law and regulations.

Indiana Code provides a student the right to attend the school corporation that serves the attendance area in which the student’s parents reside (“school corporation of legal settlement”). *See* Ind. Code § 20-26-11-2(2) (“A school corporation shall . . . conduct an educational program for all children who reside within the school corporation in kindergarten and in grades 1 through 12”).¹ Within the larger corporation attendance

¹ There are exceptions from the rule that the school corporation of legal settlement provide educational services to the student. Examples of exceptions include if the student is placed in foster care, in a child care facility by DCS, BDDS, a court order, hospitalized or placed in a treatment facility by the parent, disciplinary reasons, and separation from instruction for such reasons has substantive and procedural due process rights. *See* Ind. Code §§ 20-26-11; 20-33-8-14, 20-33-8-15, 20-33-8-17. There are also exceptions due to public health concerns. *See* Ind. Code §§ 20-34-4-5; 20-34-3-9.

area, various smaller attendance areas determine the specific buildings that students shall attend.²

While Turnaround Academies, such as Roosevelt, are a more recent statutory creation, the law governing a school corporation's ability to move students from the school in the attendance area in which they reside (i.e. Roosevelt) is well settled. Section 511 IAC 6.2-9-9 provides an explicit prohibition against a school corporation's assignment of students otherwise to attend the Turnaround Academy in a way that would significantly affect enrollment numbers. The Turnaround Academies are not under the purview of the school corporation, but rather are managed by special management teams with whom the IDOE has been authorized by the Indiana State Board of Education to enter contracts. Turnaround Academies maintain their public character and are required to serve all students who reside in the attendance zone of the school. Indeed, Ind. Code § 20-31-9.5-4 prohibits a turnaround academy from denying enrollment of a student who lives in the attendance area of that school.

GCSC does not have the authority to reassign students who have a right to attend Roosevelt and who are presumed to attend the school for the attendance area in which they reside unless an affirmative election is made to attend a different school. The administrative regulations promulgated to implement the statutory provisions, Ind. Code §§ 20-31-9; 20-31-9.5, expressly prohibit GCSC from taking actions that interfere with such students' rights to attend Roosevelt. An explicit prohibition found in 511 IAC 6.2-9-9 precludes a school corporation from reassigning students from a Turnaround Academy in a way that would significantly affect enrollment numbers. "The school corporation shall not, without the agreement of the special management team, change the assignment of students to schools in the school corporation in such a way that the number or grade level or levels of students are assigned to the school are changed significantly." 511 IAC 6.2.-9-9.

As you are aware, 511 IAC 6.2-9-8(a) forbids a school corporation from taking "action adverse to the special management team's operation of the school." Further, 511 IAC 6.2-9-8(d) provides that if "...the state board determines that the school corporation has taken adverse action against a special management team in its operation of a turnaround academy the board may order the IDOE to withhold state funds from the school corporation...."

The reports received by IDOE demonstrate that GCSC's actions constitute a systematic effort to reassign students attending Roosevelt to other schools within GCSC. While

² School corporations have the latitude to offer a choice policy under which students in any of the buildings' attendance areas may attend other buildings. However, even when such policies are made available, a student is presumed to attend the building that serves the attendance area in which the student resides unless the student makes an affirmative election otherwise.

such action may be done with the agreement of EdisonLearning, the special management team assigned to Roosevelt, IDOE has confirmed that not only was such an agreement never obtained, but also that GCSC's actions are in direct contravention of EdisonLearning's plans for the operation of Roosevelt.

Given the express prohibition regarding reassignment in the administrative regulation and the impact that such automated reassignment has on students' rights as well as the Turnaround Academy, it is IDOE's position that GCSC's attempts to reassign students constitutes an adverse action to EdisonLearning's operation of Roosevelt.

This letter constitutes formal notice to GCSC to cease and desist the automated call and to notify parents of all Roosevelt students that no students will be involuntarily reassigned. Students that reside in the Roosevelt attendance area have a right to attend Roosevelt, must be presumed to attend Roosevelt unless an affirmative election is made by the parent to attend a different school.

Should GCSC fail to immediately take the corrective action outlined above, IDOE may file a Request for Noncompliance with the State Administrator for Indiana State Board of Education to initiate a formal hearing to withhold additional state funds pursuant to 511 IAC 6.2-9-8.

To demonstrate compliance, please provide a signed letter of assurance, no later than July 6, 2012, verifying that the automated calls have ceased and GCSC has notified the parents of all Roosevelt students as directed.

If you have any questions, please feel free to contact me. I look forward to your cooperation in this matter.

Sincerely,



Matthew Parker Voors
General Counsel, Indiana Department of Education

Cc: Robert L. Lewis (via email)
Tracy Coleman (via email)
Dr. Cheryl Pruitt (via email)
Darren Washington (via email)

TRANSITION AND SHARED SERVICES AGREEMENT

This Transition and Shared Services Agreement (hereinafter this "Agreement") is entered on this ___ day of _____ ("Effective Date") by and between Theodore Roosevelt College and Career Academy, Inc., a wholly-owned subsidiary of EdisonLearning, Inc., with its principal place of business located at 485 Lexington Avenue, 2nd Floor, New York, New York 10017 (hereinafter the "Academy Corporation"), and the Gary Community School Corporation, a school district authorized, formed and governed by the applicable laws of the State of Indiana with its principal place of business located at 620 East 10th Place, Gary, Indiana 46402 (hereinafter the "GCSC").

RECITALS

WHEREAS, IC §20-31-9-4, et. seq. (hereinafter the "Indiana Turnaround Statute"), among other things, authorizes the Indiana State Board of Education (the "State") to designate certain schools as turnaround academies and to assign a special management team to operate each such turnaround academy;

WHEREAS, Roosevelt Career and Technical Academy, grades 6 through 12, is located within the jurisdiction and geographic boundary of the GCSC and has been designated as a turnaround academy by the Indiana State Board of Education (hereinafter the "Turnaround Academy");

WHEREAS, effective July 1, 2012, the Academy Corporation will serve as the special management team to operate the Turnaround Academy; and

WHEREAS, by this Agreement, the Academy Corporation and the GCSC collaboratively seek to implement certain provisions of the Indiana Turnaround Statute and to effectuate the transition of the facilities, transportation, and operations with respect to the Turnaround Academy.

NOW, THEREFORE, for and in consideration of the premises and mutual promises and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be bound legally the Academy Corporation and the GCSC (hereinafter collectively, the "Parties" or any one of them a "Party") hereby agree as follows:

1. Transportation

- a. **Statutory Requirement:** The Indiana Turnaround Statute, in relevant part, requires that the GCSC shall continue to "provide transportation for students attending the turnaround academy at the same level of service the school corporation provided before the school became a turnaround academy." IC §20-31-9.5-2(a)(2)(A) (hereinafter the "Statutory Transportation Requirement").
- b. GCSC will provide all student school bus transportation services, including, without limitation, round-trip home to school transportation each "School Day" (as defined below), transportation for students to study part-time at regional

technical and career centers or local colleges or universities, and transportation for school-sponsored field trips, athletic contests and practices, and any other school-sponsored extracurricular activities.

- c. The Academy Corporation will set the start times and ending times of the “School Day” (as defined below) for the Turnaround Academy.

i. The 2012 – 2013 academic year for the Turnaround Academy will commence on August 2, 2012 and end on June 11, 2013 (“2012 Academic Year”). Each subsequent academic year will commence on a date certain in August of a calendar year and end in June of the immediately succeeding calendar year (hereinafter, the 2012 Academic Year and each subsequent academic year are collectively referred to as an “Academic Year”). On or before May 1st of each calendar year, the Academy Corporation will notify GCSC of the start and end dates of for the subsequent Academic Year.

Comment [tmj1]: See note below on the first day of school for the 2012 – 2013 academic year.

ii. During each Academic Year, the start time for the Turnaround Academy will be 7:30 a.m. and the dismissal time will be 3:30 p.m.; provided, however, that the Academy Corporation may, in its sole discretion, set separate starting and ending times of the school day for the Turnaround Academy’s middle school and high school (“School Day”). The Academy Corporation reserves the right to notify the GCSC of changes in the starting and dismissal times of the Turnaround Academy Day. The transportation services required by such change will be timely implemented by GCSC at no additional charge to the Academy Corporation within 48 hours of receipt of the written request.

iii. GCSC will ensure that students are dropped off at the Turnaround Academy no later than 7:15 a.m. on each School Day, and that students are picked up at the Academy by no later than 3:45 p.m. GCSC also will ensure that students who are participating in school-sponsored part-time technical or college study programs, field trips, athletic practices and contests, or any other school-sponsored extracurricular activities are picked-up and dropped-off timely in accordance with the routes and schedules mutually agreed upon in writing between GCSC and the Academy Corporation.

- d. By or before August [1], 2012, the Academy Corporation will provide a list of addresses for students enrolled at the Turnaround Academy.

i. The Academy Corporation and GCSC will work collaboratively together to plan all routes, stops and schedules, and in planning such routes, stops and schedules will comply with all applicable local, state and federal laws. GCSC agrees to work in cooperation with the Academy Corporation to establish the most advantageous routing plan and schedule for the safety and convenience of the Academy Corporation’s students.

- ii. GCSC will submit proposed routes and schedules to the Academy Corporation for approval prior to implementation no later than August [15th] of each Academic Year. GCSC will notify the Academy Corporation in writing no less than thirty (30) days prior to any proposed change in routes and schedules; provided, however, that no change routes or schedules will be implemented prior to GCSC receiving the Academy Corporation's written consent. The Academy Corporation will provide notice to parents, guardians, custodians and students of each approved change.
- e. GCSC will ensure that the following transportation services are provided to the Turnaround Academy:
 - i. School buses dedicated to bus routes for the Turnaround Academy for the entire Academic Year as well as during summer school sessions, when a summer school program is provided. School buses also will be available for school-sponsored part-time technical or college study programs, field trips, athletic practices and contests, and any other school-sponsored extracurricular activities without conflicting with the regular schedules. The Academy Corporation and GCSC will mutually determine the appropriate bus routes and schedule for each program.
 - ii. Special needs students requiring transportation to and from school by reason of a limiting condition will be transported door-to-door, where feasible, and in accordance with all applicable local, state and federal laws governing the transportation of special needs students.
- f. GCSC will ensure that student pickups will be made on the side of the street on which any student's residence is located, such that students will not be required to cross dangerous thoroughfares to reach school bus transportation.
- g. GCSC will ensure that vehicles are driven, operated and maintained in compliance with all applicable provisions of local, state and federal laws governing the driving, operation and maintenance of school buses and the transportation of students as required under this Agreement as well as governing the required reporting, ridership counts and student load capacity on the school buses. GCSC will provide written notification to the Academy Corporation of any student discipline incidents on the same calendar day on which the incident occurred.
- h. During the term of this Agreement, GCSC will be solely responsible for the operation, maintenance and repairs, such that all school buses will be maintained in a clean, safe and proper mechanical condition. GCSC will maintain records reflecting all maintenance and repairs performed on each vehicle. The Academy Corporation will be entitled to copies of all vehicle repair histories upon its written request to GCSC.

Comment [tmj2]: According to the 2012-2013 calendar, school starts on August 2nd and students report on August 6th. Is this enough time to notify parents?

- i. GCSC will provide only school buses that meet or exceed all applicable local, state and federal requirements, including, without limitation Federal Motor Vehicle Safety Standards (FMVSS) and the requirements of the Current Indiana School Bus Specifications.
 - i. GCSC will ensure that all school buses will satisfy all city, county and state licensing and inspection requirements and display a current State of Indiana Vehicle Inspection Sticker. All vehicles must pass any and all inspections and tests required by local, state and federal regulation.
 - ii. School buses must be equipped with signs, provided by the GCSC, which indicates bus number, route number and the Turnaround Academy's name and must be clearly visible at street level.
 - iii. In the event that it is necessary to install seat belts and/or other safety equipment not listed herein, the cost of such installation will be the sole responsibility of GCSC.
 - iv. GCSC shall provide a copy of all student transportation agreements in which services are provided to the Academy Corporation under the terms of this Agreement.
- j. School buses will not be older than five (5) model years, with a maximum of eight (8) years if already in service. At least one (1) vehicle will be available at all times for use with respect to the Turnaround Academy as a spare. GCSC will provide a replacement bus within twenty (20) minutes anytime an original bus becomes disabled.
- k. Each bus will carry the following equipment: (i) one (1) set of flares; (ii) one (1) set of triangles; (iii) first aid kit placed on the inside of the bus within reach of the driver; (iv) two-way communication systems satisfactory to School; and (v) any other equipment required by law or proper jurisdiction regulation.
- l. Buses must be equipped with digital recording devices that will allow for the continuous monitoring of student and driver without blind spots. The videos will be provided to the Turnaround Academy upon request and will be maintained on file for a period of no less than 30 days.
- m. During inclement weather where temperature is below zero Celsius, GCSC will provide a "mobile" warming station at each stop designated as a pickup/drop off location.
- n. GCSC will provide in each vehicle a Web-based GPS monitoring system which the Turnaround Academy will have on-site access to monitor all bus routes and school related activities.

- o. All buses will be equipped with bar code scanner technology or similar. GCSC, shall at its own expense supply, all students with a student identification card and bus passes. Additional bus passes will be provided by GCSC to the Academy Corporation to be utilized by “new” students prior to receipt of their unique student identification card and bus pass.
- p. GCSC agrees to promptly, courteously and continuously provide written notice to the Academy Corporation of any and all complaints or concerns brought to its attention by parents, guardians, custodians, family members, or other parties representing the interests of any student.
 - i. GCSC will document all inquires or concerns as they arise. For the avoidance of doubt, documentation includes a description of the complaint, record of the consultation with the driver and a description of the corrective action taken. Should the complaint or concern warrant, all involved parties would be brought together for a meeting to develop a consensus about the incident and its solution.
 - ii. A copy of the written results of parent inquiries will be available to the Academy Corporation.
- q. Changes to student routing service needs of the Turnaround Academy will be implemented by the GCSC in accordance with the following schedule:
 - i. New student added to an established route/stop – next day.
 - ii. Regular education student added at a new route/stop – 1 to 2 days.
 - iii. Special education student added to new route/stop – 1 to 2 days.
- r. The GCSC will file with the Academy Corporation or its designee the names and telephone numbers of all bus drivers who will operate buses and the identification number of the assigned buses before the opening of the Turnaround Academy each year. If a new driver is added after the Academic Year begins, the driver’s information will be filed with the Academy Corporation no later than five (5) days prior to date on which the new driver starts operating a bus assigned to the Turnaround Academy.

2. Real Property, Facilities, Contents, Equipment and Supplies

a. Statutory Requirements:

- i. The Indiana Turnaround Statute requires, in relevant part, that the special management team shall continue to use the school building, the accompanying real property, and the building’s contents, equipment, and supplies. The school corporation shall continue to “maintain and repair

the buildings and grounds consistent with the maintenance and repair to the school corporation's other buildings and grounds.”

ii. The State has enacted 511 IAC 6.2-9-8, which provides as follows:

1. The school corporation shall take no action adverse to the special management team’s operation of the school.
2. The school corporation shall take no action to dispose of or cloud the title of the real property on which the school is located.
3. The school corporation shall not remove or dispose of personal property located in the school or, if located outside the school, assigned to the school.
4. If the state board determines that the school corporation has:
 - a. taken an action or actions prohibited by subsections (a) through (c); or
 - b. refused without just cause to enter into the contract required under section 6(b) of this rule;
 - c. the board may order the department to withhold additional state funds otherwise to be distributed to the school corporation in order to permit the special management team to operate the school notwithstanding the prohibited or refused action.

b. Facilities

- i. Effective July 1, 2012 and continuing throughout the term in which the Academy Corporation operates the Turnaround Academy (hereinafter “Period of Use”), the Academy Corporation will use and have the right to use the school building, the accompanying real property, and the buildings, contents, equipment and supplies located on and associated with the Turnaround Academy.
- ii. By or before June 29, 2012, GCSC will deliver to the Academy Corporation a complete copy of the master keys for all external and internal doors, file cabinets, storage rooms as well as any computers and equipment for which a physical key is required to operate such computers and equipment. GCSC also will deliver to the Academy all passwords and digital keys, if any, applicable to the facilities and equipment contained in the Turnaround Academy.

- iii. GCSC will not be responsible for providing security during the School Day and during after school events sponsored by the Turnaround Academy, excluding security required by law with respect to transporting student to and from school or to and from field trip, athletic contests and extra-curricular trips.
- iv. GCSC will provide 7-day-a-week, 24-hour-a-day availability for school facility maintenance service needs. GCSC also will be responsible for the payment of costs related to utilities, snow removal and refuse collection charges incurred by the Turnaround Academy.
- v. GCSC will recruit, hire, train, and manage qualified technicians and maintenance engineers to perform facility-specific maintenance services. GCSC will ensure the provision of training to service workers and service providers through proven instruction techniques, work processes, supplies, materials, and equipment.
- vi. GCSC will provide, at its own cost, all labor, necessary equipment and supplies for services under this Agreement (including but not limited to: tools for all skilled labor, mechanic tools, mowers and plows). Such equipment will remain the property of GCSC.
- vii. GCSC will perform contract and project management responsibilities for services or repair work, which may be outside the capabilities of the GCSC workforce, including, but not limited to, elevator maintenance and asbestos remediation.
- viii. GCSC will provide and implement its 3-year capital plan, which exists for the Turnaround Academy as of the date of this Agreement, and, where needed or otherwise required by applicable law, a facility capital asset replacement plan. By or before August 1, 2012, GCSC will replace or repair, at its cost, all items identified in Exhibit B hereof as "Exterior Must Do List" and "Interior Must Do List," including, without limitation, all items listed as dangerous conditions, or conditions that jeopardize the health and safety of the students, staff, parents, guardians, custodians or visitors of the Turnaround Academy. In the event that GCSC fails to complete any of the items identified in Exhibit B hereof as "Exterior Must Do List" or the "Interior Must Do List," then Academy Corporation may appeal to the State for the appropriate funding relief, including, without limitation, withholding the appropriate funds from the GCSC sufficient to immediately repair or replace such items. GCSC and Academy Corporation will work cooperatively together to determine the appropriate schedule for GCSC to repair or replace the items identified in Exhibit B hereof as "Exterior Should Do List" and "Interior Should Do List."
- ix. GCSC will ensure that the Turnaround Academy's kitchen is in compliance with all applicable local, state and federal laws and that all such equipment

is fully operational as a production kitchen by the start of each Academic Year. During each Academic Year, any and all kitchen equipment that is inoperable, needs repair, or replacement, including, but not limited to, ovens, coolers, freezers, and combination boxes, shall be repaired or replaced by GCSC, at its own cost, by the earlier of the time required by any applicable law or five (5) days after GCSC receives notice from the Turnaround Academy.

- x. The GCSC maintenance service providers will work closely with the Turnaround Academy's facility manager for the overall scheduling, execution of, and completion of work. The facility manager of the Turnaround Academy will provide the immediate oversight of district maintenance personnel assigned to perform services at the school.
- xi. GCSC will be expected to manage all preventive maintenance, repair and work status including, without limitation, the following:
 - 1. Day-to-day operations of all building Mechanical, Electrical, Computerized Maintenance Management System (CMMS), systems and process support equipment as necessary to meet the Turnaround Academy's performance standards. Operational activities include the management and coordination of the automated building management system to optimize effectiveness and reduce energy consumption.
 - 2. GCSC shall provide to the Academy Corporation access to all electronic data systems relevant to the operations of the Turnaround Academy.
 - 3. Preventive/predictive maintenance on an as-scheduled basis.
 - 4. HVAC equipment in accordance with GCSC's procedures for schools managed by GCSC and any other site-specific inspection and monitoring procedures, as provided. Indoor air quality issues and concerns will be reported to the school. All HVAC maintenance, repair and replacement work will be performed in accordance with applicable local, state and federal building codes.
 - 5. Plumbing systems and equipment, in accordance with GCSC's procedures for schools managed by GCSC and any other site-specific inspection and monitoring procedures as provided. Water quality issues and concerns will be reported immediately to the Turnaround Academy.
 - 6. Periodic inspection, servicing and repair to fire sprinkler and standpipe systems, gas suppressions systems, fire detection alarm and related systems and perform inspection, service repair or replacement of portable fire extinguishers. Inspections must satisfy

all code and municipal requirements, and must properly maintain the systems, including compliance with NFPA 25 or latest revision. All fire prevention systems maintenance, repair and replacement work will be performed in accordance with applicable local, state and federal building costs.

7. Electrical distribution systems and equipment in accordance with GCSC's procedures for schools managed by GCSC and any other site-specific inspection, testing and monitoring procedures as provided. All electrical maintenance, repair and replacement work to be performed in accordance with applicable local, state and federal building codes.
8. Building Uninterrupted Power Supply ("UPS") systems in accordance with GCSC's procedures for schools managed by GCSC and any on site-specific inspection, testing and monitoring procedures as provided.
9. Building emergency and standby generators in accordance with GCSC's procedures for schools managed by GCSC and any other site-specific procedures.
10. Manage unforeseen services that are required for the sustained quality operation of the facility. Such services include, but are not necessarily limited to:
 - a. Repair of small instances of vandalism and accidental damage
 - b. Indoor air and water quality. Remediation as required
 - c. Activation of fire alarm, fire sprinkler and gas suppression systems.
 - d. Items that require substantial repair costs due to fatigue or failure will be deemed episodic events and will require GCSC to repair or replace those items at its own cost. Prior approval from the Academy Corporation and will be required to ensure minimal disruption of the instructional environment.
11. Building exteriors and roofing systems through annual condition surveys, preventative maintenance and repairs.
12. Coordinate all warranties extended directly to the Turnaround Academy by manufacturers or service providers and ensure adherence to warranty stipulations.

13. Coordinate maintenance and repair of all parking lots, including, but not limited to, cleaning and stripping.
14. Landscaping services per site-specific specifications. Grounds services include, but are not limited to, landscaping, lawn care, snow removal and the operation and maintenance of exterior lighting fixtures, automatic parking controls gates, fencing, signage, pavement, striping and curbing.
15. Professional pest control services which will be provided to ensure and maintain a pest-free work environment in and around all buildings and grounds at the assigned locations. All pest control services will conform to federal, state and local laws, ordinances and regulations, and will be performed using the utmost precaution. GCSC shall comply with Academy Corporation's policy and procedures and submit all MSDS forms to the Turnaround Academy's facility manager.
16. Preventative maintenance and repairs for School Mobile equipment, Mobile Grounds Maintenance equipment and Stationary equipment.
17. Establish parts, materials and supply inventories (and related inventory controls) essential for operation and repair/maintenance services and for assurance of uninterrupted services to the Turnaround Academy.

c. Contents, Equipment and Supplies

- i. On or before July 1, 2012, the Academy Corporation will present GCSC with an inventory of the personal property, contents, equipment and supplies located in the buildings and associated with the Turnaround Academy, a copy of which will be attached to this Agreement as Exhibit "A." For the avoidance of all doubt, the Parties agree that the term "personal property" does not include personal property purchased by teachers at the Turnaround Academy with their personal funds.
- ii. On July 15, 2012, GCSC will certify that the items on Exhibit A have not been removed from the Turnaround Academy or any of its associated buildings, and the Academy Corporation shall take possession of all such items. In the event that any item on Exhibit A has been removed, then GCSC shall either return the item to the Turnaround Academy no later than five (5) days after notice (in accordance with Section 14 below) that the item has been removed, or, within the same such five (5) day period, GCSC will pay to the Academy Corporation the fair market value of the removed item, as determined by the Academy Corporation, in its sole discretion.

- iii. At the expiration of the Period of Use, the Parties will agree upon an inventory of the items in Exhibit A that have been returned by the Academy Corporation to the GCSC. All items on the inventory will remain at the Turnaround Academy for the unrestricted use by the students of the Turnaround Academy throughout the Period of Use.
3. By June 29, 2012, GCSC will transfer to the Academy Corporation all student records including, but not limited to, census data and transcripts for students who were enrolled in the Turnaround Academy during the 2011 to 2012 academic year ("Student Records"). Student Records will be transferred in accordance with a format acceptable to the Academy Corporation. In the event a student transfers to or from the Turnaround Academy after the start of an Academic Year, the Parties will work cooperatively to transfer the appropriate Student Records in a timely manner, as required by applicable state or federal laws.
4. Except as expressly provided herein or in connection with insurance coverage required to be provided in this Agreement, each Party shall be responsible for its own legal representation and legal costs. Except where there is an actual or potential conflict of interest, GCSC and the Academy Corporation shall fully cooperate with legal counsel for one another in connection with any legal claim asserted against either of them.
5. Should any claim, demand or suit be filed against GCSC which arises out of any claim that this Agreement or any part thereof is in violation of law, or of any constitutional provision, statute, law, rule, contract, or collective bargaining agreement binding upon GCSC, GCSC agrees to promptly notify the Academy Corporation and shall actively seek its assistance and participation in the defense of such claim.
6. The Academy Corporation shall indemnify and save and hold GCSC, its employees, officers, directors, subcontractors and agents harmless from any and all claims, demands, suits, costs, judgments, or other forms of liability to third parties, actual or claimed, including attorney fees, for injury to property or persons, occurring or allegedly occurring in, on or about GCSC from the grossly negligent or reckless actions and omissions or willful misconduct committed by the Academy Corporation or by its employees, officers, directors, subcontractors or agents. Upon timely written notice (in accordance with Section 14 below) from GCSC, the Academy Corporation shall defend GCSC in any such action or proceeding brought thereon.
7. GCSC shall indemnify and save and hold the Academy Corporation, its affiliates, subsidiaries, partners, employees, officers, directors, subcontractors, agents and authorized volunteers, harmless from:
 - a. any and all claims, demands, suits, costs, judgments or other forms of liability to third parties, actual or claimed, including attorney fees, for injury to property or persons, occurring or allegedly occurring from the grossly negligent or reckless actions and omissions or willful misconduct committed by GCSC or by its employees, officers, directors, subcontractors or agents. Upon timely written notice (in accordance with Section 14 below) from the Academy Corporation,

GCSC shall defend the Academy Corporation in any such action or proceeding brought thereon.

- b. any and all claims, demands, suits, costs, judgments or other forms of liability to third parties, actual or claimed, of whatsoever kind or character, including attorney fees, for injury to property or persons, occurring or allegedly occurring or arising out of any physically hazardous conditions or any environmental conditions existing or allegedly existing at the Turnaround School, including, without limitation, any building or real property adjacent thereto.
8. The foregoing provisions shall not be deemed a relinquishment or waiver of any kind of:
 - a. any applicable obligation under the Indiana Turnaround Statute, as amended;
 - b. any applicable limitations of liability to third parties provided or any defenses available to any of the parties under applicable state governmental immunities laws.
 9. Notwithstanding any provision of this Agreement to the contrary, the Academy Corporation shall not under any circumstances be liable for more than the amount of its insurance coverage required to be maintained under Section 10 hereof.
 10. With respect to its obligations under this Agreement, the Academy Corporation shall secure and maintain the following minimum insurance:
 - a. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of \$700,000 per Contractor's employee and \$5,000,000 per occurrence. GCSC is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Agreement.
 - b. Professional Errors & Omissions insurance with limits of at least one million dollars (\$1,000,000); and
 - c. Workers' Compensation insurance with Statutory primary coverage and at least five hundred thousand dollars (\$500,000) of Employers Liability coverage; and
 - d. Crime/Employee Dishonesty insurance with limits of at least five hundred thousand dollars (\$500,000), including any bond required of GCSC's financial officers); and
 - e. Umbrella liability coverage of five million dollars (\$5,000,000) in excess of the primary commercial general liability, automobile liability and employer's liability insurance policies.
 11. With respect to its obligations under this Agreement, GCSC shall secure and maintain the following minimum insurance:

- a. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of \$700,000 per Contractor's employee and \$5,000,000 per occurrence. the Academy Corporation is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Agreement.
 - b. Workers' Compensation insurance with Statutory primary coverage and at least five hundred thousand dollars (\$500,000) of Employers Liability coverage; and
 - c. Crime/Employee Dishonesty insurance with limits of at least five hundred thousand dollars (\$500,000), including any bond required of GCSC's financial officers); and
 - d. Umbrella liability coverage of one million dollars (\$1,000,000) in excess of the primary commercial general liability, automobile liability and employer's liability; and
12. The term of this Agreement will commence on the Effective Date and will continue in full force and effect until June 30, 2015, unless terminated in accordance with Section 13 of this Agreement; provided, however, that this Agreement shall terminate automatically on the date the State terminates the Academy Corporation authority to serve as the special management team to operate the Turnaround Academy.
13. Either Party may terminate this Agreement: (i) immediately upon giving notice (in accordance with Section 14 below) of any material breach by the other Party if the nature of the breach is such that it cannot be remedied; (ii) sixty (60) days following notice (in accordance with Section 14 below) to the other Party of a material remedial breach, if the other Party has not remedied such breach within that thirty-day period; or (iii) ninety (90) days following notice (in accordance with Section 14 below) to the other Party for any reason.
- a. The right of termination provided herein is absolute and the Party terminating will not be liable to the other Party for damages of any kind, including incidental or consequential damages, damages for loss of prospective business or loss of continuing business or otherwise which arise due to a termination in accordance with the provisions of this Section 13. This does not relieve either Party from responsibility such party may have under the Indiana Turnaround Statute, or for damages caused by its actions or breaches of the Agreement, but only for damages related to or resulting from the termination of the business relationship.
 - b. Upon the termination of this Agreement for any reason, the provisions of Sections 13 through 17, inclusive, and Sections 19 through 29, inclusive, will survive any termination or expiration of this Agreement. The termination or expiration of this Agreement will not relieve either Party of any liability that accrued prior to such termination or expiration.

14. All notices required or permitted by this Agreement will be in writing and will be either personally delivered or sent by nationally-recognized overnight courier, facsimile or by registered or certified U.S. mail, postage prepaid, addressed as set forth below (except that a party may from time to time give notice changing the address for this purpose).

To the Theodore Roosevelt
College and Career Academy, Inc. at:

Theodore Roosevelt College and
Career Academy, Inc.
485 Lexington Avenue, 2nd Floor
New York, NY 10017
Attn: Todd McIntire
Chief Education Officer

With a copy to:

EdisonLearning, Inc.
485 Lexington Avenue, 2nd Floor
New York, NY 10017
Attn: General Counsel

To GCSC at:

Gary Community School Corporation
620 East 10th Place
Gary, Indiana 46402
Attn: Superintendent

With a copy to:

Robert Lewis Associates
2148 West Avenue
Gary, Indiana 46404
Attn: Robert Lewis, Esq.

A notice will be effective on the date personally delivered, on the date delivered by a nationally-recognized overnight courier, on the date set forth on the receipt of a telecopy or facsimile, or upon the earlier of the date set forth on the receipt of registered or certified mail or on the fifth day after mailing.

15. This Agreement and the rights, interests and obligations hereunder will be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and permitted assigns.
16. This Agreement, and all rights and obligations under this Agreement, may not be assigned or encumbered without the prior written consent of the Parties; provided, however, that the Academy Corporation may assign this Agreement to a successor entity that acquires, through a corporate reorganization, substantially all of the Academy Corporation's assets and liabilities. Any attempted assignment in violation of this Section 16 will be void ab initio.
17. The Parties do not intend, nor will any clause be interpreted, to create under this Agreement any obligations of either GCSC or the Academy Corporation in favor of, or benefits to, or rights in, any third party.
18. GCSC will perform and maintain a background history check file on all of its employees and contractors who perform services at the Turnaround Academy.
- a. GCSC will ensure that all such employees and contractors comply with the applicable federal and state background check requirements, including, without

limitation, nationwide criminal fingerprint-based background check on all contractors and their employees working in the school environment, and the Turnaround Academy's requirement that no convicted felons shall be allowed to perform any services at the Turnaround Academy.

- b. GCSC will ensure that all background checks required under this Agreement or by any applicable laws are completed before the performance of any services under this Agreement.
 - c. GCSC shall conduct federal, state and local pre-employment background history check requirements, including probable cause and alcohol tests, at its own cost.
 - d. GCSC shall provide to the Academy Corporation proof of successful completion of criminal background history checks by written notification of the successful completion of the background check requirements prior to the start of the agreement.
19. GCSC and the Academy Corporation are each independent contractors and neither Party will be, nor represent itself to be, the franchiser, partner, broker, employee, servant, agent or legal representative of the other Party. Neither Party is granted any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of, or in the name of, the other Party, or to bind the other Party in any manner or thing.
20. All remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy will not be deemed an election of such remedy to the exclusion of other remedies.
21. The waiver or failure of either Party to exercise in any respect any right provided under this Agreement will not be deemed a waiver of such right in the future or a waiver of any other rights established under this Agreement.
22. This Agreement will be enforceable notwithstanding the existence of any claim or cause of action either Party may have against the other Party.
23. Should any term or provision of this Agreement be held to any extent unenforceable, invalid, or prohibited under law, then such provision will be deemed restated to reflect the original intention of the Parties as nearly as possible in accordance with applicable law and the remainder of this Agreement.
24. This Agreement, each transaction entered into under this Agreement, and all matters arising in connection with this Agreement will be in all respects governed by, and construed, and enforced in accordance with, the laws of the State of Indiana without giving effect to its rules relating to conflict of laws.
25. This Agreement constitutes the complete and exclusive statement of the agreement between the Parties with respect to the subject matter of this Agreement, and this

Agreement supersedes any and all prior oral or written communications, proposals, representations, and agreements. It may be amended only by mutual agreement expressed in writing and signed by both Parties, and any attempted amendment in violation of this Section 25 will be void ab initio.

- 26. The exhibits and schedules hereto are an integral part of this agreement and are deemed incorporated by reference herein.
- 27. Except as otherwise provided in this Agreement, this Agreement may not be amended, modified or supplemented except by written document signed by an authorized officer of the Party to be held.
- 28. Neither Party will be obligated to perform or observe its obligations undertaken in the Agreement to the extent prevented or hindered from doing so by any circumstances beyond its control, provided that each Party will use its commercially reasonable efforts to perform or observe its obligations as soon as practical after, and to the extent that, such circumstances no longer prevent or hinder such Party.
- 29. This Agreement may be executed in any number of separate counterparts, each of which, when executed by and delivered to the other Party, with delivery by facsimile permissible, will be an original as against the Party whose signature appears on such counterpart but all such counterparts together constituting one and the same instrument.

IN WITNESS WHEREOF, the Parties accept this Agreement and have caused this Agreement to be executed and delivered and do each hereby warrant and represent that its respective signatory, whose signature appears below, has been and is, on the date executed, duly authorized by all necessary and appropriate corporate action to execute this Agreement on its behalf.

**THEODORE ROOSEVELT COLLEGE
AND CAREER ACADEMY, INC.**

**GARY COMMUNITY SCHOOL
CORPORATION**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A
THEODORE ROOSEVELT ASSET INVENTORY LIST

(TO BE PROVIDED)

EXHIBIT B

THEODORE ROOSEVELT COLLEGE AND CAREER ACADEMY INITIAL FACILITY ASSESSMENT – IMMEDIATE RESOLUTION

1) Executive Summary: Exterior Must Do List

- a) The brick parapet located at the SE corner of the gymnasium exhibits significant signs of distress creating a **dangerous condition that must be remedied immediately**. This was noted in a Memorandum to Edison Learning, inc. dated 4.12.12. Repair the brick parapet at the gym.
- b) The concrete walkways leading to and located near the 25th Avenue entrances are in need of repair. There are areas of concern that should be addressed very soon. There are significant cracks in several areas that have created tripping hazards. We recommend that these be addressed as soon as possible.
- c) ADA access to these entrances are not properly constructed and do not meet the letter of the law. We recommend that these be addressed as soon as possible.
- d) The main entrance steps are in very poor condition and are in need of major repair, if this entrance is going to be reopened. There are no handrails installed as required per the building code.
- e) All of the masonry located around (especially above) this entrance must be closely inspected to determine the soundness of all attachments to the supporting structure. There is evidence of significant deterioration that would have to be fixed prior to reopening this entrance.
- f) A thorough inspection of all masonry overhangs, especially those located above entrances or walkways should be done as soon as possible to determine the soundness of all attachments to the supporting structure.
- g) The low masonry wall located at the ticket window entrance to the gymnasium on the east side of the building is showing very significant damage from water infiltration and freeze/thaw cycles over a long period of time. This wall should be completely re-built.
- h) Repair/Replace the enameled steel panels on the bridge to building A. The existing panels show signs of rust and probable concealed attachment issues.

2) Executive Summary: Interior Must Do List

- a) Remove all hazardous materials such as asbestos floor tile and lead paint. This is an obvious life safety issue.

- b) Replace all handrails to meet the current ADA standards. Handrails are currently non-compliant.
 - c) Remove all chains and padlocks from doors. This is a building code violation and a fire safety hazard.
 - d) Remove all stored materials from the stair towers. File cabinets and furniture were noted. This is a building code violation and a life safety hazard.
 - e) Replace all Fire Extinguishers and cabinets. This is a life safety issue. Provide tamper dye and alarm cover pull stations
 - f) Fill all holes left in floor. This is a safety issue.
 - g) Replace all HVAC controls.
 - h) Re-key and fix all locksets.
 - i) Repair all doors. Install half glass lights in all classroom doors.
 - j) Repair all lavatories.
 - k) Repair all toilet room accessories.
 - l) Install covers for all floor drains. This is a safety issue.
 - m) Repair all air intakes.
 - n) Provide updated room numbers and way-finding system
- 3) Executive Summary: Exterior Should Do List
- a) Replace all exterior windows with new energy efficient insulated and thermally broken windows.
 - b) Inspect and repair all mortar joints to prevent further damage in the brick.
 - c) Paint the raw wood exposed beneath the gutters to preserve the installation. Repair/replace the exterior parking lot lighting.
- 4) Executive Summary: Interior Should Do List
- a) Install a complete fire sprinkler and detection system that would be monitored by the fire department.
 - b) Replace all T12 fluorescent fixtures with energy efficient T8 fixtures.
 - c) Install a card access system in lieu of the current key system.

- d) Repair/Replace the pool filter which is currently inoperable.
- e) Replace all ceilings tiles and grid.
- f) Replace all window treatments.
- g) Install new cameras and security system.
- h) Replace all lockers.
- i) Update all floor finishes.
- j) Devise new paint /finish systems to designate the 3 Academies.
- k) Repair the AV booth in the Auditorium

10/15/2011
1-57
12/5/11

MEMORANDUM OF UNDERSTANDING

This Transition and Shared Services Agreement (hereinafter this "Agreement") is entered on this ___ day of June ("Effective Date") by and between ~~Theodore Roosevelt College and Career Academy, Inc., a wholly-owned subsidiary of Edison Learning, Inc. (herein referred to as Edison)~~, with its principal place of business located at 485 Lexington Avenue, 2nd Floor, New York, New York 10017 (~~hereinafter the "Academy Corporation"~~), and the Gary Community School Corporation (herein referred to as Gary School), a school district authorized, formed and governed by the applicable laws of the State of Indiana with its principal place of business located at 620 East 10th Place, Gary, Indiana 46402 (hereinafter the "GCSC").

RECITALS

WHEREAS, IC §20-31-9-4, et. seq. (hereinafter the "Indiana Turnaround Statute"), among other things, authorizes the Indiana State Board of Education (the "State") to designate certain schools as turnaround academies and to assign a special management team to operate each such turnaround academy;

WHEREAS, the Indiana Department of Education has indicated that Edison Learning, Inc. will be the Special Management Team for Roosevelt Career and Technical Academy but has not provided a signed contract authorizing Edison Learning, Inc. to be the operator.

WHEREAS, based on the representations made by the Indiana Department of Education that Edison Learning Inc. shall be the Turnaround Operator, the Gary Community School Corporation is entering into this memorandum of understanding with Edison Learning, Inc. until the State of Indiana presents a signed contract between Edison Learning, Inc. and the Indiana Department of Education.

WHEREAS, all agreements between Gary Community School Corporation and Edison Learning, Inc. are contingent on Edison Learning, Inc. and the Indiana Department of Education ratifying a final contract between Edison Learning, Inc. and the Indiana Department of Education on or before July 15, 2012.

WHEREAS, Roosevelt Career and Technical Academy, grades ~~6~~ 7 through 12, is located within the jurisdiction and geographic boundary of the GCSC. ~~and has been designated as a turnaround academy by the Indiana State Board of Education (hereinafter the "Turnaround Academy")~~;

WHEREAS, the Indiana State Board of Education has designated Roosevelt Career and Technical Academy as a turnaround academy.

WHEREAS, Roosevelt Career and Technical Academy, disagrees that grades 7 – 8 should be included as a Turnaround due to the fact that grades 7 – 8 have not been on academic probation for 6 years.

WHEREAS, in order to facilitate the transfer of Roosevelt Career and Technical Academy to Edison Learning, Inc. the parties have entered into this memorandum of understanding to outline the transition while awaiting a final contract from the Indiana Department of Education between Edison Learning Inc. and the Indiana Board of Education.

WHEREAS, effective July 1, 2012, the Academy Corporation will serve as the special management team to operate the Turnaround Academy; and

~~WHEREAS, by this Agreement, the Academy Corporation and the GCSC collaboratively seek to implement certain provisions of the Indiana Turnaround Statute and to effectuate the transition of the facilities, transportation, and operations with respect to the Turnaround Academy. Edison and GCSC seek to effectuate the transition of the facilitations and operations of Roosevelt Career and Technical Academy to Edison.~~

~~NOW, THEREFORE, for and in consideration of the premises and mutual promises and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be bound legally the Academy Corporation and the GCSC (hereinafter collectively, the "Parties" or any one of them a "Party") hereby agree as follows: in order to effectuate the transfer of Roosevelt Career and Technical Academy to Edison, the parties have engaged in discussions regarding the two areas designated by the statute which includes transportation and facilities.~~

1. Transportation

- a. Statutory Requirement: The Indiana Turnaround Statute, in relevant part, requires that the GCSC shall continue to "provide transportation for students attending the turnaround academy at the same level of service the school corporation provided before the school became a turnaround academy." IC §20-31-9.5-2(a)(2)(A) (hereinafter the "Statutory Transportation Requirement").
- b. GCSC will provide all student school bus transportation services, including, without limitation, round-trip home to school transportation each "School Day" (as defined below), transportation for students to study part-time at regional technical and career centers or local colleges or universities, and transportation for school-sponsored field trips, athletic contests and practices, and any other school-sponsored extracurricular activities.
- c. The ~~Edison Academy Corporation~~ will set the start times and ending times of the "School Day" (as defined below) for the Turnaround Academy.
 - i. The 2012 – 2013 academic year for the Turnaround Academy will commence on August 15, 2012 and end on May 31, 2012 ("2012 Academic Year"). Each subsequent academic year will commence on a date certain in August of a calendar year and end in May or June of the immediately succeeding calendar year (hereinafter, the 2012 Academic Year and each subsequent academic year are collectively referred to as an "Academic Year"). On or before May 1st of each calendar year, the Academy Corporation will notify GCSC of the start and end dates of for the subsequent Academic Year.
 - ii. During each Academic Year, the start time for the Turnaround Academy will be 7:30 a.m. and the dismissal time will be 3:30 p.m.; provided, however, that the Academy Corporation may, in its sole discretion, set separate starting and ending times of the school day for the Turnaround

Academy's middle school and high school ("School Day"). The Academy Corporation reserves the right to notify the GCSC of changes in the starting and dismissal times of the Turnaround Academy Day. The transportation services required by such change will be timely implemented by GCSC at no additional charge to the Academy Corporation within 48 hours of receipt of the written request.

- iii. GCSC will ensure that students are dropped off at the Turnaround Academy no later than 7:15 a.m. on each School Day, and that students are picked up at the Academy by no later than 3:45 p.m. GCSC also will ensure that students who are participating in school-sponsored part-time technical or college study programs, field trips, athletic practices and contests, or any other school-sponsored extracurricular activities are picked-up and dropped-off timely in accordance with the routes and schedules mutually agreed upon in writing between GCSC and the Academy Corporation.
- d. By or before July 25, 2012 ~~August 1, 2012~~, the Academy Corporation will provide a spreadsheet list of addresses for students enrolled at the Turnaround Academy.
- ~~i. The Academy Corporation and GCSC will work collaboratively together to plan all routes, stops and schedules, and in planning such routes, stops and schedules will comply with all applicable local, state and federal laws. GCSC agrees to work in cooperation with the Academy Corporation to establish the most advantageous routing plan and schedule for the safety and convenience of the Academy Corporation's students.~~
 - ~~ii. GCSC will submit proposed routes and schedules to the Academy Corporation for approval prior to implementation no later than August 1st of each Academic Year. For each week during the Academic Year, the Academy Corporation will supplement its list of enrolled students on a weekly basis, as appropriate, and GCSC will update its routes within forty-eight (48) hours of receiving each supplemental list of enrolled students from the Academy Corporation.~~
 - ~~iii. Except as provided in Section 1(d)(ii) above, GCSC will notify the Academy Corporation in writing no less than thirty (30) days prior to any proposed change in routes and schedules; provided, however, that no change routes or schedules will be implemented prior to GCSC receiving the Academy Corporation's written consent. The Academy Corporation will provide notice to parents, guardians, custodians and students of each approved change.~~
- e. GCSC will ensure that the following transportation services are provided to the Turnaround Academy.

- ~~i. School buses dedicated to bus routes for the Turnaround Academy for the entire Academic Year as well as during summer school sessions, when a summer school program is provided. School buses also will be available for school sponsored part-time technical or college study programs, field trips, athletic practices and contests, and any other school-sponsored extracurricular activities without conflicting with the regular schedules. The Academy Corporation and GCSC will mutually determine the appropriate bus routes and schedule for each program.~~
 - ~~ii. Special needs students requiring transportation to and from school by reason of a limiting condition will be transported door to door, where feasible, and in accordance with all applicable local, state and federal laws governing the transportation of special needs students.~~
- ~~f. GCSC will ensure that student pickups will be made on the side of the street on which any student's residence is located, such that students will not be required to cross dangerous thoroughfares to reach school bus transportation.~~
- ~~g. GCSC will ensure that vehicles are driven, operated and maintained in compliance with all applicable provisions of local, state and federal laws governing the driving, operation and maintenance of school buses and the transportation of students as required under this Agreement as well as governing the required reporting, ridership counts and student load capacity on the school buses. GCSC will provide written notification to the Academy Corporation of any student discipline incidents on the same calendar day on which the incident occurred.~~
- ~~h. During the term of this Agreement, GCSC will be solely responsible for the operation, maintenance and repairs, such that all school buses will be maintained in a clean, safe and proper mechanical condition. GCSC will maintain records reflecting all maintenance and repairs performed on each vehicle. The Academy Corporation will be entitled to copies of all vehicle repair histories upon its written request to GCSC.~~
- ~~i. GCSC will provide only school buses that meet or exceed all applicable local, state and federal requirements, including, without limitation Federal Motor Vehicle Safety Standards (FMVSS) and the requirements of the Current Indiana School Bus Specifications.
 - ~~i. GCSC will ensure that all school buses will satisfy all city, county and state licensing and inspection requirements and display a current State of Indiana Vehicle Inspection Sticker. All vehicles must pass any and all inspections and tests required by local, state and federal regulation.~~
 - ~~ii. School buses must be equipped with signs, provided by the GCSC, which indicates bus number, route number and the Turnaround Academy's name and must be clearly visible at street level.~~~~

- ~~iii. In the event that it is necessary to install seat belts and/or other safety equipment not listed herein, the cost of such installation will be the sole responsibility of GCSC.~~
- ~~iv. GCSC shall provide a copy of all student transportation agreements in which services are provided to the Academy Corporation under the terms of this Agreement.~~
- ~~j. School buses will not be older than five (5) model years, with a maximum of eight (8) years if already in service. At least one (1) vehicle will be available at all times for use with respect to the Turnaround Academy as a spare. GCSC will provide a replacement bus within twenty (20) minutes anytime an original bus becomes disabled.~~
- ~~k. Each bus will carry the following equipment: (i) one (1) set of flares; (ii) one (1) set of triangles; (iii) first aid kit placed on the inside of the bus within reach of the driver; (iv) two way communication systems satisfactory to School; and (v) any other equipment required by law or proper jurisdiction regulation.~~
- ~~l. Buses must be equipped with digital recording devices that will allow for the continuous monitoring of student and driver without blind spots. The videos will be provided to the Turnaround Academy upon request and will be maintained on file for a period of no less than 30 days.~~
- ~~m. During inclement weather where temperature is below zero Celsius, GCSC will provide a "mobile" warming station at each stop designated as a pickup/drop off location.~~
- ~~n. GCSC will provide in each vehicle a Web-based GPS monitoring system which the Turnaround Academy will have on-site access to monitor all bus routes and school-related activities.~~
- ~~o. All buses will be equipped with bar code scanner technology or similar. GCSC, shall at its own expense supply, all students with a student identification card and bus passes. Additional bus passes will be provided by GCSC to the Academy Corporation to be utilized by "new" students prior to receipt of their unique student identification card and bus pass.~~
- ~~p. GCSC agrees to promptly, courteously and continuously provide written notice to the Academy Corporation of any and all complaints or concerns brought to its attention by parents, guardians, custodians, family members, or other parties representing the interests of any student.~~
 - ~~i. GCSC will document all inquires or concerns as they arise. For the avoidance of doubt, documentation includes a description of the~~

complaint, record of the consultation with the driver and a description of the corrective action taken. Should the complaint or concern warrant, all involved parties would be brought together for a meeting to develop a consensus about the incident and its solution.

~~ii. A copy of the written results of parent inquiries will be available to the Academy Corporation.~~

~~q. Changes to student routing service needs of the Turnaround Academy will be implemented by the GCSC in accordance with the following schedule:~~

~~i. New student added to an established route/stop — next day.~~

~~ii. Regular education student added at a new route/stop — 1 to 2 days.~~

~~iii. Special education student added to new route/stop — 1 to 2 days.~~

~~r. The GCSC will file with the Academy Corporation or its designee the names and telephone numbers of all bus drivers who will operate buses and the identification number of the assigned buses before the opening of the Turnaround Academy each year. If a new driver is added after the Academic Year begins, the driver's information will be filed with the Academy Corporation no later than five (5) days prior to date on which the new driver starts operating a bus assigned to the Turnaround Academy.~~

2. Real Property, Facilities, Contents, Equipment and Supplies

a. Statutory Requirements:

i. The Indiana Turnaround Statute requires, in relevant part, that the special management team shall continue to use the school building, the accompanying real property, and the building's contents, equipment, and supplies. The school corporation shall continue to "maintain and repair the buildings and grounds consistent with the maintenance and repair to the school corporation's other buildings and grounds."

~~ii. The State has enacted 511 IAC 6.2-9-8, which provides as follows:~~

~~1. The school corporation shall take no action adverse to the special management team's operation of the school.~~

~~2. The school corporation shall take no action to dispose of or cloud the title of the real property on which the school is located.~~

~~3. The school corporation shall not remove or dispose of personal property located in the school or, if located outside the school, assigned to the school.~~

~~4. If the state board determines that the school corporation has:~~

- ~~a. taken an action or actions prohibited by subsections (a) through (c); or~~
- ~~b. refused without just cause to enter into the contract required under section 6(b) of this rule;~~
- ~~c. the board may order the department to withhold additional state funds otherwise to be distributed to the school corporation in order to permit the special management team to operate the school notwithstanding the prohibited or refused action.~~

b. Facilities

- i. Effective July 1, 2012 and continuing throughout the term in which the Academy Corporation operates the Turnaround Academy (hereinafter “Period of Use”), the Academy Corporation will use and have the right to use the school building, the accompanying real property, and the buildings, contents, equipment and supplies located on and associated with the Turnaround Academy.
- ii. On July 2, 2012 @ 8:00 a.m. at Roosevelt Career and Technical Academy
~~By or before June 29, 2012, GCSC will deliver to the Academy Corporation~~ will deliver to Edison a complete copy of the master keys for all external and internal doors, file cabinets, storage rooms as well as any computers and equipment for which a physical key is required to operate such computers and equipment. GCSC also will deliver to Edison the Academy all passwords and digital keys, if any, applicable to the facilities and equipment contained in the Turnaround Academy.
- iii. The Academy Corporation may elect to re-key the external or internal doors, file cabinets, storage rooms as well as any computers and equipment for which a physical key is required to operate such computers and equipment. If the Academy Corporation elects to re-key the external or internal doors, then it will provide a copy of the new master keys to the appropriate individual designed in writing by GCSC.
- iv. GCSC will not be responsible for providing security during the School Day and during after school events sponsored by the Turnaround Academy, excluding security required by law with respect to transporting student to and from school or to and from field trip, athletic contests and extra-curricular trips.

- v. GCSC will provide 7-day-a-week, 24-hour-a-day availability for school facility maintenance service needs. GCSC also will be responsible for the payment of costs related to utilities, snow removal and refuse collection charges incurred by the Turnaround Academy.
- vi. GCSC will recruit, hire, train, and manage qualified technicians and maintenance engineers to perform facility-specific maintenance services. GCSC will ensure the provision of training to service workers and service providers through proven instruction techniques, work processes, supplies, materials, and equipment.
- vii. GCSC will provide, at its own cost, all labor, necessary equipment and supplies for services under this Agreement (including but not limited to: tools for all skilled labor, mechanic tools, mowers and plows). Such equipment will remain the property of GCSC.
- viii. GCSC will perform contract and project management responsibilities for services or repair work, which may be outside the capabilities of the GCSC workforce, including, but not limited to, elevator maintenance and asbestos remediation.
- ix. GCSC will provide and implement its 3-year capital plan, which exists for the Turnaround Academy as of the date of this Agreement, and, where needed or otherwise required by applicable law, a facility capital asset replacement plan. By or before August 1, 2012, GCSC will replace or repair, at its cost, all items identified in Exhibit B hereof as "Exterior Must Do List" and "Interior Must Do List," including, without limitation, all items listed as dangerous conditions, or conditions that jeopardize the health and safety of the students, staff, parents, guardians, custodians or visitors of the Turnaround Academy. In the event that GCSC fails to complete any of the items identified in Exhibit B hereof as "Exterior Must Do List" or the "Interior Must Do List," then Academy Corporation may appeal to the State for the appropriate funding relief, including, without limitation, withholding the appropriate funds from the GCSC sufficient to immediately repair or replace such items. GCSC and Academy Corporation will work cooperatively together to determine the appropriate schedule for GCSC to repair or replace the items identified in Exhibit B hereof as "Exterior Should Do List" and "Interior Should Do List."
- x. GCSC will ensure that the Turnaround Academy's kitchen is in compliance with all applicable local, state and federal laws and that all such equipment is fully operational as a production kitchen by the start of each Academic Year. During each Academic Year, any and all kitchen equipment that is inoperable, needs repair, or replacement, including, but not limited to, ovens, coolers, freezers, and combination boxes, shall be repaired or replaced by GCSC, at its own cost, by the earlier of the time required by any applicable

law or five (5) days after GCSC receives notice from the Turnaround Academy.

- xi. The GCSC maintenance service providers will work closely with the Turnaround Academy's facility manager for the overall scheduling, execution of, and completion of work. The facility manager of the Turnaround Academy will provide the immediate oversight of district maintenance personnel assigned to perform services at the school.
- xii. GCSC will be expected to manage all preventive maintenance, repair and work status including, without limitation, the following:
 1. Day-to-day operations of all building Mechanical, Electrical, Computerized Maintenance Management System (CMMS), systems and process support equipment as necessary to meet the Turnaround Academy's performance standards. Operational activities include the management and coordination of the automated building management system to optimize effectiveness and reduce energy consumption.
 2. ~~GCSC shall provide to the Academy Corporation access to all electronic data systems relevant to the operations of the Turnaround Academy.~~
 3. ~~Preventive/predictive maintenance on an as-scheduled basis.~~
 4. ~~HVAC equipment in accordance with GCSC's procedures for schools managed by GCSC and any other site-specific inspection and monitoring procedures, as provided. Indoor air quality issues and concerns will be reported to the school. All HVAC maintenance, repair and replacement work will be performed in accordance with applicable local, state and federal building codes.~~
 5. Plumbing systems and equipment, in accordance with GCSC's procedures for schools managed by GCSC and any other site-specific inspection and monitoring procedures as provided. Water quality issues and concerns will be reported immediately to the Turnaround Academy.
 6. ~~Periodic inspection, servicing and repair to fire sprinkler and standpipe systems, gas suppressions systems, fire detection alarm and related systems and perform inspection, service repair or replacement of portable fire extinguishers. Inspections must satisfy all code and municipal requirements, and must properly maintain the systems, including compliance with NFPA 25 or latest revision. All fire prevention systems maintenance, repair and replacement work will be performed in accordance with applicable local, state and federal building costs.~~

- ~~7. Electrical distribution systems and equipment in accordance with GCSC's procedures for schools managed by GCSC and any other site specific inspection, testing and monitoring procedures as provided. All electrical maintenance, repair and replacement work to be performed in accordance with applicable local, state and federal building codes.~~
- ~~8. Building Uninterrupted Power Supply ("UPS") systems in accordance with GCSC's procedures for schools managed by GCSC and any on site specific inspection, testing and monitoring procedures as provided.~~
- ~~9. Building emergency and standby generators in accordance with GCSC's procedures for schools managed by GCSC and any other site specific procedures.~~
- ~~10. Manage unforeseen services that are required for the sustained quality operation of the facility. Such services include, but are not necessarily limited to:
 - ~~a. Repair of small instances of vandalism and accidental damage~~
 - ~~b. Indoor air and water quality. Remediation as required~~
 - ~~c. Activation of fire alarm, fire sprinkler and gas suppression systems.~~
 - ~~d. Items that require substantial repair costs due to fatigue or failure will be deemed episodic events and will require GCSC to repair or replace those items at its own cost. Prior approval from the Academy Corporation and will be required to ensure minimal disruption of the instructional environment.~~~~
- ~~11. Building exteriors and roofing systems through annual condition surveys, preventative maintenance and repairs.~~
- ~~12. Coordinate all warranties extended directly to the Turnaround Academy by manufacturers or service providers and ensure adherence to warranty stipulations.~~
- ~~13. Coordinate maintenance and repair of all parking lots, including, but not limited to, cleaning and stripping.~~
- ~~14. Landscaping services per site specific specifications. Grounds services include, but are not limited to, landscaping, lawn care, snow removal and the operation and maintenance of exterior~~

~~lighting fixtures, automatic parking controls gates, fencing, signage, pavement, striping and curbing.~~

15. Professional pest control services which will be provided to ensure and maintain a pest-free work environment in and around all buildings and grounds at the assigned locations. All pest control services will conform to federal, state and local laws, ordinances and regulations, and will be performed using the utmost precaution. GCSC shall comply with Academy Corporation's policy and procedures and submit all MSDS forms to the Turnaround Academy's facility manger..

~~16. Preventative maintenance and repairs for School Mobile equipment, Mobile Grounds Maintenance equipment and Stationary equipment.~~

~~17. Establish parts, materials and supply inventories (and related inventory controls) essential for operation and repair/maintenance services and for assurance of uninterrupted services to the Turnaround Academy.~~

c. Contents, Equipment and Supplies

- i. On or before July 1, 2012, the Academy Corporation will present GCSC with an inventory of the personal property, contents, equipment and supplies located in the buildings and associated with the Turnaround Academy, a copy of which will be attached to this Agreement as Exhibit "A." For the avoidance of all doubt, the Parties agree that the term "personal property" does not include personal property purchased by teachers at the Turnaround Academy with their personal funds.
- ii. On July 15, 2012, GCSC will certify that the items on Exhibit A have not been removed from the Turnaround Academy or any of its associated buildings, and the Academy Corporation shall take possession of all such items. In the event that any item on Exhibit A has been removed, then GCSC shall either return the item to the Turnaround Academy no later than five (5) days after notice (in accordance with Section 14 below) that the item has been removed, or, within the same such five (5) day period, GCSC will pay to the Academy Corporation the fair market value of the removed item, as determined by the Academy Corporation, in its sole discretion.
- iii. At the expiration of the Period of Use, the Parties will agree upon an inventory of the items in Exhibit A that have been returned by the Academy Corporation to the GCSC. All items on the inventory will remain at the Turnaround Academy for the unrestricted use by the students of the Turnaround Academy throughout the Period of Use.

- ~~3. GCSC will ensure that all student records including, but not limited to, student's address, name of parent or legally appointed guardian, census data and transcripts for students who were enrolled in the Turnaround Academy during the 2011 to 2012 academic year ("Student Records") remain in the Turnaround Academy. If any Student Records were removed from the Turnaround Academy after March 1, 2012 for any reason other than at the written request of the student's parent or legally appointed guardian, then GCSC shall ensure that such student record is returned to the Turnaround Records by July 1, 2012. Student Records will be delivered in accordance with a format acceptable to the Academy Corporation. In the event a student transfers to or from the Turnaround Academy after the start of an Academic Year, the Parties will work cooperatively to transfer the applicable Student Records in a timely manner, as required by applicable state or federal laws.~~
- ~~4. Except as expressly provided herein or in connection with insurance coverage required to be provided in this Agreement, each Party shall be responsible for its own legal representation and legal costs. Except where there is an actual or potential conflict of interest, GCSC and the Academy Corporation shall fully cooperate with legal counsel for one another in connection with any legal claim asserted against either of them.~~
- ~~5. Should any claim, demand or suit be filed against GCSC which arises out of any claim that this Agreement or any part thereof is in violation of law, or of any constitutional provision, statute, law, rule, contract, or collective bargaining agreement binding upon GCSC, GCSC agrees to promptly notify the Academy Corporation and shall actively seek its assistance and participation in the defense of such claim.~~
6. The Academy Corporation shall indemnify and save and hold GCSC, its employees, officers, directors, subcontractors and agents harmless from any and all claims, demands, suits, costs, judgments, or other forms of liability to third parties, actual or claimed, including attorney fees, for injury to property or persons, occurring or allegedly occurring in, on or about GCSC from the grossly negligent or reckless actions and omissions or willful misconduct committed by the Academy Corporation or by its employees, officers, directors, subcontractors or agents. Upon timely written notice (in accordance with Section 14 below) from GCSC, the Academy Corporation shall defend GCSC in any such action or proceeding brought thereon.
- ~~7. GCSC shall indemnify and save and hold the Academy Corporation, its affiliates, subsidiaries, partners, employees, officers, directors, subcontractors, agents and authorized volunteers, harmless from:~~
 - ~~a. any and all claims, demands, suits, costs, judgments or other forms of liability to third parties, actual or claimed, including attorney fees, for injury to property or persons, occurring or allegedly occurring from the grossly negligent or reckless actions and omissions or willful misconduct committed by GCSC or by its employees, officers, directors, subcontractors or agents. Upon timely written notice (in accordance with Section 14 below) from the Academy Corporation, GCSC shall defend the Academy Corporation in any such action or proceeding brought thereon.~~

- ~~b. any and all claims, demands, suits, costs, judgments or other forms of liability to third parties, actual or claimed, of whatsoever kind or character, including attorney fees, for injury to property or persons, occurring or allegedly occurring or arising out of any physically hazardous conditions or any environmental conditions existing or allegedly existing at the Turnaround School, including, without limitation, any building or real property adjacent thereto.~~
- ~~8. The foregoing provisions shall not be deemed a relinquishment or waiver of any kind of:~~
- ~~a. any applicable obligation under the Indiana Turnaround Statute, as amended;~~
- ~~b. any applicable limitations of liability to third parties provided or any defenses available to any of the parties under applicable state governmental immunities laws.~~
- ~~9. Notwithstanding any provision of this Agreement to the contrary, the Academy Corporation shall not under any circumstances be liable for more than the amount of its insurance coverage required to be maintained under Section 10 hereof.~~
10. With respect to its obligations under this Agreement Memorandum of Understanding, the Edison Academy Corporation shall secure and maintain the following minimum insurance:
- a. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of \$700,000 per Contractor's employee and \$5,000,000 per occurrence. GCSC is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Agreement.
 - b. Professional Errors & Omissions insurance with limits of at least one million dollars (\$1,000,000); and
 - c. Workers' Compensation insurance with Statutory primary coverage and at least five hundred thousand dollars (\$500,000) of Employers Liability coverage; and
 - d. Crime/Employee Dishonesty insurance with limits of at least five hundred thousand dollars (\$500,000), including any bond required of GCSC's financial officers); and
 - e. Umbrella liability coverage of five million dollars (\$5,000,000) in excess of the primary commercial general liability, automobile liability and employer's liability insurance policies.
- ~~11. With respect to its obligations under this Agreement, GCSC shall secure and maintain the following minimum insurance:~~
- ~~a. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of~~

~~\$700,000 per Contractor's employee and \$5,000,000 per occurrence. the Academy Corporation is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Agreement.~~

- ~~b. Workers' Compensation insurance with Statutory primary coverage and at least five hundred thousand dollars (\$500,000) of Employers Liability coverage; and~~
- ~~e. Crime/Employee Dishonesty insurance with limits of at least five hundred thousand dollars (\$500,000), including any bond required of GCSC's financial officers); and~~
- ~~d. Umbrella liability coverage of one million dollars (\$1,000,000) in excess of the primary commercial general liability, automobile liability and employer's liability; and~~

12. The term of this Agreement Memorandum of Understanding will commence on the Effective Date and will continue in full force and effect until September 1, 2012 or until a written contract is signed with Edison and the Indiana Department of Education and this Memorandum of Understanding is replaced. June 30, 2017, unless terminated in accordance with Section 13 of this Agreement; provided, however, that this Agreement shall terminate automatically on the date the State terminates the Academy Corporation authority to serve as the special management team to operate the Turnaround Academy.

13. ~~Either Party may terminate this Agreement: (i) immediately upon giving notice (in accordance with Section 14 below) of any material breach by the other Party if the nature of the breach is such that it cannot be remedied; (ii) sixty (60) days following notice (in accordance with Section 14 below) to the other Party of a material remedial breach, if the other Party has not remedied such breach within that thirty-day period; or (iii) ninety (90) days following notice (in accordance with Section 14 below) to the other Party for any reason.~~

- ~~a. The right of termination provided herein is absolute and the Party terminating will not be liable to the other Party for damages of any kind, including incidental or consequential damages, damages for loss of prospective business or loss of continuing business or otherwise which arise due to a termination in accordance with the provisions of this Section 13. This does not relieve either Party from responsibility such party may have under the Indiana Turnaround Statute, or for damages caused by its actions or breaches of the Agreement, but only for damages related to or resulting from the termination of the business relationship.~~
- ~~b. Upon the termination of this Agreement for any reason, the provisions of Sections 13 through 17, inclusive, and Sections 19 through 29, inclusive, will survive any termination or expiration of this Agreement. The termination or expiration of this Agreement will not relieve either Party of any liability that accrued prior to such termination or expiration.~~

14. All notices required or permitted by this Agreement Memorandum of Understanding will be in writing and will be either personally delivered or sent by nationally-recognized overnight courier, facsimile or by registered or certified U.S. mail, postage prepaid, addressed as set forth below (except that a party may from time to time give notice changing the address for this purpose).

To the Theodore Roosevelt
College and Career Academy, Inc. at:

Theodore Roosevelt College and
Career Academy, Inc.
485 Lexington Avenue, 2nd Floor
New York, NY 10017
Attn: Todd McIntire
Chief Education Officer

With a copy to:

Edison Learning, Inc.
485 Lexington Avenue, 2nd Floor
New York, NY 10017
Attn: General Counsel

To GCSC at:

Gary Community School Corporation
620 East 10th Place
Gary, Indiana 46402
Attn: Superintendent

With a copy to:

Robert Lewis Associates
2148 West Avenue
Gary, Indiana 46404
Attn: Robert Lewis, Esq.

A notice will be effective on the date personally delivered, on the date delivered by a nationally-recognized overnight courier, on the date set forth on the receipt of a telecopy or facsimile, or upon the earlier of the date set forth on the receipt of registered or certified mail or on the fifth day after mailing.

- ~~15. This Agreement and the rights, interests and obligations hereunder will be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and permitted assigns.~~
- ~~16. This Agreement, and all rights and obligations under this Agreement, may not be assigned or encumbered without the prior written consent of the Parties; provided, however, that the Academy Corporation may assign this Agreement to a successor entity that acquires, through a corporate reorganization, substantially all of the Academy Corporation's assets and liabilities. Any attempted assignment in violation of this Section 16 will be void ab initio.~~
- ~~17. The Parties do not intend, nor will any clause be interpreted, to create under this Agreement any obligations of either GCSC or the Academy Corporation in favor of, or benefits to, or rights in, any third party.~~
- ~~18. GCSC will perform and maintain a background history check file on all of its employees and contractors who perform services at the Turnaround Academy.~~

- ~~a. GCSC will ensure that all such employees and contractors comply with the applicable federal and state background check requirements, including, without limitation, nationwide criminal fingerprint based background check on all contractors and their employees working in the school environment, and the Turnaround Academy's requirement that no convicted felons shall be allowed to perform any services at the Turnaround Academy.~~
 - ~~b. GCSC will ensure that all background checks required under this Agreement or by any applicable laws are completed before the performance of any services under this Agreement.~~
 - ~~c. GCSC shall conduct federal, state and local pre-employment background history check requirements, including probable cause and alcohol tests, at its own cost.~~
 - ~~d. GCSC shall provide to the Academy Corporation proof of successful completion of criminal background history checks by written notification of the successful completion of the background check requirements prior to the start of the agreement.~~
- ~~19. GCSC and the Academy Corporation are each independent contractors and neither Party will be, nor represent itself to be, the franchiser, partner, broker, employee, servant, agent or legal representative of the other Party. Neither Party is granted any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of, or in the name of, the other Party, or to bind the other Party in any manner or thing.~~
- ~~20. All remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy will not be deemed an election of such remedy to the exclusion of other remedies.~~
- ~~21. The waiver or failure of either Party to exercise in any respect any right provided under this Agreement will not be deemed a waiver of such right in the future or a waiver of any other rights established under this Agreement.~~
- ~~22. This Agreement will be enforceable notwithstanding the existence of any claim or cause of action either Party may have against the other Party.~~
- ~~23. Should any term or provision of this Agreement be held to any extent unenforceable, invalid, or prohibited under law, then such provision will be deemed restated to reflect the original intention of the Parties as nearly as possible in accordance with applicable law and the remainder of this Agreement.~~
- ~~24. This Agreement, each transaction entered into under this Agreement, and all matters arising in connection with this Agreement will be in all respects governed by, and construed, and enforced in accordance with, the laws of the State of Indiana without giving effect to its rules relating to conflict of laws.~~

- ~~25. This Agreement constitutes the complete and exclusive statement of the agreement between the Parties with respect to the subject matter of this Agreement, and this Agreement supersedes any and all prior oral or written communications, proposals, representations, and agreements. It may be amended only by mutual agreement expressed in writing and signed by both Parties, and any attempted amendment in violation of this Section 25 will be void ab initio.~~
- ~~26. The exhibits and schedules hereto are an integral part of this agreement and are deemed incorporated by reference herein.~~
- ~~27. Except as otherwise provided in this Agreement, this Agreement may not be amended, modified or supplemented except by written document signed by an authorized officer of the Party to be held.~~
- ~~28. Neither Party will be obligated to perform or observe its obligations undertaken in the Agreement to the extent prevented or hindered from doing so by any circumstances beyond its control, provided that each Party will use its commercially reasonable efforts to perform or observe its obligations as soon as practical after, and to the extent that, such circumstances no longer prevent or hinder such Party.~~
- ~~29. This Agreement may be executed in any number of separate counterparts, each of which, when executed by and delivered to the other Party, with delivery by facsimile permissible, will be an original as against the Party whose signature appears on such counterpart but all such counterparts together constituting one and the same instrument.~~

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

IN WITNESS WHEREOF, the Parties accept this Agreement and have caused this Agreement to be executed and delivered and do each hereby warrant and represent that its respective signatory, whose signature appears below, has been and is, on the date executed, duly authorized by all necessary and appropriate corporate action to execute this Agreement on its behalf.

**THEODORE ROOSEVELT COLLEGE
AND CAREER ACADEMY, INC.**

**GARY COMMUNITY SCHOOL
CORPORATION**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A
THEODORE ROOSEVELT ASSET INVENTORY LIST

(TO BE PROVIDED)

EXHIBIT B

~~THEODORE ROOSEVELT COLLEGE AND CAREER ACADEMY INITIAL FACILITY ASSESSMENT—IMMEDIATE RESOLUTION~~

1) ~~Executive Summary: Exterior Must Do List~~

- ~~a) The brick parapet located at the SE corner of the gymnasium exhibits significant signs of distress creating a **dangerous condition that must be remedied immediately**. This was noted in a Memorandum to Edison Learning, inc. dated 4.12.12. Repair the brick parapet at the gym.~~
- ~~b) The concrete walkways leading to and located near the 25th Avenue entrances are in need of repair. There are areas of concern that should be addressed very soon. There are significant cracks in several areas that have created tripping hazards. We recommend that these be addressed as soon as possible.~~
- ~~e) ADA access to these entrances are not properly constructed and do not meet the letter of the law. We recommend that these be addressed as soon as possible.~~
- ~~d) The main entrance steps are in very poor condition and are in need of major repair, if this entrance is going to be reopened. There are no handrails installed as required per the building code.~~
- ~~e) All of the masonry located around (especially above) this entrance must be closely inspected to determine the soundness of all attachments to the supporting structure. There is evidence of significant deterioration that would have to be fixed prior to reopening this entrance.~~
- ~~f) A thorough inspection of all masonry overhangs, especially those located above entrances or walkways should be done as soon as possible to determine the soundness of all attachments to the supporting structure.~~
- ~~g) The low masonry wall located at the ticket window entrance to the gymnasium on the east side of the building is showing very significant damage from water infiltration and freeze/thaw cycles over a long period of time. This wall should be completely re-built.~~
- ~~h) Repair/Replace the enameled steel panels on the bridge to building A. The existing panels show signs of rust and probable concealed attachment issues.~~

2) ~~Executive Summary: Interior Must Do List~~

- ~~a) Remove all hazardous materials such as asbestos floor tile and lead paint. This is an obvious life safety issue.~~

- ~~b) Replace all handrails to meet the current ADA standards. Handrails are currently non-compliant.~~
 - ~~c) Remove all chains and padlocks from doors. This is a building code violation and a life safety hazard.~~
 - ~~d) Remove all stored materials from the stair towers. File cabinets and furniture were noted. This is a building code violation and a life safety hazard.~~
 - ~~e) Replace all Fire Extinguishers and cabinets. This is a life safety issue. Provide tamper dye and alarm cover pull stations~~
 - ~~f) Fill all holes left in floor. This is a safety issue.~~
 - ~~g) Replace all HVAC controls.~~
 - ~~h) Re key and fix all locksets.~~
 - ~~i) Repair all doors. Install half glass lights in all classroom doors.~~
 - ~~j) Repair all lavatories.~~
 - ~~k) Repair all toilet room accessories.~~
 - ~~l) Install covers for all floor drains. This is a safety issue.~~
 - ~~m) Repair all air intakes.~~
 - ~~n) Provide updated room numbers and way finding system~~
- ~~3) Executive Summary: Exterior Should Do List~~
- ~~a) Replace all exterior windows with new energy efficient insulated and thermally broken windows.~~
 - ~~b) Inspect and repair all mortar joints to prevent further damage in the brick.~~
 - ~~c) Paint the raw wood exposed beneath the gutters to preserve the installation. Repair/replace the exterior parking lot lighting.~~
- ~~4) Executive Summary: Interior Should Do List~~
- ~~a) Install a complete fire sprinkler and detection system that would be monitored by the fire department.~~
 - ~~b) Replace all T12 fluorescent fixtures with energy efficient T8 fixtures.~~
 - ~~c) Install a card access system in lieu of the current key system.~~

- d) ~~Repair/Replace the pool filter which is currently inoperable.~~
- e) ~~Replace all ceilings tiles and grid.~~
- f) ~~Replace all window treatments.~~
- g) ~~Install new cameras and security system.~~
- h) ~~Replace all lockers.~~
- i) ~~Update all floor finishes.~~
- j) ~~Devise new paint /finish systems to designate the 3 Academies.~~
- k) ~~Repair the AV booth in the Auditorium~~