

**HEALTH CARE SERVICES AGREEMENT
FOR THE CITY OF SAN ANTONIO HEAD START PROGRAM
BETWEEN THE CITY OF SAN ANTONIO &
UNIVERSITY OF THE INCARNATE WORD ILA FAYE MILLER SCHOOL OF
NURSING AND HEALTH PROFESSIONS**

This agreement ("Contract") is entered into by and between the City of San Antonio ("City"), a Texas Municipal Corporation, acting by and through its Director of the Department of Human Services pursuant to Ordinance No. _____ dated August 31, 2017, and University of the Incarnate Word Ila Faye Miller School of Nursing and Health Professions, ("Contractor") (individually "the Party" and collectively "the Parties") to set forth the objectives, understandings, and agreements between the Parties in connection with the provision of health services to children in the City of San Antonio Head Start Program.

WITNESSETH:

WHEREAS, the City has received grants pursuant to the Head Start Act (42 U.S.C. §9801 *et seq.*, as amended) (collectively, "Grant") for the purpose of providing Head Start and Early Head Start – Child Care Partnership ("EHS-CCP") services to children and families in the San Antonio and Edgewood Independent School District areas; and

WHEREAS, the City is authorized by the U.S. Department of Health and Human Services ("HHS") Administration for Children and Families ("ACF") and desires, through its Department of Human Services ("DHS"), to execute an agreement with Contractor to provide Head Start and EHS-CCP health services to children residing in the identified grant area (hereinafter referred to as the "Project" or "Program"); and

WHEREAS, the City issued a Request for Proposal for health screenings for children through RFP 17-068 (RFx 6100008742) on April 7, 2017 and Contractor is the chosen respondent; and

WHEREAS, City agrees to compensate Contractor for health screenings and physical examinations provided to children enrolled in its Program; and

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained and intending to be legally bound hereby, the Parties agree as follows:

I. SCOPE OF WORK

- 1.1 The Contractor will provide all activities and services in a manner satisfactory to the City and in compliance with the Contractor's Scope of Work, affixed hereto and incorporated herein for all purposes as **Attachment I**, this Contract, and the Terms of the Grant (hereinafter defined). If the terms of this Contract are inconsistent or in conflict with applicable Terms of the Grant, the terms imposing the most stringent requirements upon the Contractor will control.
- 1.2 For purposes of this Contract, the following terms will have the following meanings:
 - (A) "Allowable Costs" are those costs, which are necessary, reasonable, and allowable under applicable federal, state, and local law, including but not limited to those laws referenced in Article XII hereof, for the proper administration and performance of the services to be provided under an agreement.
 - (B) "Business day" means every day of the week except all Saturdays, Sundays, and those scheduled holidays officially adopted and approved by the San Antonio City Council for City of San Antonio employees.

- (C) "Cost Allocation Plan" is a plan that identifies and distributes the cost of services provided by staff and/or departments or functions. It is the means to substantiate and support how the costs of a program are charged to a particular cost category or to the Program so as to assure the provided Grant funds do not subsidize other program(s), and ensures that the City is paying only its fair share of the costs solely devoted to the Project or funded pursuant to this Contract.
- (D) "Program Budget Year" or "PBY" means the budget term for the individual grant(s) that comprise the funding source(s) for this Contract.
- (E) "Program Income" means earnings of Contractor realized from activities resulting from this Contract or from Contractor's management of funding provided or received hereunder. Such earnings include, but are not limited to, interest income; usage or rental/lease fees; income produced from Contract-supported services of individuals or employees or from the use of equipment or facilities of Contractor provided as a result of this Contract; and if applicable, payments from clients or third parties for services rendered by Contractor pursuant to this Contract.
- (F) "Relevant HHS directives" means oral or written directives of HHS or its subdivision, including the ACF, Head Start Bureau, Program Operations Division and ACF Region VI, including any updates.
- (G) "Terms of the Grant" means all requirements of the Grant, whether contained in the Head Start Act, as amended by the Improving Head Start for School Readiness Act of 2007 (42 U.S.C. §9831, *et seq.*), or other applicable statutes, implementing regulations (e.g., 45 C.F.R. §1301 *et seq.* (the "Head Start Performance Standards" or "Performance Standards") and 45 C.F.R. Part 75, as amended and as applicable), rules, Executive Orders, the award document from the U.S. Department of Health and Human Services ("HHS") to the City, relevant HHS directives, including, but not limited to circulars, Program Instructions, Information Memorandums and Policy Clarifications, the City's policies and procedures and any other directives applicable to the Program, as such requirements exist as of the date of this Contract and as such requirements may be established or modified (by amendment, deletion, addition, or otherwise) during the period of the Contract.

- 1.3 Contractor will establish and implement policies and procedures governing personnel, financial management, and programmatic management, as specified more fully in 45 C.F.R Parts 1301 *et seq.*, and/or 45 C.F.R. Part 75 as applicable. Such policies and procedures must be consistent with the Terms of the Grant, the policies and procedures approved by the Grantee's Policy Council and Governing Body, and content and service plans.
- 1.4 City retains the authority to contract with third-parties for the delivery of services in the San Antonio and Bexar County area. Contractor agrees to allow the City's other contractors access to the facilities leased and/or owned by Contractor. Contractor agrees to cooperate with City and third-party contractors to establish, modify and comply with a set of policies and procedures and/or a program design manual governing the City's Program and the protocol for collaboration between service providers.

II. TERM

- 2.1 Except as otherwise provided, this Contract will begin on September 1, 2017 and terminate on July 31, 2018. The City, subject to its continued award of Grant funds from HHS, will have the option to renew this Contract, upon the Parties signatures, for five (5) additional one-year terms without the necessity of further City Council approval. Renewal under this option may include appropriate revisions to the budget in order to reflect the Grant award and to associated due dates and the Scope of Work in order to best meet the needs of children and families through Grant activities.

III. CONSIDERATION

- 3.1 In consideration of Contractor's services, the City will reimburse Contractor a total amount not to exceed **\$85,480.00** ("the Federal Share"), comprised of up to \$77,480.00 for Head Start and \$8,000.00 for EHS-CCP, during the period in which this Contract is in effect for costs incurred in accordance with the Program

Budget, attached to and incorporated in this Contract as **Attachment II**. Contractor's Program Budget is comprised of the Federal Share and the Non-Federal Share. The Federal Share will be no more than eighty percent (80%) of the total Program Budget. Should Contractor fail to raise all of the non-Federal Share funds (20% of the total Program Budget, or \$19,370.00 for Head Start and \$2,000.00 for EHS-CCP) it is required to raise for the operation of its Program, City reserves the right to limit its reimbursements to Contractor proportionately. For instance, if Contractor succeeds in raising only fifty percent (50%) of its required non-Federal Share funds, City may accordingly limit its reimbursements to Contractor to fifty percent (50%) of City's total obligation to Contractor. To meet the requirements of this Contract, all claimed non-Federal Share must meet the requirements of 45 C.F.R. § 75.306, as applicable.

- 3.2 Prior to commencement of the Contract, Contractor must submit to City for its approval a monthly budget by line item for the entire term of the Contract along with its Program Budget, including detail by category alone. Contractor understands the budget may not include indirect costs unless the Contractor already has an existing approved federal indirect cost rate that has been pre-approved by the City. If the Contractor's budget is not submitted to the City for approval before the beginning of the Contract period, the City reserves the right to redirect Contractor's funding as necessary. Additionally, for each grant program, Contractor will submit, on or before contract execution, on or before the start of each program budget year ("PBY"), and whenever requested by the City, a forecast of the projected monthly expenses for each month remaining in the Contract so that the City may review and compare actual expenses to projected expenditures and address issues associated with Contractor's expenditure rate (e.g., for Head Start: on or before September 1, 2017, and again on or before February 1, 2018, contractor will submit the projected expenses by month for Sept through January 2018, and through February 2018 through August 2018, respectively, and at any other time requested by the City), in accordance with the **Schedule of Due Dates and Deadlines**, attached to and incorporated in this Contract as **Attachment II.5** (see Forecasts). Contractor's budgeted development and administrative costs (as defined by 45 C.F.R. §1301.32) may not exceed twelve percent (12%) of the Program Budget, unless the total Program Budget is modified in accordance with this Contract in which case this amount will be reduced proportionately unless the Parties otherwise agree.
- 3.3 **Approval required.** Contractor must seek and obtain City's prior written approval thirty (30) calendar days before making budget modifications. City may make exceptions to the thirty (30) day notice requirement on a case by case basis, but otherwise Contractor must make request in writing or via email to the City's Head Start Program Administrator. Contractor's written request must be accompanied by a justification for the change and indicate which lines items are affected by such change.
- 3.4 The funding level of this Contract is based on an allocation from the following funding sources:
- (A) U.S. Department of Health and Human Services (HHS) – Head Start Funds Catalog of Federal Domestic Assistance # 93.600.
 - (B) Consequently, Contractor agrees to comply with the Terms of the Grant, and the Special Provisions attached to and incorporated in this Contract as **Attachment III**.
- 3.5 It is expressly understood and agreed by the City and Contractor that the City's obligations under this Contract are contingent upon the actual receipt of adequate grant funds from HHS to meet City's liabilities hereunder. This Contract may be terminated by the City if HHS terminates the City as a grantee or reduces the amount granted to City, for any reason; provided that, if the reduction of grant funds does not result in complete unavailability of such funds, the Parties will use best efforts to amend this Contract accordingly. City will promptly notify Contractor of any such HHS action.

IV. PAYMENT

- 4.1 Contractor agrees that this is a cost reimbursement contract and that the City's liability hereunder is limited to making reimbursements for Allowable Costs incurred as a direct result of services provided by the Contractor in accordance with the terms of this Contract. All requested reimbursed costs must be consistent with the terms and provisions of the approved budgeted line items described in **Attachment II** of this Contract, unless (a) in cases where the total Contract Budget remains the same, a subsequent budget

revision has been approved in accordance with the procedure set forth in Section 3.3 and signed by the Director of DHS (“budget revision”), or (b) in cases where there is an increase or decrease to the total Contract Budget, an amendment has been approved and signed by the Director of DHS pursuant to Section 24.1 of this Contract (“budget amendment”). Approved budget revisions and Contract amendments modify the Budget, and in such cases Contractor’s requested reimbursed costs must be consistent with the last revised, approved budget. Approved budget revisions and Contract amendments supersede prior conflicting or inconsistent agreements with regard to the referenced Project Budget(s), and all references in the Contract to the budget(s) will mean the budget as revised through approved budget revisions or Contract amendments. Budget revision requests must be submitted in advance of anticipated expense(s). The City will accept budget revision requests no later than thirty (30) days prior to the end of the PBY for each grant program, in accordance with the dates on Attachment II.5 (see Budget Revisions Deadline). City will not be liable for any cost of Contractor not eligible for reimbursement as defined within the Contract. Contractor will remit to City within ten (10) business days after the City makes the request for remittance any funded amounts which were paid pursuant to this Article IV and used to cover disallowed costs. Any such amounts not remitted within ten (10) business days may, at City’s option, be subject to offset against future funding obligations by City.

4.2 Advance Payments. If specific circumstances require an advance payment on this Contract, Contractor must submit to the DHS a written request for approval of such advance payment, including the specific reason for such request in the form prescribed by City. Contractor agrees that the City will not be obligated to approve any advance request. It is understood and agreed by the Parties that (a) each request requires submission to the Director of DHS no less than ten (10) business days prior to the actual ostensible cash need; (b) each request will be considered by the Director on a case-by-case basis, and (c) the decision by the Director whether or not to approve an advance payment is final.

(A) Contractor’s payment to a vendor using funds advanced by the City must be remitted to the vendors in a prompt and timely manner after services have been performed by the vendor, but not later than (10) business days after the Contractor is notified that an advance payment check is available from the City.

(B) The Contractor must deposit Contract funds in an account in a bank insured with the Federal Deposit Insurance Corporation (FDIC) and maintain recordkeeping in a manner that allows City to track expenditures made. In those situations where Contractor’s total deposits in said bank exceed the FDIC insurance limit, the Contractor must arrange with said bank to automatically have the excess collaterally secured. A written copy of the collateral agreement must be obtained by Contractor from the Contractor’s banking institution, maintained on file and be available for City monitoring reviews and audits. Advanced funds that cause the Contractor’s account balance to exceed the FDIC limit must be deposited in a manner consistent with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code) as amended.

(C) The City may deduct from monthly reimbursements amounts necessary to offset the amount advanced, considering factors such as projected Allowable Costs and other indicators such as Contractor’s financial stability. Contractor will maintain a financial management system to account for periodic, or a lump sum, deduction from reimbursements.

4.3 Requests for Payment. Contractor will submit to City no later than the fifteenth (15th) of every month a monthly Request for Payment in the form prescribed by City, which details the specific costs (by category and by program account number) Contractor expensed in the previous month for the services delivered per grant program as described in Article I of this Contract and in accordance with Attachment II.5 (see Invoices), including supporting documentation of such costs as may be required by the City. Contractor must liquidate all obligations made during each PBY and submit each grant program’s final invoice to the City forty-five (45) days after the end of the (i) PBY, and (ii) the contract term (or date of early termination, if applicable). The Request for Payment must also specify the Program Income (as defined in Section 1.2) received or projected during the same time period. The Director of DHS may require the Contractor’s submission of original or certified copies of invoices, cancelled checks, Contractor’s general ledger and/or receipts to verify invoiced expenses.

- 4.4 City will make reimbursement payments of eligible expenses to the Contractor of any undisputed amounts in accordance with established procedures. City will make payment to Contractor within thirty (30) calendar days of receiving a valid and approved Request for Payment.
- 4.5 Closeout. For each grant program, Contractor will submit to City a full accounting of the Program Income and non-Federal Share funds received and total Program costs incurred, along with all Requests for Payment for the Term forty-five (45) days after the end of the (i) PBY and (ii) contract term (or, date of early termination, if applicable), in accordance with Attachment II.5 (see Closeout and Deadline to submit final invoice).. These deadlines may be adjusted only if Contractor receives written authorization from the City allowing Contractor to submit a Request for Payment at a later specified date.
- 4.6 Contractor agrees that the City will not be obligated to any subcontractors or third party beneficiaries of the Contractor.
- 4.7 Contractor will maintain a financial management system, and acceptable accounting records in accordance with this Contract and applicable HHS and Head Start regulations and directives, such as 2 CFR 200 *et seq.* and 45 C.F.R. §75.302 *et seq.*, as applicable, and that provide for:
- (A) accurate, current, and complete disclosure of financial support from each federal, state, and locally sponsored project and program in accordance with the reporting requirements set forth in Article VIII of this Contract. If accrual basis reports are required, the Contractor will develop accrual data for its reports based on an analysis of the documentation available;
 - (B) records that adequately identify the source and application of funds for City-sponsored activities. Such records will contain information pertaining to City awards, authorizations, obligations, un-obligated balances, assets, equity, outlays, and income;
 - (C) effective control over and accountability for all funds, property, and other assets. The Contractor must adequately safeguard all such assets and ensure that they are used solely for authorized purposes. Contractor will maintain a separate numbered account for all funds received and disbursed through this Contract;
 - (D) comparison of actual outlays with budget amounts for each award. Whenever appropriate or required by the City, financial information should be related to performance and unit cost data;
 - (E) procedures to minimize the time elapsing between the transfer of funds from the City and the disbursement of said funds by the Contractor;
 - (F) procedures for determining reasonable, allowable, and allocable costs in accordance with the provisions of any and all applicable cost principles, including but not limited to the cost principles referenced in Article XII hereof, and the terms of the award, Grant, or Contract, with the City;
 - (G) accounting records that are supported by source documentation (i.e., timesheets, employee benefits, professional services agreements, purchases, and other documentation as required by City). Contractor will maintain records and meet necessary requirements under Generally Accepted Accounting Principles [GAAP]; and
 - (H) an accounting system based on generally acceptable accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the Project. A Receipts and Disbursements Ledger must be maintained. A general ledger with an Income and Expense Account for each budgeted line item is necessary. Paid invoices revealing check number, date paid and evidence of goods or services received are to be filed according to the expense account to which they were charged.
- 4.8 Contractor agrees that Contractor costs or earnings claimed under this Contract may not be claimed under another contract or grant from another agency, organization, business entity or governmental entity.

- 4.9 Cost Allocation Plan. Contractor must establish, and abide by a cost allocation methodology to ensure that costs allocated and charged to the Program are not charged to other federal, state, or local awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the Federal awards, or for other reasons. Contractor will provide to City prior to the start of the Contract Term (i) a matrix identifying the shared use of such facilities and/or program services; and (ii) the Cost Allocation Plan and supporting documentation, along with its Budget, financial statements and audit that are applicable to the Contractor's Project. City will have the right to approve the Cost Allocation Plan.
- 4.10 Contractor agrees to reimburse the City for any Contractor overpayment based upon reconciled adjustments resulting from Contractor's balance and/or Statement of Revenue and Expenditure sheet as of July 31, 2018, which is due to the City no later than forty-five (45) days (or next business day if the forty-fifth (45th) day is a weekend or holiday) after the end of the Contract term, for each grant program. Reimbursement will be made within twenty (20) calendar days of written notification to the Contractor of the need for reimbursement.
- 4.11 All unused funds, rebates, advances exceeding Allowable Costs, or credits on-hand or collected thereafter relating to the Project, will be immediately returned by Contractor to the City.
- 4.12 Upon execution of this Contract or at any time during its Term, a person designated by the City may review and approve all Contractor's systems of internal accounting and administrative controls prior to the release of funds.

V. PROGRAM INCOME

- 5.1 At the sole option of the Director of DHS, if Contractor obtains program income under the Contract, Contractor will either (a) be required to return Program Income funds to City through DHS, or (b) upon prior written approval by the Director of DHS, Contractor may be permitted to retain such funds to be:
- (A) added to the Project and used to further eligible Project objectives, in which case proposed expenditures must first be approved by the City; or (B) deducted from the total Project cost for the purpose of determining the net cost reimbursed by the City.
- 5.2 In any case where Contractor is required to return Program Income to City, Contractor must return such Program Income within the timeframe that may be specified by the Director of DHS. If the Director of the DHS does not specify a timeframe, then Contractor must return such Program Income to City on the same date that Contractor submits its statement of expenditures and revenues set forth in this Contract. If the Director grants Contractor authority to retain Program Income, Contractor must submit all reports required by City within the timeframe specified in this Contract.
- 5.3 Contractor will provide DHS with thirty (30) calendar days written notice prior to the activity that generates Program Income. The notice must detail the type of activity, time, and place of the activity.
- 5.4 The Contractor will fully disclose and be accountable to the City for all Program Income. Contractor must submit a statement of expenditures and revenues to DHS within thirty (30) calendar days of the activity that generates Program Income. The statement is subject to audit verification by City. Failure by Contractor to report Program Income as required is grounds for suspension, cancellation, or termination of this Contract.
- 5.5 Contractor is prohibited from charging fees or soliciting donations and is prohibited from inviting or contracting with vendors who would charge fees or solicit donations from Program participants or their parents in any Contract-funded project without the prior written approval of City.
- 5.6 Contractor will include this Article, in its entirety, in all of its subcontracts involving income-producing services or activities.

VI. ADMINISTRATION OF CONTRACT

- 6.1 The Contractor agrees to comply with all the terms and conditions that the City must comply with in its award document from HHS. A copy of said award document is attached to and incorporated in this Contract as **Attachment IV**. From time to time, the award document may be amended or supplemented, and these changes will be included automatically in **Attachment IV**.
- 6.2 Should any disagreement or dispute arise between the Parties pertaining to the interpretation or meaning of any part of this Contract or its governing rules, regulations, laws, codes or ordinances, the City Manager or the Director of DHS, as representatives of the City and the party ultimately responsible for all matters of compliance with HHS and City rules and regulations, will have the final authority to render or secure an interpretation. Contractor may request that City secure an interpretation or opinion from HHS in order to assist in resolution of the dispute and City will request it.
- 6.3 Contractor will not use funds awarded from this Contract as matching funds for any federal, state, or local grant without the prior written approval of City.
- 6.4 The City will have the authority during normal business hours to make physical inspections of all operating facilities occupied by Contractor for the administration of this Contract and to require physical safeguarding devices such as locks, alarms, security / surveillance systems, safes, fire extinguishers, sprinkler systems, etc. as reasonably necessary, to safeguard children, property and/or equipment under this Contract.
- 6.5 Employee Integrity. The Contractor's Governing Board, as applicable, and Contractor's management staff must adopt and approve an Employee Integrity Policy and internal program management procedures, and require all staff to abide by it and the Head Start standards as established in the HHS regulations, to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to prevent fraud and Program abuse. These policies and procedures require repayment of such erroneously received Grant funds or property to the Contractor, or to the applicable service provider from whom such Grant funds or property was received, if other than the Contractor, and specify any other consequences to Contractor's employees and vendors involved in such illegal activities, and may include termination and prosecution where necessary. Said policies and procedures will be provided to DHS upon request by DHS. If DHS finds the policies and procedures to be lacking, Contractor will comply with DHS's recommended revision(s).
- 6.6 If Contractor writes or handles checks under this Contract, Contractor agrees to comply with the following check writing and handling procedures:
- (A) No blank checks are to be signed in advance.
 - (B) No checks are to be made payable to cash or bearer with the exception of those for petty cash reimbursement, not to exceed a \$100.00 maximum per check. Contractor agrees that the aggregate amount of petty cash reimbursement will not exceed \$500.00 for any given calendar month during the Term of this Contract unless Contractor receives prior written approval from DHS to exceed such limit. Such requests for petty cash must be supported by the submission to DHS of an original receipt.
 - (C) Checks issued by City to Contractor must be deposited into the appropriate bank account immediately or by the next business day after Contractor's receipt, and will never be cashed for purposes of receiving the face amount back. If a check is not deposited within the next Contractor business day from the date of issue, City may investigate and issue a stop-payment order, as applicable. However, stop payment orders will not be issued for the posting of checks beyond three (3) business days due to the financial institution's posting policies so long as the checks are deposited by Contractor within the required three (3) business days. Upon cancellation of any outstanding check, the check may be reissued to Contractor if deemed appropriate by City; if not, the check will be immediately returned to the City.

(D) For checks other than petty cash reimbursement, Contractor must adopt and comply with a policy requiring no less than two (2) signatures of authorized representatives of Contractor on each check. Contractor understands and agrees that City's reimbursement is subject to compliance with this provision of the Contract.

6.7 Use of gift cards to defray any expenses under this Contract by the Contractor is not permitted.

VII. AUDIT

7.1 Funds from City. If Contractor expends \$750,000.00 or more of funds provided under this Contract, or cumulative funds provided by or through City, and does not have to comply with the provisions of Section 7.2 regarding federal funds, then during the Term of this Contract, the Contractor shall have completed an independent audit, with the report submitted to the City within the earlier of thirty (30) calendar days after receipt or nine (9) months after the end of Contractor's fiscal year, or termination of this Contract, whichever is earlier. Contractor agrees to furnish DHS a copy of the audit report including (i) the corrective action plan(s) on all audit findings, (ii) a summary schedule of prior audit findings, and (iii) the management or conduct of audit letter, within thirty (30) calendar days of receipt of the report or submission of the corrective action plan to the auditor.

Contractor agrees that upon notification from federal, state, or local entities that have conducted program reviews or audits of Contractor or its programs of any findings about accounting deficiencies or violations of Contractor's financial operations, a copy of the notification, review, investigation, and audit violations report must be forwarded to DHS within a period of ten (10) calendar days upon the Contractor's receipt.

7.2 Federal funds. Contractor agrees that if Contractor expends more than \$750,000.00 in federal funds from the City, an audit shall be made in accordance with the Single Audit Act Amendments of 1996, the State of Texas Single Audit Circular, and the U.S. Office of Management and Budget Circular (Uniform Guidance). Contractor will also be required to submit copies of its annual independent audit report and all related reports issued by the independent certified public accountant within the earlier of (i) thirty (30) days after receipt of the auditor's report(s), or (ii) nine (9) months after the end of the audit period, unless the federal cognizant or oversight agency for audit to the Federal Audit Clearinghouse agrees, in advance, to a longer period. A copy of this report must also be provided to City within this same time period. Contractor may submit reports through the following website: <http://harvester.census.gov/sac/> and may also contact the Clearinghouse by telephone at (301) 763-1551 (local), 1-888-222-9907 or 1-800-253-0696 (toll free).

Per 2 C.F.R. 200.36, upon completion of Form SF-SAC, Contractor may submit the completed report by mail to:

Federal Audit Clearinghouse
Bureau of the Census
1201 E. 10th Street
Jeffersonville, Indiana 47132

Contractor agrees to reimburse the City or supplement any disallowed costs with eligible and allowable expenses based upon reconciled adjustments resulting from Contractor's Single Audit. Reimbursement must be made within thirty (30) days of written notification regarding the need for reimbursement.

7.3 If Contractor expends less than \$750,000.00 of City dollars during the Term of this Contract, then the Contractor will complete and submit an unaudited financial statement(s) within nine (9) months immediately after the end of Contractor's fiscal year, expiration or early termination of this Contract, whichever is earlier. The financial statement will include a balance sheet and income statement prepared by a bookkeeper, and a cover letter signed by Contractor attesting to the correctness of the financial statement.

7.4 All financial statement(s) must include a schedule of receipts and disbursements by budgeted cost category for each program funded by or through the City.

- 7.5 The City reserves the right to conduct, or cause to be conducted, an audit or review of all funds received under this Contract at any time. The City Internal Audit Staff, a Certified Public Accounting (CPA) firm, or other personnel as designated by the City, may perform the audit(s) or reviews. The City reserves the right to determine the scope of every audit, so long as it is limited to Contractor's Program, and Contractor, accordingly, agrees to make available to City all accounting and Project records.

Contractor shall, during Contractor's normal business hours, and as often as deemed necessary by City and/or the applicable state or federal governing agency or any other auditing entity, make available the books, records, documents, reports, and evidence with respect to all matters covered by this Contract, and continue to do so for a minimum period of three (3) years or whatever period is determined necessary based on the Records Retention guidelines, established by applicable law for this Contract. Records must be maintained for the required period beginning immediately after Contract termination, unless there is litigation or if the audit report covering such agreement has not been accepted, then the Contractor will retain the records until the resolution of such issues has satisfactorily occurred. The auditing entity will have the authority to audit, examine and make excerpts, transcripts, and copies from all said, records, including those used by Contractor in accounting for expenses incurred under this Contract, or relating to matters covered by this Contract.

The City may require the Contractor to use any and all of the City's accounting or administrative procedures in the planning, controlling, monitoring, and reporting of all fiscal matters relating to this Contract, and the Contractor will abide by such requirements.

- 7.6 When an audit or examination determines that the Contractor has expended funds or incurred costs which are questioned by the City and/or the applicable state or federal governing agency, the Contractor will be notified and provided an opportunity to address the questioned expenditure or costs.

Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any site review or audit, the Contractor will promptly refund the amount to the City no later provision than ten (10) days from the date of notification of the disapproval or disallowance by the City. At its sole option, DHS may instead deduct the claim(s) from subsequent reimbursements and notify Contractor prior to exercising this option. Contractor must provide to City a full refund of the amount no later than ten (10) business days from the date of notification of the disapproval or disallowance by the City. If Contractor is obligated under anything in this Contract to refund a disapproved or disallowed cost incurred, the refund is required and will be made to City by check, cashier's check or money order. Should the City deduct such claims from subsequent reimbursements, the Contractor is forbidden from reducing Project expenditures and Contractor must use its own funds to maintain the Project.

Contractor agrees and understands that all expenses, fees, fines, and penalties associated with the collection of delinquent debts owed by Contractor will be the sole responsibility of the Contractor and will not be paid from any Project funds received under this Contract. Delinquent debts that would otherwise be identified as Allowable Costs may be paid with Project funds only after written approval of DHS.

- 7.7 If the City determines that Contractor is in violation of the above requirements, City has the right to dispatch auditors of its choosing to conduct the required audit and to have Contractor pay for it from non-City resources.

VIII. RECORDS, REPORTING, MONITORING AND INTELLECTUAL PROPERTY

- 8.1 Contractor will submit to DHS any and all reports as may be required of Contractor by HHS or City. Contractor must incorporate and use a City approved tracking or information system, such as ChildPlus, for the delivery of comprehensive services and collect, input and update all data in accordance with City's planned timeline to ensure the reporting of accurate and consistent information to HHS.
- 8.2 Additionally, Contractor will maintain and furnish to City the appropriate financial and programmatic information and reports, in such forms as the City may require under the Head Start Act, as amended, or as may be required and federal regulations, such as 45 C.F.R. Part 75, as applicable:

- (A) The total amount of public and private funds received by Contractor and the amount from each source;
- (B) Financial reports showing all actual and/or projected costs of the Program, an explanation of budgetary expenditures, Program Income, non-Federal Share amounts;
- (C) The results of the most recent financial audit;
- (D) The number and percentage of enrolled children that received medical exams;
- (E) Reports showing employee credentials and a list of personnel serving to satisfy Contractor's in-kind non-Federal Share requirement;
- (F) Reports showing the wages of each employee;
- (G) Contractor report shall be submitted on a monthly basis; and
- (H) Any other information requested by City.

Contractor will maintain all applicable supporting documentation of costs, including but not limited to payroll records, invoices, contracts or vouchers, and make these available to City upon request.

- 8.3 City reserves the right to request Contractor to provide additional records for travel expenses, long distance and mobile phone calls, faxes, internet service, or other electronic communication devices charged to the budget associated with this Contract.
- 8.4 Contractor must report all notices served, violations found or complaints filed with regard to licensing, or lack thereof, of Contractor within one (1) business day of receipt of notice violation or complaint.
- 8.5 **Child Safety.** Contractor must comply with federal regulations (including the Head Start Performance Standards), the Head Start Act and all applicable federal, state, and local laws relating to child safety. Contractor must establish and implement policies and procedures to respond to medical, dental, and other health emergencies with which all staff should be familiar and trained. These policies and procedures must include, among other things, methods of notifying parents in the event of an emergency involving their child and established methods for handling cases of suspected or known child endangerment, abuse or neglect that are in compliance with applicable Federal, State, or Local laws. If Contractor has knowledge of, a report of, or is aware of a Program crisis related to a claim, or suspects that media coverage would be negative due to, an incident of child endangerment, neglect, abuse, or physical discipline of a child while in the Program, Contractor will contact City's designated representative immediately, but no later than twenty-four (24) hours, for the purpose of notification of incident. Contractor must contact City's designated representative whether or not the incident is fully investigated by Contractor. If Contractor is unable to reach the City's designated representative, Contractor will leave a verbal message or written message via e-mail notifying City that Contractor is attempting to notify City of an incident. Contractor further agrees to immediately notify the parent of a child in any of the instances cited above, whether or not the instance may be characterized as suspected child abuse.
- 8.6 Within a period not to exceed forty-five (45) calendar days after the expiration or early termination date of this Contract, Contractor will submit all final client reports and all required deliverables to City. Contractor understands and agrees that in conjunction with the submission of the final report, the Contractor will execute and deliver to City a receipt for all sums received and a release of all claims for said sums against the Project.
- 8.7 **Retention.** Contractor must maintain financial records, supporting documents, statistical records, and all other books, documents, papers, or other records pertinent to this Contract or the Grant including records for real property and equipment acquired with Grant funds (collectively, "Records"), in accordance with the official records retention schedules established within the Local Government Records Act of 1989 and any

amendments thereto, or for such period as may be specifically required by the Head Start regulations, as applicable, whichever is longer. Regardless, Contractor agrees to maintain all Contract and Grant related records or documents for at least four (4) years from the date of City's submission of the annual financial report covering the awarded funds. If an audit, litigation, or other action involving the Records has been initiated before the end of the retention period, Contractor agrees to maintain the Records until completion of the latest requisite time period.

- 8.8 Access. Contractor will make available to City, or HHS, upon appropriate notice and unless otherwise prohibited by law, books, records, reports, documents, papers, policies and procedures (collectively "Documents") as may be necessary for audit, examination, excerpt, transcription, and copy purposes, for as long as said Documents are retained. This right also includes timely and reasonable access to Contractor's facility and to Contractor's personnel for the purpose of interview and discussion related to such Documents. Contractor will, upon request, transfer certain records or documents to the custody of City or HHS when City or HHS determines that they possess long-term retention value.
- 8.9 The Contractor agrees to incorporate and use any City-approved tracking or information system for the delivery of comprehensive Program services. Contractor will enter current, accurate, and complete client data.
- 8.10 Monitoring. DHS is assigned monitoring, fiscal control, and evaluation of certain projects funded by City with General or Grant Funds, including the Project covered by this Contract. Therefore, Contractor agrees to permit City and/or HHS to evaluate, through monitoring, reviews, inspection or other means, the quality, appropriateness, and timeliness of services delivered under this Contract and to assess Contractor's compliance with applicable legal and programmatic requirements. At such times and in such form as may be required by DHS, the Contractor will make available to DHS and HHS such statements, reports, records, personnel files (including evidence of criminal background check(s) as required by Head Start regulations), client files, data, all policies and procedures and information as may be requested by DHS, and permit the City and HHS to have interviews with its personnel, board members and program participants pertaining to the matters covered by this Contract. Contractor agrees that failure of City to monitor, evaluate, or provide guidance and direction will not relieve the Contractor of any liability to City for failure to comply with the Terms of the Grant or the terms of this Contract.
- 8.11 Monitoring Visits. City may, at its discretion, conduct periodic, announced and unannounced monitoring visits to ensure Program and administrative compliance with Head Start Performance Standards and with Program goals and objectives for the Contract period. City reserves the right to make unannounced visits to Contractor Program sites when it is determined that such unannounced visits are in the interest of effective program management and service delivery.
- 8.12 Findings. Contractor understands that City will timely inform Contractor of the findings of any such review or monitoring, specifically any default under the Contract or deficiencies in performance. City will inform Contractor in writing of Program strengths and weaknesses and specify a deadline for corrective action. The City will further assist Contractor in finding solutions for Program improvement if and as appropriate.
- 8.13 Unless otherwise stated, all information requested by DHS will be submitted by Contractor to City within five (5) business days of the request via electronic communication or other form of written correspondence. The Parties agree that a shorter time frame may be necessary for response in the case of the single audit and shall cooperate to meet deadlines necessary to comply with the single audit requirements. Should Contractor fail to deliver the required information or delivers incomplete information, the City may suspend reimbursements to Contractor until such information is delivered to City. Furthermore, the Contractor ensures that all information contained in all required reports or information submitted to City is accurate.
- 8.14 Confidential Information.
- (A) Unless disclosure is authorized by City or is required by the Attorney General for the State of Texas, Contractor agrees to maintain in confidence all information pertaining to the Project or City including,

without limitation, reports, information, data, other related information (collectively, the "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Contract. Contractor must protect the Confidential Information and take all reasonable steps to prevent the unauthorized disclosure, dissemination, or publication of the Confidential Information.

- (B) If disclosure is permitted by law or required by order of a governmental agency or court of competent jurisdiction, Contractor will give the Director of DHS prior written notice that such disclosure is required with a full and complete description regarding such requirement.
- (C) Contractor must establish specific procedures designed to meet the obligations of this Section, including, but not limited to execution of confidential disclosure agreements, regarding the Confidential Information with Contractor's employees and subcontractors prior to any disclosure of the Confidential Information to third parties. This Section may not be construed to limit the right of HHS or City to obtain copies, review and audit records or other information, confidential or otherwise, under this Contract. Upon termination or expiration of this Contract, Contractor will return to City all copies of materials related to the Project, including the Confidential Information. All confidential obligations contained herein (including those pertaining to information transmitted orally) will survive the termination of this Contract. The Parties agree to ensure that their respective employees, agents, and contractors are notified of the requirement to comply with these obligations.

- 8.15 Public Information Act. The Public Information Act, Government Code Section 552.021, requires City and Contractor to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is written, produced, collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information, has a right of access to it, or has spent or contributed public money for the purpose of its writing, production, collection, assembly or maintenance. Therefore, if Contractor or City receives a request under the Public Information Act (i.e., an Open Records Request) for information within Contractor's possession pursuant to this Contract, Contractor will forward the requested documents to the City within two (2) business days of Contractor's designated liaison's receipt of the written request. If the requested information is confidential or may be kept confidential pursuant to state or federal law, the Contractor will submit to City the list of specific statutory authority mandating and/or authorizing confidentiality no later than three (3) business days of Contractor's receipt of the request.

For the purposes of communicating and coordinating with regard to public information requests, all communications will be made to the designated public information liaison for each Party. Each Party will designate in writing to the other Party the public information liaison for its organization and promptly notify the other of any change.

- 8.16 Local Government Records. In accordance with Texas law, Contractor acknowledges and agrees that all "local government records" as defined in Chapter 201, Section 201.003 (8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, Contractor agrees that no such local government records produced by or on the behalf of Contractor pursuant to this Contract will be the subject of any copyright or proprietary claim by Contractor.

Contractor acknowledges and agrees that all local government records produced in the course of the work required by this Contract are public information, belong to and be the property of City and will be made available to the City at any time. Contractor further agrees to turn over to City all such records upon termination of this Contract, unless otherwise prohibited by law. Contractor agrees that it will not, under any circumstances, release any records created during the performance of the Contract to any entity without the written permission of the Director of DHS, unless required to do so by a court of competent jurisdiction. DHS will be notified of such request as set forth in accordance with this Article.

- 8.17 **Ownership of Intellectual Property.** The Parties agree that the Project will be and remain the sole and exclusive proprietary property of City. The Project will be deemed a “work for hire” within the meaning of the copyright laws of the United States, and ownership of and rights in the Project will be solely vested in City. Contractor conveys to City all rights in and to the Project; the tangible and intangible property rights relating to or arising out of the Project, including without limitation, any and all copyright, patent and trade secret rights; and all intellectual property rights including, without limitation, patent, copyright, trade secret, trademark, brand names, color schemes, designs, screens, displays, user interfaces, data structures, organization, sequences of operation, trade dress, and other proprietary rights (the “Intellectual Property Rights”). All Intellectual Property Rights in the Project will be solely vested in City. As owner of the tangible and intangible intellectual property, City may reproduce; publish; authorize others to reproduce or publish; or otherwise use such material. Contractor agrees to execute all documents reasonably requested by City to perfect and establish City’s right to the Intellectual Property Rights. If City is unable, after reasonable effort, to secure Contractor’s signature on any documents relating to Intellectual Property Rights in the Project, Contractor hereby irrevocably designates and appoints City and its duly authorized officers and agents as Contractor’s agent and attorney-in-fact, to act for and in Contractor’s behalf and stead to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution with the same legal force and effect as if executed by Contractor. Nothing is intended nor construed to require Contractor to transfer any ownership interest in Contractor’s best practice and benchmarking information.
- 8.18 If Contractor desires to copyright material or to permit any third-party to do so, Contractor must obtain City’s prior written approval and must appropriately acknowledge City’s support in any such materials.
- 8.19 HIPAA. Subject to obligations to maintain confidentiality under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the HIPAA Business Associate Agreement, attached to and incorporated in this Contract as Attachment V), and subject to the requirements of and the limitations imposed under law regarding transfer of information, any and all writings, documents or information in whatsoever form and character produced by Contractor pursuant to the provisions of this Contract is the exclusive property of City; and no such writing, document or information will be the subject of any copyright or proprietary claim by Contractor. Contractor understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

IX. INSURANCE AND INDEMNIFICATION

9.1 Insurance

- (A) Prior to the commencement of any work under this Contract, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City’s Department of Human Services, which shall be clearly labeled “RFP 17-068, RFx 610008742, HEALTH SCREENING SERVICES FOR CHILDREN” in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent’s signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this Contract until such certificate and endorsements have been received and approved by the City’s Department of Human Services. No officer or employee, other than the City’s Risk Manager, shall have authority to waive this requirement.
- (B) The City reserves the right to review the insurance requirements of this Article during the effective period of this Contract and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City’s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract. In no instance will City allow modification whereby City may incur increased risk.

- (C) A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
2. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

- (D) Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Contractor herein, and provide a certificate of insurance and endorsement that names the Contractor and the CITY as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Contractor. Contractor shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this Contract. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.
- (E) As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Contractor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within ten (10) days. Contractor shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
 Attn: Department of Human Services
 P.O. Box 839966
 San Antonio, Texas 78283-3966

- (F) Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City; and
 - Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- (G) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Contract.
- (H) In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
- (I) Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Contract.
- (J) It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Contract.
- (K) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Contract and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.
- (L) Contractor and any Subcontractors are responsible for all damage to their own equipment and/or property.

9.2 Indemnification.

CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR'S activities under this CONTRACT, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this CONTRACT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNIFICATION are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

CONTRACTOR shall advise the CITY in writing within twenty-four (24) hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR'S activities under this CONTRACT.

9.3 Acts and Omissions.

The Parties agree to accept and each entity is responsible for its own acts and omissions in providing services pursuant to this Contract as well as those acts or omissions of its employees and nothing in this Contract shall be construed to place any responsibility for such acts or omissions onto the other party.

X. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

- 10.1 SBEDA Program. The City has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended; also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's Economic Development (EDD) website page and is also available in hard copy form upon request to the City. The SBEDA Ordinance Compliance Provisions contained in this section of the CONTRACT and by the requirements outlined in the SBEDA Program for this Contract, attached to and incorporated in this Contract for all purposes as Attachment VI, are governed by the terms of the SBEDA Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the City pursuant to the Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Contract. Unless defined in a contrary manner herein, terms used in Attachment VI shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

XI. APPLICABLE LAWS

- 11.1 Contractor, and all of the work performed under this Contract, must comply with all applicable laws, rules, regulations and codes of the United States and the State of Texas and with the charter, ordinances, bond ordinances, and rules and regulations of the City of San Antonio and Bexar County. Contractor agrees to abide by any and all future amendments or additions to such laws, rules, regulations, policies and procedures as they may be promulgated.
- 11.2 The Contractor understands that certain funds provided it pursuant to this Contract are funds which have been made available by the City's General Operating Budget and/or by federal, state, or other granting entities. Consequently, Contractor agrees to comply with all laws, ordinances, codes, rules, regulations, policies, and procedures, including all licensing standards and all applicable accreditation standards, applicable to the funds received by Contractor hereunder as directed by the City or as otherwise required in this Contract, including but not limited to:
- (A) The Head Start Act (42 U.S.C. §9801 *et seq.*, as amended);
 - (B) 45 C.F.R. Part 1301 *et seq.*;
 - (C) The Terms of the HHS Grant;
 - (D) As applicable, 45 C.F.R. Part 75 ("Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards");
 - (E) Texas Child Care Licensing laws;

- (F) The most recent Office of Management and Budget (OMB) Circular at 2 C.F.R. 200 *et. al.* titled, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (Uniform Guidance), as applicable;
- (G) Official record retention schedules as established by the Local Government Records Act of 1989; and
- (H) The Texas Public Information Act, at Chapter 552, The Texas Government Code.

11.3 Contractor further understands and agrees:

- (A) to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. §§1251-1387), as amended. Contractor agrees to report each violation to the City and understands that the City will, in turn, report each violation as required to HHS and the appropriate EPA Regional Office. Additionally, Contractor agrees to include these requirements in each subcontract to this Contract exceeding \$150,000.00 financed in whole or in part with federal funds.
- (B) to make positive efforts to utilize small businesses, minority-owned firms and women's business enterprises in connection with the work performed hereunder, whenever possible.
- (C) to provide for the rights of the federal government in any invention resulting from the work performed hereunder, in accordance with 37 C.F.R. Part 401 and any applicable implementing regulations.
- (D) to include a provision requiring compliance with the Copeland "Anti-Kickback" Act (40 U.S.C 3145) and as supplemented by Department of Labor regulations at 29 C.F.R. Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or In Part by Loans or Grants from the United States."
- (E) to comply with the Davis-Bacon Act as amended (40 U.S.C. 3141–3144, and 3146–3148), and as supplemented by Department of Labor regulations at 29 C.F.R. Part 5, implementing regulations, and the relevant Additional OMB Provisions attached to and incorporated in this Contract as **Attachment VII**, and to include a provision requiring compliance with the each in any construction contracts of more than \$2,000.00, and report all suspected or reported violations to HHS.
- (F) to comply with the certification and disclosure requirements of the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352), and any applicable implementing regulations. Contractor verifies it has tendered said Certificate to the City.
- (G) to comply with the applicable standards under the McKinney-Vento Homeless Assistance Act (42 U.S.C. §11431 *et seq.*), and any applicable implementing regulations, as may be applicable.
- (H) to comply with the Contract Work Hours and Safety Standards Act (40 USC 3701-3708), as supplemented by Department of Labor regulations (29 CFR Part 5), relating to all contracts that involve the employment of mechanics or laborers, and the relevant provisions in Attachment VII, which provides, in part, that each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of forty (40) hours, that work in excess of the standard work week be compensated at a rate at least one and a half times the basic rate of pay, and that no laborer or mechanic must be required to work under conditions which are unsanitary, hazardous or dangerous.
- (I) to comply with the prohibitions contained in the Pro-Children Act of 1994 (20 U.S.C §6081-84),, relating to no smoking within any indoor facility (or portion thereof) owned or leased or contracted for by Contractor for the provision of regular or routine health care or day care or early childhood development (Head Start) services to children or for the use of the employees of the City or Contractor who provide such services.

- (J) that Contractor and its subcontractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.
- 11.4 The Contractor certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 701-707 and 8101-8106, as amended). Failure to comply with the above-referenced law and regulations could subject the Contractor to suspension of payments, termination of Contract, and debarment and suspension actions.
- 11.5 Contractor will comply with all federal, state, or local laws, rules, and orders prohibiting discrimination, and not engage in employment practices which have the effect of discriminating against any employee or applicant for employment. As a party to this Contract, Contractor understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, will not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein. Consistent with the foregoing, Contractor agrees to comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented by regulations at 41 C.F.R. Part 60. Additionally, Contractor certifies that it will comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:
- (A) Title VII of the Civil Rights Act of 1964, as amended;
 - (B) Section 504 of the Rehabilitation Act of 1973, as amended;
 - (C) The Age Discrimination Act of 1975, as amended;
 - (D) Title IX of the Education Amendments of 1972, as amended; (Title 20 USC sections 1681-1688);
 - (E) Fair Labor Standards Act of 1938, as amended;
 - (F) Equal Pay Act of 1963, P.L. 88-38; and
 - (G) All applicable regulations implementing the above laws.
- 11.6 Further, if Contractor engages in any contract that, except as otherwise provided under 41 C.F.R. Part 60, meets the definition of "federally assisted construction contract" in 41 C.F.R. Part 60-1.3, Contractor must comply with the Equal Employment Opportunity provisions in Attachment VII and all of the Executive Order and Code of Federal Regulations provisions previously cited in Section 12.5, and must include the provisions in any of its subcontracts.
- 11.7 The Contractor warrants that any and all taxes that the Contractor may be obligated for, including but not limited to, federal, state, and local taxes, fees, special assessments, Federal and State payroll and income taxes, personal property, real estate, sales and franchise taxes, are current, and paid to the fullest extent liable as of the execution date of the Contract. The Contractor will comply with all applicable local, State, and Federal laws including, but not limited to, related to:
- (A) worker's compensation;
 - (B) unemployment insurance;
 - (C) timely deposits of payroll deductions;
 - (D) filing of Information on Tax Return form 990 or 990T, Quarterly Tax Return Form 941, W-2's Form 1099 on individuals who received compensation other than wages, such as car allowance, Forms 1099 and 1096 for contract or consultant work, non-employee compensation, etc.;
 - (E) Occupational Safety and Health Act regulations; and
 - (F) Employee Retirement Income Security Act of 1974, P.L. 93-406.
- 11.8 Contractor agrees to comply with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.*, and all regulations thereunder.
- 11.9 Contractor and its subcontractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, including, but not limited to, the regulatory

provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they relate to the procurement of recovered materials, as required by 2 CFR 200.322 and as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

- 11.10 All expenditures by the Contractor or any of its subcontractors must be made in accordance with all applicable federal, state and local laws, rules and regulations.
- 11.11 If applicable, Contractor will submit to DHS its most recent form 990 or 990T and also submit any that are filed with the Internal Revenue Service subsequent to its last submission to the City if filed during the Term.

XII. NO SOLICITATION/CONFLICT OF INTEREST

- 12.1 The Contractor warrants that no person or selling agency or other organization has been retained to solicit or secure this Contract for a commission, percentage, brokerage, or contingent fee and further that no such understanding or agreement exists or has existed with any employee of the Contractor or the City. For breach or violation of this warrant, the City will have the right to terminate this Contract without liability or, at its discretion, to deduct from the Contract or otherwise recover the full amount of such arrangement, or to seek such other remedies as legally may be available.
- 12.2 Contractor covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. Contractor further covenants that no persons having such interest may be employed or appointed as a member of its governing body or of its staff.
- 12.3 Contractor further covenants that no member of its governing body or of its staff will possess any interest in, or use their position for, a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.
- 12.4 No member of City's governing body or of its staff who exercises any function or responsibility in the review or approval or carrying out of this Contract will:
 - (A) participate in any decision which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest; or
 - (B) have any direct or indirect interest in this Contract.
- 12.5 Contractor acknowledges that it is informed that Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52, from having a financial interest in any contract with the City. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: A City officer or employee; his parent, child or spouse; an entity in which the officer or employee, or his parent, child or spouse owns ten percent (10%) or more of the voting stock or shares of the entity, or ten percent (10%) or more of the fair market value of the entity; an entity in which any individual or entity above listed is subcontractor on a City contract, a partner or a parent or subsidiary entity.
- 12.6 Contractor warrants and certifies, and this Contract is made in reliance thereon, that Contractor is a public entity and Contractor's representative further warrants and certifies that no City officer or employee nor any spouse, parent, child, sibling or first-degree relative of a City officer or employee owns ten percent (10%) or more of the voting stock or shares of Contractor, or ten percent (10%) or more of the fair market value of the Contractor. Contractor further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XIII. TERMINATION

- 13.1 (A) Termination for Cause – Upon written notice in accordance with the official communication provisions in this Contract. CITY may terminate this Contract as of the date provided in the notice in whole or in part upon the occurrence of either:
- (i) Failure to fulfill, in a timely and proper manner, obligations under this Contract to include performance standards established by the City or HHS, or violation of any of the covenants, conditions, or stipulations of the Contract; or
 - (ii) Notification by a local, state or federal agency of a formal charge, probation, deferred adjudication, or conviction involving fraud, theft or the commission of a felony by Contractor or Contractor's employee working in the Program. In the case of a Contractor's employee being the subject of the notification, Contractor will have the opportunity to cure via the immediate termination and/or removal of the employee from the Program.
- (B) Termination for Convenience - This Contract may be terminated in whole or in part upon providing notice in accordance with the official communication provisions in this Contract, notice that must specify a date, which date will not be sooner than 120 days following the day on which notice is sent, unless earlier terminated under any other provision herein.
- 13.2 The Contractor will be entitled to receive just and equitable compensation for any work satisfactorily completed prior to any termination date. Satisfactory completion of such work will be determined by the City alone, and its decision will be final. It is further expressly understood and agreed by the Parties that Contractor's performance upon which final payment is conditioned shall include, but not be limited to, the Contractor's complete and satisfactory performance, of its obligations for which final payment is sought.
- 13.3 Notwithstanding any other remedy contained in this Contract or by law, the City may delay, suspend, limit, or cancel funds, rights or privileges herein given the Contractor for failure to comply with the terms and provisions of this Contract. Specifically, at the sole option of the City, the Contractor may be placed on probation during which time the City may withhold reimbursements when it determines that the Contractor is not in compliance with this Contract. The Contractor will not be relieved of liability for damages sustained by the City by virtue of any breach of this Contract, and the City may withhold funds otherwise due as damages, in addition to retaining and utilizing any other remedies available to the City.
- 13.4 If an employee of Contractor is discharged or otherwise leaves employment with Contractor, then the Contractor will pay in full to the employee all of his or her earned salaries and wages, within the timeframe specified by law.
- 13.5 Should the Contractor be debarred by federal government or the City pursuant to a debarment policy currently existing or hereafter adopted, the debarment may be grounds for termination.
- 13.6 Contractor must not incur new obligations after the effective date of termination, and will cancel as many outstanding obligations as possible. Contractor will submit to City all required reports including a final financial statement which is a statement of all expenditures incurred by Contractor under this Contract. City will pay Contractor the full cost of obligations that City determines were not subject to cancellation if such costs are properly documented, allowable, within the approved budget, and unavoidably incurred by Contractor prior to termination or expiration. The final financial statement's payment constitutes full and complete reimbursement for all of Contractor's performance under this Contract.

XIV. PROHIBITION OF POLITICAL ACTIVITIES

- 14.1 Contractor agrees that no funds provided from or through the City will be contributed or used to conduct political activities for the benefit of any candidate for elective public office, political party, organization or cause, whether partisan or non-partisan, nor will the personnel involved in the Project be assigned to work for or on behalf of any partisan or non-partisan political activity.

- 14.2 Contractor agrees that no funds provided under this Contract may be used in any way to attempt to influence a member of Congress or any other State or local elected or appointed official.
- 14.3 The prohibitions set forth in this Article include, but are not limited to, the following:
- (A) an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation;
 - (B) working or directing other personnel to work on any political activity during time paid for with City or Grant funds, including, but not limited to activities such as voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature;
 - (C) coercing personnel, whether directly or indirectly, to work on political activities on their personal time, including the activities already listed in this Section; and
 - (D) using facilities or equipment paid for, in whole or in part with City or Grant funds for political purposes including but not limited to office space, office equipment or supplies, such as telephones, computers, fax machines, during and after regular business hours.
- 14.4 To ensure that the above policies are complied with, Contractor will provide every member of its personnel paid out of Contract funds with a statement of the above prohibitions and have each said individual sign a statement of acknowledgment. Such statement will include a paragraph that directs any staff person with knowledge of violations or feels that (s)he has been pressured to violate the above policies to call and report the same to DHS; DHS' contact person's name and number will be listed on the statement.
- 14.5 Contractor agrees that if an investigation of the above is ongoing or has been confirmed, salaries paid to the Contractor under this Contract may, at the City's discretion, be withheld until the situation is resolved, or the appropriate member of the Contractor's personnel is terminated.
- 14.6 This Article does not prohibit any person from exercising his or her right to express his or her opinion or to limit any individual's right to vote. Further, Contractor and staff members are not prohibited from participating in political activities on their own volition, if done during personal time.

XV. PERSONNEL

- 15.1 Contractor must establish and maintain an organizational structure that supports the accomplishment of Program objectives, addresses the major functions and responsibilities assigned to each staff position and provides evidence of adequate mechanisms for staff supervision to ensure the effective oversight of the Program operations. Contractor must ensure that, at a minimum, the program management functions listed in the Scope of Work are assigned to and adopted by staff within the Program.
- 15.2 Wages & Salaries
- (A) Contractor understands that the City will periodically perform its own wage and salary comparison and issue such results to Contractor. Contractor understands and agrees that City has no obligation to reimburse Contractor employees' wages that exceed the average rate paid to persons providing substantially comparable services in the area. Although the City may consider factors such as training and experience as affecting compensation levels, the City has the sole and absolute authority to determine the rate of City's reimbursement under the Contract and its decision will be final. Subject to the restriction set forth in this Section, Contractor may compensate its employees above the rate the City will reimburse, so long as the additional compensation is not charged to the Contract budget.
 - (B) Contractor expressly understands and agrees that in accordance with 42 U.S.C. §9848, no portion of the Contract funds may be used to pay an employee if compensation (including Non-Federal funds) to that employee exceeds \$179,700.00, or the currently authorized maximum under the law. Contractor

further agrees that all employees must devote to the Program the time proportionate to the percentage of their compensation funded through the Program Grant (e.g., employees who are funded one hundred percent (100%) through the Grant must devote one hundred percent (100%) of their time to support the Program). Contractor agrees to submit employee certifications if requested by the City or HHS.

(C) At the sole discretion of the Director of DHS, Contractor may be reimbursed by City for the cost of pay granted to full time, permanent employees that is not chargeable to annual or personal leave only for the reasons listed below:

- i. To attend annual training in a branch of the Armed Services, not to exceed fifteen (15) business days during the term of this Contract.
- ii. To serve as a juror.
- iii. To attend the funeral of someone in the immediate family, which includes spouse, parent, child, sibling or in-laws or "step" family members of the same relationship ("Relatives"). In such event, the Contractor may grant up to three (3) business days of leave with pay that is not chargeable to annual or personal leave.
- iv. To attend seminars or workshops.

(D) Contractor agrees to comply with all applicable federal regulations regarding the setting of, and maximum amount allowable for, salaries of Contractor's employees.

- 15.3 The Contractor agrees to establish internal procedures that assure employees of an established complaint and grievance process. This process will include procedures to receive, investigate, and resolve complaints and grievances in an expeditious manner.
- 15.4 Contractor agrees that all copies of written job descriptions will be filed in individual personnel folders for each position in the organization.
- 15.5 The Contractor agrees to provide the City with the names and license registration of any employees of Contractor whose activities contribute towards, facilitate, or coordinate the performance of this Contract.
- 15.6 Chief Executive Officers (CEOs), directors and other supervisory personnel may not supervise a Relative who is supported in any capacity with Contract funds. Relatives, however, may be co-workers in the same Project in a non-supervisory position.

XVI. ADVERSARIAL PROCEEDINGS

- 16.1 Except in circumstances where the following is in conflict with federal law or Program regulations, Contractor agrees to comply with the following special provisions:
 - (A) Funds received under this Contract shall not be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City or any other public entity; and
 - (B) Contractor, at the City's option, could be ineligible for consideration to receive any future funding while any adversarial proceeding against the City remains unresolved.

XVII. FEDERAL AND CITY-SUPPORTED PROJECT

- 17.1 This Section is applicable to all Project publicity, presentations, signs, public notices, and other informational material, to include electronic media, (collectively, "Materials") prepared and/or disseminated during the Term of the Contract by Contractor. Contractor will obtain City's prior approval of the language and logo to be used, and the Parties agree that all publicity regarding the affiliation between the Parties will be mutually agreed to in advance by the Parties. Contractor agrees that Material(s) regarding the Program must provide a written statement in a form approved by City acknowledging the role of the federal funds provided by HHS through City. Material(s) include, but are not limited to, signs identifying

the facilities from which these programs are provided. In addition, all publicity and Materials related to Contractor's Program services must note that the Program is operated on a non-discriminatory basis.

- 17.2 Contractor further agrees to provide City with a copy of all proposed communications to the public, including Program's parents and employees, as it may relate to the Program, and to obtain the City's approval prior to dissemination.

XVIII. PROPERTY, EQUIPMENT, AND SUPPLIES

- 18.1 Definition: "equipment" and "property" means tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000.00 or more per unit and includes not only furniture and other durable property, but also vehicles, but will not include supplies and consumables.
- 18.2 Ownership. The City retains ownership of all equipment/property purchased with funds received through the City and such equipment/property will, at the City's sole option, revert to the City at Contract's termination, for whatever reason. Contractor agrees to relinquish and transfer possession of and, if applicable, title to said equipment/property without the requirement of a court order. Equipment/Property that has reverted to the Contractor through a City-paid lease agreement with option to buy will be considered the same as though the equipment was purchased outright with Contract funds.
- 18.3 Disposal, Loss, and Transfer
- (A) Contractor agrees that no equipment purchased with Contract funds may be disposed of without receiving prior written approval from DHS. In cases of theft and/or loss of equipment, it is the responsibility of the Contractor to replace it with like equipment with funds other than Contract funds. All replacement equipment will be treated in the same manner as equipment purchased with Contract funds.
- (B) City reserves the right to require transfer of property/equipment acquired with funds awarded under this Contract as provided in 45 C.F.R. Part 75, including but not limited to §75.316 *et seq.*
- 18.4 Contractor will maintain accurate and complete records on all equipment and property obtained with Contract funds to include:
- (A) A description of the equipment, including the model and serial number or other identification number, if applicable;
- (B) The date of acquisition, cost and procurement source, purchase order number, and vendor number;
- (C) An indication of whether the equipment is new or used;
- (D) The vendor's name (or transferred from);
- (E) The location of the property;
- (F) The property number shown on the property tag; and
- (G) A list of disposed items and disposition.
- 18.5 Lost, Stolen, or Damaged. The Contractor is fully and solely responsible for the insuring, safeguarding, maintaining, and reporting of lost, stolen, missing, damaged, or destroyed equipment/property purchased or leased with Contract funds. All lost, stolen, missing, damaged and/or destroyed equipment/property must be reported to the local Police Department and, if applicable, the Federal Bureau of Investigation (FBI) immediately. The Contractor will make such reports immediately and notify and deliver a copy of the official report to DHS within seventy-two (72) hours from the date that Contractor discovers the lost, stolen, missing, damaged and/or destroyed equipment/property. The report submitted by the Contractor to DHS shall minimally include:
- (A) A reasonably complete description of the missing, damaged or destroyed articles of property, including the cost and serial number and other pertinent information;

- (B) A reasonably complete description of the circumstances surrounding the loss, theft, damage or destruction; and,
 - (C) A copy of the official written police report or, should the Police not make such copy available within seventy-two (72) hours of the discovery and reporting of the loss, a summary of the report made to the Police, including the date the report was made and the name and badge number of the Police Officer who took the report. Contractor will provide a copy of the official written report to the City within seventy-two (72) hours of receiving the official written report from law enforcement.
- 18.6 All equipment (as defined in 18.1 above) purchased under this Contract must be fully insured against fire, loss and theft. Contractor will, at a minimum, provide the equivalent insurance for real property and equipment acquired with Contract funds as provided to other property acquired or owned by the Contractor.
- 18.7 Annual Inventory. Upon request, the Contractor shall provide an annual inventory of assets purchased with funds received through the City to DHS.
- 18.8 Contractor shall fully comply with the property and equipment requirements of 45 C.F.R Part 74, including but not limited to Sections 75.316 through 75.323, as applicable, related to the following:
- (A) Insurance Coverage
 - (B) Real Property
 - (C) Federally-owned and exempt property
 - (D) Equipment
 - (E) Supplies
 - (F) Intangible property
 - (G) Property trust relationship
- 18.9 Purchase thresholds. Contractor will route all written correspondence through DHS for review, endorsement and processing. For equipment purchases in the amount of \$5,000.00 or greater or cumulative purchases in the amount of \$25,000.00 or greater, Contractor must obtain written approval from DHS prior to issuance of the bid or other procurement notice and prior to selection of the winning bid or proposal. Contractor will not split the purchase of a line item greater than the preceding threshold(s) in order to avoid obtaining approval from DHS.
- 18.10 Tracking. Contractor will maintain a system for tracking, on an ongoing basis, inventory of equipment and supplies purchased with Grant funds that either (i) has a purchase price of \$5,000.00 or greater; or (ii) meets such other criteria as City may prescribe (and which City will notify Contractor of as appropriate). Upon request, Contractor will provide City a status report of the current inventory of equipment and supplies meeting these requirements. City will have the right to review and approve Contractor's inventory tracking system.
- 18.11 City reserves the right to require transfer of property acquired with funds awarded under this Contract as provided in 45 C.F.R. Part 75, including but not limited to §75.316 *et seq.*

XIX. TRAVEL

- 19.1 Costs associated with budgeted business travel, provided documentation of expenses, are Allowable Costs.
- (A) Contractor agrees that mileage reimbursement paid to Contractor's employees will be reimbursed at a rate no more liberal than the City's policy for mileage reimbursement, which is consistent with Internal Revenue Service (IRS) rules. Contractor further agrees that in order for its employees to be eligible, the employees 1) will be required to possess a valid Texas Driver's License and liability insurance as required by law, evidence of which must be kept on file with the Contractor, and 2) must record, on a daily basis, odometer readings before and after business use, showing total business miles driven each day and must keep such record in the vehicle. Mileage records are subject to spot-checks by City auditors and monitors. Contractor will strongly encourage the participation by its employees in an approved defensive driving course.

(B) Contractor agrees that in order to obtain reimbursement of the costs associated with budgeted out of town travel for business in connection with this Contract, Contractor will:

- 1) obtain City's prior approval and provide City with detailed documentation of such business travel expense(s);
- 2) ensure that any and all costs associated with out-of-town travel (including per diem rates) will not be more liberal than the City's travel policies which conform with the reimbursement rates established by the United States General Services Administration;
- 3) purchase all business travel at economy class rates; and
- 4) maintain supporting documentation for conferences to include itineraries and certification of attendance and provide such documentation to City upon request.

XX. NO USE OF FUNDS FOR RELIGIOUS ACTIVITIES

20.1 Contractor agrees that none of the performance rendered hereunder will involve, and no portion of the funds received hereunder will be used, directly or indirectly, for any sectarian or religious facility or activity, nor will performance rendered or funds received be utilized so as to benefit, directly or indirectly, any such sectarian or religious facility or activity.

XXI. DEBARMENT

21.1 Contractor certifies that neither it nor its principals nor subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any state or federal program.

21.2 Contractor will provide immediate written notice to City, in accordance with the notice requirements of this Contract, if, at any time during the Term of the Contract, including any renewals hereof, Contractor learns that its certification was erroneous when made or has become erroneous.

XXII. ASSIGNMENT

22.1 Contractor will not assign or transfer Contractor's interest in this Contract or any portion thereof without the written consent of the City, and if applicable, HHS. Any attempt to transfer, pledge or otherwise assign will be void ab initio and confer no rights upon any third person or party.

XXIII. AMENDMENT

23.1 Any alterations, additions or deletions to the terms of this Contract must be by amendment in writing executed by both Parties. The Director of DHS has the authority to execute an amendment of this Contract without the necessity of seeking any further City Council approval in the following circumstances:

- (A) Increases to the funding of this Contract in an amount not exceeding (a) twenty-five percent (25%) of the total amount or (b) \$25,000.00, whichever is the less; provided, however, that the cumulative total of all amendments executed without City Council approval pursuant to this subsection must not exceed the foregoing thresholds.
- (B) Modifications to the Scope of Work set forth in Attachment I, so long as any changes stay within the substantive parameters set forth in the original Scope of Work.
- (C) Modifications to the insurance provisions described in Article IX of this Contract that receive the prior written approval of the City of San Antonio's Risk Manager and the Director of DHS.
- (D) decreases (and increases) in Contract funding based upon Program enrollment levels, and any modifications to Contract terms related to enrollment; provided, however, that the cumulative total of all Program contracts, as amended, will not exceed the City's total Program budget for the applicable grant year.

- 23.2 Contractor further agrees that except when the terms of this Contract expressly provide otherwise, any alterations, additions or deletions to its terms must be by amendment in writing and approved by HHS.

XXIV. SUBCONTRACTING

- 24.1 None of the work or services covered by this Contract may be sub-contracted without the prior written consent of the City and the Grantor of the Grant Funds, if so required by said Grantor.
- 24.2 Contractor must comply with all applicable local, State and Federal procurement standards, rules, regulations and laws in all its sub-contracts related to the work or funds herein. It is further agreed by the Parties hereto that the City has the authority to monitor, audit, examine, and make copies and transcripts of all sub-contracts, as often as deemed appropriate by the City. If, in the sole determination of the City, it is found that all applicable local, State and Federal procurement standards, rules, regulations and laws have not been met by Contractor with respect to any of its sub-contracts, then the Contractor will be deemed to be in default of this Contract, and as such, this Contract will be subject to termination in accordance with the provisions hereof.
- 24.3 Any work or services for sub-contracting in this Contract, shall be sub-contracted only by written Contract, and unless specific waiver is granted in writing by City, will be subject by its terms of this Contract. Compliance by sub-contractors with this Contract is the responsibility of Contractor. Contractor agrees that payment for services of any sub-contractor must be submitted through Contractor, and Contractor will be responsible for all payments to sub-contractors.
- 24.4 Contractor certifies that its subcontractors are not presently debarred, suspended or proposed for debarment, declared ineligible or voluntarily excluded from participation in any state or federal program.
- 24.5 Contractor understands that all subcontracts in excess of \$10,000.00 must address termination for cause and for convenience, including how termination will be effected and the basis for settlement.

XXV OFFICIAL COMMUNICATIONS

- 25.1 Except where the terms of this Contract expressly provide otherwise, any communication under this Contract must be in writing and deemed delivered when delivered personally (with receipt acknowledged), or three (3) days after deposit in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail or a commercial courier service (e.g. Federal Express) to the addresses set forth below.

City:
Director
Department of Human Services
106 S. St. Mary's Street, Suite 700
San Antonio, Texas 78205

University of the Incarnate Word Ila Faye Miller
School of Nursing and Health Professions
Douglas B. Endsley
Vice President for Business & Finance
4301 Broadway CPO #300
San Antonio, Texas 78209

Notices of changes of address by either Party must be made in writing delivered to the other Party's last known address within five (5) business days of the change.

XXVI. VENUE

- 26.1 The Parties agree that this Contract will be governed by and construed in accordance with the laws of the State of Texas. Any action or proceeding brought to enforce its terms or adjudicate any dispute arising out of it will be brought in a court of competent jurisdiction in San Antonio, Bexar County, Texas.

XXVII. GENDER

- 27.1 Words of any gender used in this Contract will be understood and construed to include any other gender, and words in the singular will be understood to include the plural, unless the context otherwise requires.

XXIII. REPRESENTATIONS AND OTHER OBLIGATIONS

- 28.1 Contractor's signatory below represents, warrants, and guarantees that (s)he has full legal authority to execute this Contract on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations herein contained. Contractor must be authorized to do business in the State of Texas and operating in accordance with all applicable laws of the State of Texas. Contractor will provide DHS verification of the foregoing requirements upon request by City.
- 28.2 This Contract is based on the representation of Contractor that it is financially accountable for its expenditures; that it has the continuing capability to furnish the Non-Federal Share of the cost of operating its approved Contractor Program; and that Program funds disbursed to Contractor will be expended only for Allowable Costs in the implementation of the Contractor Program. Contractor represents that there are no financial limitations or impediments that would make it not viable, solvent and accountable such that the flow of Program funds might be used for the Program.
- 28.3 If circumstances arise which might result in interference with Contractor's ability to provide services under this Contract, Contractor agrees to inform City of those circumstances immediately upon discovery. Contractor agrees that reimbursement to Contractor, upon reasonable notice, may be suspended by City until such financial circumstances giving rise to the possible interference have been eliminated; provided, however, that authorized expenditures made and approved by City prior to the suspension, will not be affected.

XXIX. LICENSES AND TRAINING

- 29.1 Contractor warrants and certifies that its employees and subcontractors, if any, have the requisite training, license or certification, and meet all competence standards promulgated by all other authoritative bodies, as applicable to provide services this Contract.

XXX. INDEPENDENT CONTRACTOR

- 30.1 It is expressly understood and agreed that the Contractor is and will be deemed to be an independent contractor, responsible for its own acts or omissions, for which City is not responsible, and that neither Party hereto has authority to bind the other nor to hold out to third parties that it has the authority to bind the other.
- 30.2 Nothing contained herein may be deemed or construed as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the Parties hereto.
- 30.3 Any and all of the employees of the Contractor, wherever located, while engaged in the performance of any work required by the City under this Contract will be considered employees of the Contractor only, and not of the City, and any and all Workers' Compensation claims that may arise on behalf of the employees while so engaged are the sole obligation and responsibility of the Contractor.

XXXI THE SBEDA PROGRAM

- 31.1 The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2016-05-19-0367 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's Economic Development Department (EDD) website page and is also available in hard copy format upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement and in the SBEDA Program included herein and attached hereto as Attachment VI, and are governed by the terms of the SBEDA Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and

meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

XXXII. SEVERABILITY

- 32.1 If any clause or provision of this Contract is held invalid, illegal, or unenforceable under present or future federal, state, or local laws, including but not limited to the City Charter, City Code, or ordinances of City, then and in that event it is the intention of the Parties that such clause or provision will not affect any other and that the remainder of this Contract will be construed as if it were never a part; it is also the intention of the Parties that in lieu of such clause or provision, there be added to this Contract a clause or provision as similar in terms as may be possible, legal, valid and enforceable.

XXXIII. NON-WAIVER OF PERFORMANCE

- 33.1 No waiver by City of a breach of any of the terms, conditions, covenants, or guarantees of this Contract will be construed as a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein. Further, any failure of City to insist on the strict performance of any of the covenants of this Contract, or to exercise any option, will not be construed as a waiver or future relinquishment of such covenant or option.

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XXXIV. ENTIRE CONTRACT

34.1 This Contract and its attachments constitute the entire and integrated Contract between the Parties and contain all terms and conditions agreed upon, and supersede all prior negotiations, representations, or contracts, either oral or written. No such other negotiations or representations may be enforced by either Party nor may they be employed for interpretation purposes in any dispute involving this Contract.

This Contract has been executed effective the ____ day of _____, ____.

CITY OF SAN ANTONIO:

CONTRACTOR:

University of Incarnate Word
School of Nursing and Health Professions



Douglas B. Endsley
Vice President for Business & Finance

Melody Woosley, Director
Department of Human Services

APPROVED AS TO FORM:



Assistant City Attorney

APPROVED AS TO FORM:

Counsel

ATTACHMENTS

- Attachment I – Scope of Work
- Attachment II – Program Budget
- Attachment II.5 -- Schedule of Due Dates and Deadlines
- Attachment III – Special Provisions
- Attachment IV – HHS Award Document
- Attachment V – HIPAA Business Associate Agreement
- Attachment VI – SBEDA Program
- Attachment VII – Additional OMB Provisions

ATTACHMENT I
SCOPE OF WORK

CITY OF SAN ANTONIO HEAD START PROGRAM SERVICES

1. Summary

To promote healthy development and ensure optimal learning, Contractor will provide health services to children enrolled in the Head Start and Early Head Start Child Care Partnership (EHS-CCP) programs, as needed, in accordance with the Head Start Performance Standards provided in Head Start regulations, 45 CFR Part 1301 *et seq.* and with the Head Start Act, as amended, 42 U.S.C. 9801 *et seq.* and the terms of this Contract. Contractor will conduct onsite Lead Screenings for children enrolled in both programs, and additionally, Hemoglobin Screenings for children enrolled in the EHS-CCP Program, as instructed by the City. Contractor will provide guidance and advice in the area of health to Head Start and EHS-CCP Education Service Providers when requested.

2. Program Services

- A. Contractor shall ensure that its Head Start and EHS-CCP Program shall be, and remain, in full compliance with the Head Start Performance Standards as provided in Head Start regulations, 45 CFR Part 1301 *et seq.* and with the Head Start Act, as amended, 42 U.S.C. 9801 *et seq.*
- B. Contractor shall establish and maintain an organizational structure that supports accomplishment of Program/Scope of Work objectives and supports the City to ensure the required Head Start and EHS-CCP lead and EHS-CCP hemoglobin screenings services are provided.
- C. Contractor shall establish an ongoing monitoring system that includes an inventory of equipment and supplies, and conduct internal monitoring of operations throughout the program year, notifying the City when the Contractor identifies possible or actual lack of compliance with the Head Start Performance Standards, Head Start Act, City's program policies or terms of this contract. Contractor will make copies of monitoring reports available to the City upon request.
- D. Contractor shall ensure that employees' time and effort funded through the Head Start and EHS-CCP grants devote that time and effort to support only the Head Start and/or EHS-CCP Program. Contractor will provide administrative support to ensure that all Head Start activities are coordinated and billed accordingly.
- E. Contractor must establish, implement and maintain communication systems to ensure that timely, accurate and appropriate information is provided to parents, Health Coordinators and Education Service Providers.
- F. Contractor, in coordination with the City and Education Service Providers, must strive to complete the following in a timeline directed by the City, and as needed throughout the program school year as new children enter the Program:
 - a. Contractor will conduct up to 1800 Lead Screenings for identified children enrolled in the Head Program at \$39.50 per Lead Screening, not to exceed \$71,100 and up to 100 Lead Screenings and up to 60 Hemoglobin screenings for identified children enrolled in

the EHS-CCP Program at \$41.50 per screening, not to exceed \$6,640.

- i. Contractor will provide the appropriate Consent and Release of Information form for services to the City for Lead and Hemoglobin Screening. Contractor will initiate the work as soon as the Education Service Provider completes the initial assessment and the Contractor receives a list of the children that require these screenings. Contractor will provide results of screening to the City staff and input results of all screenings into the City's designated data management system, ChildPlus, within 3 business days.
 - ii. If screenings indicate a lead level above normal or an abnormal hemoglobin results, Contractor shall refer the child to a health professional for further evaluation and treatment and inform the appropriate Education Service Provider and City staff member. Contractor will provide a referral letter to parents and Service Provider stating lead level within 3 business days, and will be responsible for explaining/counseling elevated lead levels to parents, when needed and as appropriate.
 - iii. City will make available the following information to the Contractor on all children that are screened for lead;
 1. Child's name
 2. Child's date of birth
 3. Current home address
- b. Contractor must coordinate directly with the City to ensure that there is a system of appointments, document collection, follow-up and information sharing for the provision of Lead and Hemoglobin Screenings to include the following:
- i. Contractor will carry out the following:
 1. Report all lead results and document to the Texas Childhood Lead Poisoning Prevention Program – Texas Department of State Health Services in accordance with Contractor's Policy and Procedures.
 - a. All elevated lead results will be reported immediately to the Health Coordinator and the parents will be notified through a written referral given by the Family Service Worker.
 2. Any direct contact between the Contractor and parents of children with elevated lead results or abnormal hemoglobin results must be documented in ChildPlus within 3 business days from the initial contact.
 - ii. Provide City and Education Service Providers ChildPlus status reports on Lead and Hemoglobin Screenings on a monthly basis and as requested by the City. Reports must include number of campus visits, number of children screened for lead and hemoglobin, and number of children identified with abnormal lead and/or hemoglobin results (referrals).
 - iii. Be responsible for the ChildPlus data entry on health events of lead and hemoglobin screenings. Contractor must create the health event in ChildPlus, and input event date, status and results with the health services module for every child served. The information must be entered into ChildPlus no later than 3 business days from the date of service. If appropriate, Contractor must check appropriate referral section on the health event. Contractor must attend a

scheduled training with City on data entry instructions prior to the beginning of the new program year.

3. **Equipment and Supplies**

- A. Contractor may purchase needed supplies and equipment not to exceed \$1,360 for EHS-CCP and \$6,400 for Head Start.
- B. Provide City with an itemized list of all items purchased with the Program funds to the City with monthly invoice.
- C. Track and document items purchased with Program funds and submit when requested by City.
- D. Report on screening updates during monthly Health Coordinators Monthly meetings and bi-monthly Head Start Directors meetings on an as needed basis.

4. **Licensure/Staffing**

Contractor shall obtain and maintain all necessary and appropriate State licenses, permits, certifications, and approvals required for the operation of Contractor's programs including those supported by this Contract. Upon commencement of the Contract, Contractor shall notify the City that it is in compliance with this provision. If at any time Contractor is out of compliance with this provision, Contractor shall notify the City within one (1) Contractor business day of receipt of written notice of violation or complaint from the state licensing, certifying or permit-issuing authority indicating lack of licensure, permitting or certification, as the case may be, and shall take all necessary steps to cure such violation. Contractor further agrees that all personnel, either employed or contracted, assigned by Contractor to provide the health services set forth above shall, as appropriate or required by law, be fully qualified and authorized under applicable law, to perform such Services.

5. **Participation**

Contractor shall make time and resources available to support: (i) participation by Contractor in meetings with City staff for community assessment, self-assessment, strategic planning, development of training and technical assistance plan, communication and program development activities; (ii) participation in technical assistance trainings and service enhancements developed by City and the training and technical assistance service provider, as well as other Head Start and/or EHS-CCP trainings that may be developed by relevant federal or state agencies.

**City of San Antonio Head Start Program - Head Start - Pre K Program
University of the Incarnate Word Ila Faye Miller School of Nursing & Health Professions
Lead and Hemoglobin Screening Budget**

Contact Person: Linda Hook, MSN, DrPH, PHNA-BC, Phone Number: (210) 414-7578, email: hook@uiwtx.edu

Description	Cost per Unit	Start Up	Total Federal	In-Kind
Testing Equipment		6,000		
Office Supplies		400		
IN-KIND Contribution - Office Space, Administrative costs				19,370
Number of Points of Care Tests	1,800			
Cost per Individual Point of Care lead test	\$ 39.49			
Totals	\$ 71,080	\$ 6,400	\$ 77,480	\$ 19,370

David B. Gindley *Mary M. Hobe* 8/10/17
 Dean, UIW School of Nursing and Health Professions Date
V.P. Business & Finance
 For COSA use below this line
M. M. M. M. M. 8/11/17
 Head Start Program Administrator Contract Monitor
Shirley 8/11/17 *[Signature]* 8/11/17
 Fiscal Monitor Fiscal Manager

**City of San Antonio Head Start Program -Early Head Start-Child Care Partnership Program
University of the Incarnate Word Ila Faye Miller School of Nursing & Health Professions
Lead and Hemoglobin Screening Budget**

Contact Person: Linda Hook, MSN, DrPH, PHNA-BC, Phone Number: (210) 414-7578, email: hook@uiwtx.edu

Description	Cost Per Unit	Start Up	Total Federal	In-Kind
Testing Equipment		1,200		
Office Supplies		160		
IN-KIND Contribution - Office Space, Administrative costs				2,000
Number of Points of Care Tests	160			
Cost per Individual Point of Care lead test	\$ 41.50			
Totals	\$ 6,640	\$ 1,360	\$ 8,000	\$ 2,000

David B. Eubank *Mary M. Hoke* 8/10/17
 Dean, UIW School of Nursing and Health Professions Date
V.P. Business & Finance

 For COBA use below this line
Mrs. Man 8/11/17 *[Signature]* 8/11/17
 Head Start Program Administrator Contract Monitor
[Signature] 8/11/17 *[Signature]* 8/11/17
 Fiscal Monitor Fiscal Manager

Schedule of Due Dates and Deadlines

Program	Grant #	Program Budget Year		University of the Incarnate Word Contract Term		Federal	Non Federal	Total
		February 1, 2017	January 31, 2018	September 1, 2017	July 31, 2018			
Head Start (HS-PK)	CH7074-05	February 1, 2017	January 31, 2018	September 1, 2017	July 31, 2018	\$77,480	\$19,370	\$96,850
Head Start (HS-PK)	CH7074-06	February 1, 2018	June 30, 2018					
Head Start (HS-PK)	TBD*	July 1, 2018	June 30, 2019					
Early Head Start-Childcare Partnership (EHS-CCP)	HP0019-03	August 1, 2017	July 31, 2018			\$8,000	\$2,000	\$10,000
						Total:	\$85,480	\$21,370

*Grant number and project period are subject to change by grantor

		Reporting Due Dates and Deadlines		
		HS-PK	EHS-CCP	
1	Forecasts	09/01/17	09/01/17	
		02/01/18		
2	Budget Revision Deadline	12/31/17	06/30/18	
		05/31/18		
4	Invoices & final invoice deadline	Invoices - Due by the 15th of every month for prior month services; Final Invoice Deadline -- Liquidate all obligations made during the appropriate program budget year and submit final invoice to DHS for respective program.		
3	Closeout	03/15/18	09/17/18	
		09/17/18		
5	Overpayment to Contractor	Reimbursement is due by 45 days after the end of the Contract term, for each grant program		
		9/17/2018		

**ATTACHMENT III
SPECIAL PROVISIONS**

I. RESTRICTIONS ON USE OF FUNDS OR PROPERTY

In addition to the other applicable restrictions on the use of Head Start funds provided under this Contract, the Contractor is prohibited from:

- 1) using or transferring funds provided under this Contract for purposes other than authorized Head Start activities;
- 2) using, pledging, granting a security interest in, or otherwise encumbering any right under this Contract or any property acquired with funds provided under this Contract as collateral or security for any loan, note debenture, bond or any other debt instrument;
- 3) using any funds provided under this Contract for payment of principal or interest on any loan, note, debenture, bond or any other debt instrument, other than those approved in the 45 C.F.R. Part 74 and by the City

II. REQUIREMENTS FOR PARTICIPATION IN CHILD PLUS DATA SYSTEM

2.01 Child Plus is an electronic case management system managed and licensed by the City. This system maintains child files and an overall wait list and streamlines the process for program entry, qualification, position reservation and referrals. Child Plus enhances performance and improves the overall efficiency of data processing and automation systems in support of Head Start initiatives and is used to compile the annual Program Information Report (PIR).

2.02 Contractor shall:

- a) maintain and support Child Plus Data System
- b) provide a data entry specialist for Child Plus Data System that will be responsible for entering all required data into the system and who will be the designated contact person with regard to data entries;
- c) attend meetings with the City's Child Plus vendor and City staff to ensure continuity and commitment to the this system;
- d) support all design, development, testing and implementation protocols as established by the City by carrying out and complying therewith;
- e) participate in preliminary and final testing of the system using City protocols;
- f) provide the technical detail required for matching Contractor's system with the Child Plus Data System environment;
- g) allow City and its vendor to install data encryption software on the Child Care System Database network; and
- i) provide City and its vendor with access to Confidential Data with parental permission, as defined in Article 3.01 below, which data is critical for the Head Start project.

2.03 Both Parties agree to:

- a) use best efforts to cooperate and exchange information regarding all aspects of the Head Start project and comply with all reasonable requests of the other Party with respect to information concerning the system.
- b) Parties agree that nothing herein shall be construed as to control or in any way limit the right of parents to choose a Head Start provider.

III. CONFIDENTIAL DATA

3.01 The Parties to this Contract shall have access to the following data ("Confidential Data"), with parental permission in the case of the child:

Parent's Information:	Each child's Information:
Case Number	Client Number
First Name	First Name
Middle Initial	Middle Initial
Last Name	Last Name
Street Address	Social Security Number (Optional)
City	Birth Date
Zip Code	Gender
Telephone	Race
Social Security Number (Optional)	Handicap (Optional)
Birth Date	
Gender	
Race	
Handicap (Optional)	
Yearly Income	
Number of members in the Family	
County of Residence	
Employment and training status	

- 3.02 Contractor understands that City intends to enter into additional agreements with other providers of child care services (“Additional Collaborators”) in order to promote the success of the Head Start project. Confidential Data may be shared by City, Contractor, and any Additional Collaborator, except that all parties shall share such information in compliance with state and federal laws relating to confidentiality. All Additional Collaborators shall be required to enter into a written agreement with City containing the confidentiality requirements set forth in this Section III.
- 3.03 Each Party shall establish a method to secure the Confidential Data in accordance with the applicable federal, state, and local laws and regulations. This provision shall not be construed as limiting a Party to this Contract or an Additional Collaborator, or such Party’s authorized representative’s right of access to that Party’s Confidential Data.
- 3.04 Neither Party shall disclose or publish Confidential Data or public school education data to any individual or organization that is not a Party to this Contract or an Additional Collaborator, unless required by law or a lawful order of a court of competent jurisdiction. Each Party shall take measures within its organization to ensure that Confidential Data or public school education data is accessible only by those persons working on the Head Start project, or directly providing other public school education / child care services, and only for the purpose of performing or assisting with services required by the Head Start project or other specific public school education / child care services.
- 3.05 Either Party may disclose Confidential Data to a third party (“Third Party”) under contract or affiliated with that Party for the sole purpose of performing or assisting with services required in relation to the Head Start project or other specific child care services, and in compliance with state and federal laws relating to confidentiality. Confidential Data provided to a Third Party shall remain confidential and written confirmation by such Third Party that the Third Party will conform to the requirements of this section shall be provided to the Party prior to delivery of any information to the Third Party.

Contract #: _____

ATTACHMENT IV

[INSERT THE HHS NOA HERE]

ATTACHMENT V

WITNESSETH:

HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement (“BAA”) is entered into by and between the City of San Antonio (“Covered Entity”), and Contractor, the University of the Incarnate Word Ila Faye Miller School of Nursing and Health Professions, in the underlying agreement, a Business Associate (“BA”).

WHEREAS, Covered Entity and BA have entered into agreement (“Agreement”) for BA to provide health services, through July 31, 2018 and any renewals thereafter; and

WHEREAS, Covered Entity and BA may need to use, disclose and/or make available certain information pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (“PHI”); and

WHEREAS, Covered Entity and BA intend to protect the privacy and provide for the security of PHI disclosed to each other pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”), Health Information Technology for Economic and Clinical Health Act (“HITECH Act”), and other applicable laws; and

WHEREAS, the purpose of this BAA is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations (“C.F.R.”), as the same may be amended from time to time;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

A. **Definitions.** For the purposes of this BAA, the following terms have the meanings ascribed to them:

(1) “Disclosure” with respect to PHI, shall mean the release, transfer, provision of access to or divulging in any other manner of PHI outside the entity holding the PHI.

(2) “Individual” shall have the same meaning as the term "Individual" in 45 C.F.R. 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).

(3) “Parties” shall mean Covered Entity and BA. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 C.F.R. 160.103. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 C.F.R. 160.103.

(4) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, subparts A and E.

(5) “Security Rule” shall mean the HIPAA regulation that is codified at 45 C.F.R. Part 164.

(6) “Protected Health Information” or “PHI” shall have the same meaning as the term "protected health information" in 45 C.F.R. 164.501, limited to the information created or received by BA from or on behalf of Covered Entity. PHI includes “Electronic Protected Health Information” or

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"EPHI" and shall have the meaning given to such term under the HIPAA Rule, including but not limited to 45 C.F.R. Parts 160, 162, 164, and under HITECH.

(7) "Required By Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.501.

(8) "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or his designee.

(9) "PHI Breach" shall mean an acquisition, access, use, or disclosure of PHI in a manner not permitted by the Privacy Rules and such action compromises the security or privacy of the PHI.

(10) The Health Information Technology for Economic and Clinical Health ("HITECH") Act shall mean Division A, Title XII of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

B. BA Obligations and Activities. BA agrees that it shall:

(1) Not use or disclose the PHI other than as permitted or required by this BAA or as Required by Law;

(2) Establish and maintain appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect, consistent with the services provided under this BAA, the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of Covered Entity;

(3) Mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI by BA in violation of the requirements of this BAA;

(4) Report to Covered Entity any use or disclosure of PHI of which BA is aware or becomes aware that is not provided for or allowed by this BAA as well as any security incident that BA becomes of aware of;

(5) Ensure that a business associate agreement is in place with any of its agents or subcontractors with which BA does business and to whom it provides PHI received from, created or received by BA on behalf of Covered Entity are aware of and agree to the same restrictions and conditions that apply through this BAA to BA with respect to such information, and further agree to implement reasonable and appropriate administrative, physical and technical safeguards that render such PHI unusable, unreadable, and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI;

(6) Provide access, at the request of Covered Entity, and in a reasonable time and manner as agreed by the Parties, to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements 45 C.F.R. §164.524;

(7) Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of the Covered Entity or an Individual, and in a reasonable time and manner agreed to by the Parties;

(8) Make available to the Covered Entity or to the Secretary all internal practices, books and records, including policies and procedures, relating to the use and disclosure of PHI received

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from, or created or received by the BA on behalf of the Covered Entity, for purposes of the Secretary in determining Covered Entity's compliance with the Privacy Rule;

(9) Document such disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request from an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;

(10) Provide Covered Entity or an Individual, in a reasonable time and manner as agreed to by the Parties, information collected in accordance with Section B(9) of this BAA, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;

(11) Will immediately, and in no event later than three days from discovery, notify Covered Entity of any breach of PHI, including ePHI, and will coordinate with Covered Entity to identify, record, investigate, and report to an affected individual and the U.S. Department of Health and Human Services, as required, any covered PHI breach. Breach notification to Covered Entity must include: names of individuals with contact information for those who were or may have been impacted by the HIPAA Breach; a brief description of the circumstances of the HIPAA Breach, including the date of the breach and date of discovery; a description of the types of unsecured PHI involved in the breach; a brief description of what the BA has done or is doing to investigate the breach and mitigate harm. BA will appoint a breach liaison and provide contact information to provide information and answer questions Covered Entity may have concerning the breach;

(12) Comply with all HIPAA Security Rule requirements;

(13) Comply with the provisions of HIPAA Privacy Rule for any obligation Covered Entity delegates to BA;

(14) Under no circumstances may BA sell PHI in such a way as to violate Texas Health and Safety Code, Chapter 181.153, effective September 1, 2012, nor shall BA use PHI for marketing purposes in such a manner as to violate Texas Health and Safety Code Section 181.152, or attempt to re-identify any information in violation of Texas Health and Safety Code Section 181.151, regardless of whether such action is on behalf of or permitted by the Covered Entity.

C. Permitted Uses and Disclosures by BA

(1) Except as otherwise limited in this BAA, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

(2) Except as otherwise limited in this BAA, BA may disclose PHI for the proper management and administration of the BA, provided that disclosures are Required By Law, or BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the BA of any instances of which it is aware in which the confidentiality of the information has been breached.

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(3) Except as otherwise limited in this BAA, BA may use PHI to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).

(4) BA may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. 502(j)(1).

D. Obligations of Covered Entity. Covered Entity shall inform BA of its privacy practices and restrictions as follows. Covered Entity shall:

(1) notify BA of any limitations in its notice of privacy practices in accordance with 45 C.F.R. 164.520, to the extent that such limitation may affect BA's use or disclosure of PHI;

(2) notify BA of any changes in, or revocation of, permission by any Individual to use or disclose PHI, to the extent that such changes may affect BA's use or disclosure of PHI;

(3) notify BA of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522 to the extent that such changes may affect BA's use or disclosure of PHI;

(4) coordinate with BA regarding any PHI breach and make timely notification to affected individuals within 60 days of discovery.

E. Permissible Requests by Covered Entity.

Covered Entity shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that the BA may use or disclose PHI for data aggregation or management and administrative activities of the BA.

F. Term and Termination.

(1) The term of this BAA shall commence upon execution of the Agreement. This BAA shall terminate when all PHI encompassed by this BAA is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy the PHI, protections are extended to such information in accordance with the termination provisions in this Section.

(2) Termination for Cause. Upon Covered Entity's knowledge of a material breach by BA, Covered Entity shall either (a) provide an opportunity for BA to cure the breach in accordance with the terms of the Agreement or, if the BA does not cure the breach or end the violation within the time for cure specified in the Agreement, end the violation and terminate this BAA and the Agreement; or (b) immediately terminate this BAA and the Agreement if BA has breached a material term of this BAA and cure is not possible. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary of the U.S. Department of Health and Human Services.

(3) Effect of Termination.

(a) Except as provided below in paragraph (b) of this Section F(3), upon termination of this BAA for any reason, BA shall return or destroy all PHI received from the Covered Entity, or created or received by BA on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of BA or its subcontractors or agents. BA shall not retain any copies of PHI.

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- (b) In the event that BA determines that returning or destroying PHI is infeasible, BA shall provide to Covered Entity written notification of the condition that makes the return or destruction of PHI infeasible. Upon BA's conveyance of such written notification, BA shall extend the protections of this BAA to such PHI and limit further uses and disclosures of such PHI to those purposes that make its return or destruction infeasible, for so long as BA maintains such PHI.
- G. Amendment to Comply with Law. The Parties agree to take written action as is necessary to amend this BAA to comply with any Privacy Rules and HIPAA legal requirements for Covered Entity without the need for additional council action.
- H. Survival. The respective rights and obligations of the BA under Sections B, C (2) and (4), and F(3) shall survive the termination of this BAA.
- I. Interpretation. Any ambiguity in this BAA shall be interpreted to permit Covered Entity to comply with the Privacy Rule.
- J. Regulatory References. A reference in this BAA to a section in the Privacy Rule means the section as in effect or amended.
- K. No Third Party Beneficiaries. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer upon any person other than Covered Entity, BA, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- L. **INDEMNIFICATION. BA WILL INDEMNIFY, DEFEND AND HOLD COVERED ENTITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS, FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES ARISING OUT OF OR RELATED TO ANY THIRD-PARTY CLAIM BASED UPON ANY BREACH OF THIS BAA BY BA IN ACCORDANCE WITH THE INDEMNITY PROVISIONS IN THE SERVICECONTRACT, WHICH ARE HEREBY INCORPORATED BY REFERENCE FOR ALL PURPOSES.**
- M. Reimbursement. BA will reimburse Covered Entity for reasonable costs incurred responding to a PHI breach by BA or any of BA's subcontractors.
- N. Waiver. No provision of this BAA or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.
- O. Assignment. Neither party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this BAA without the prior written consent of the other party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of BA.
- P. Entire Agreement. This BAA constitutes the complete agreement between BA and Covered Entity relating to the matters specified in this BAA, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this BAA and the terms of the Agreement or any such later agreement(s), the terms of this BAA shall control unless the terms of such Agreement comply with the federal law and regulations

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commonly referred to as the Privacy Standards and the Security Standards. No oral modification or waiver of any of the provisions of this BAA shall be binding on either party. This BAA is for the benefit of, and shall be binding upon the Parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this BAA, nor shall any third party have any rights as a result of this BAA.

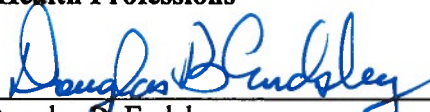
Q. **Governing Law.** This BAA shall be governed by and interpreted in accordance with the laws of the State of Texas.

EFFECTIVE upon execution by both parties.

COVERED ENTITY
City of San Antonio

BUSINESS ASSOCIATE:
University of the Incarnate Word Ila
Faye Miller School of Nursing and
Health Professions

Melody Woosley, Director
Department of Human Services



Douglas D. Endsley
Vice President for Business & Finance

APPROVED AS TO FORM:

Assistant City Attorney

ATTACHMENT VI**SBEDA PROGRAM**

The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2016-05-19-0367 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's Economic Development Department (EDD) website page and is also available in hard copy format upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this Attachment of the Agreement are governed by the terms of the SBEDA Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this Attachment of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

A. Definitions

Affirmative Procurement Initiatives (API) – Refers to various S/M/WBE Program tools and Solicitation Incentives that are used to encourage greater prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE Program tools, see Section III.D of Attachment A to the SBEDA Ordinance). To be eligible for the benefits of race- and gender-conscious APIs as provided in the SBEDA Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.

Annual Aspirational Goal – a non-mandatory annual aspirational percentage goal for overall M/WBE Prime and subcontract participation in City of San Antonio contracts is established each year for Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contract Industry Categories. This Annual Aspirational Goal is to be set (and thereafter adjusted) by the Goal Setting Committee (GSC) based upon the M/WBE availability by industry in accordance with the City's 2015 Disparity Study findings, along with relative M/WBE availability data to be collected by the City through its CVR system, and the utilization of M/WBEs. Any adjusted Annual Aspirational Goals for a given industry should not exceed the Expected Availability for award dollar weights as found in the 2015 Disparity Study. Annual Aspirational Goals are not to be routinely applied to individual contracts, but are intended to serve as a benchmark against which to measure the overall effectiveness of the S/M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and to the aggressiveness of remedies being applied under the Program. Percentage Goals for S/M/WBE participation may be established by the GSC on a contract-by-contract basis based upon similar data and analysis for the particular goods and services being purchased in a given contract.

Award – the final selection of a Respondent for a specified Prime Contract or subcontract dollar amount. Contract awards are made by the City to Prime Contractors or vendors and by Prime Contractors or vendors to Subcontractor or sub-vendors, usually pursuant to a solicitation

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process. (Contract awards are to be distinguished from contract payments in that they only reflect the anticipated dollar amounts instead of actual dollar amounts that are paid to a contractor under an awarded contract).

Best Value Contracting – a purchasing solicitation process through which the Originating Department may evaluate factors other than price. Evaluation criteria for selection may include a Respondent's previous experience and quality of product or services procured, and other factors identified in the applicable statute.

Centralized Vendor Registration System (CVR) – a mandatory electronic system of hardware and software programs by which the City recommends all prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to the City to register. All businesses awarded a City contract shall be required to register in the CVR. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

Certification – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City may accept any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6.

City – refers to the City of San Antonio, TX.

Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed.

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Control – the authority of a person or business owner to sign responses to solicitations and contracts, make price negotiation decisions, sell or liquidate the business and have the primary authority to direct the day-to-day management and operation of a business enterprise without interference from others.

Economic Inclusion – efforts to promote and maximize commercial transactions within, between and among all segments of the business population, regardless of race or gender, within the Relevant Marketplace.

Emerging SBE (ESBE) – a certified SBE corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is independently owned and operated by Individuals legally residing in, or that are citizens of, the United States or its territories whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.

Emerging M/WBE – a certified M/WBE firm whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.

Evaluation Preference – an API that may be applied by the Goal Setting Committee to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to the City by S/M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime Respondents.

Formal Solicitation – an invitation for bids, request for proposals, request for qualifications or other solicitation document issued by a City department for a contract that requires City Council approval, in accordance with the procurement rules adopted by the City Manager or designee through a memorandum issued by the City Manager or designee, an Administrative Directive or a procurement manual issued under the authority of the City Manager or designee, and/or pursuant to statutory requirements.

Goal Setting Committee (GSC) – a committee, or series of committees, appointed and chaired by the City Manager or designee from the Executive Team that includes, at a minimum, the EDD Director or designee, and the Director of Finance or Director of Transportation and Capital Improvements (TCI) or their designees, the Director or designee of the Originating Department (if the Originating Department is neither Finance nor TCI,) all without duplication of designees and two citizens appointed by City Council who are eligible to vote during the goal setting committee on contracts valued at \$3,000,000 and above. The City Manager or designee may also appoint two ex-officio members of the Small Business Advocacy Committee to serve on any GSC purely in an advisory and non-voting capacity. The GSC establishes S/M/WBE Program Goals for the City of San Antonio (e.g., Annual Aspirational Goals, Contract-by-Contract Subcontracting Goals, and determining which M/WBE segments are eligible for Segmented Subcontracting Goals annually) based upon Industry Categories, vendor availability, project-

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specific characteristics, and M/WBE utilization. The GSC also makes determinations about which Affirmative Procurement Initiatives (APIs) are to be applied to specific contracts based upon various criteria.

Good Faith Efforts – documentation of the Respondent’s intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation as stated in the solicitation reflecting the Respondent’s commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office’s directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor’s posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and CONTRACTORS that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.)

HUBZone Firm – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

Independently Owned and Operated – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

Individual – an adult person that is of legal majority age.

Industry Categories – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as “business categories.”

Joint Venture Incentives – an API that provides inducements for non-SBE and non-M/WBE firms to collaborate with SBE or M/WBE partners in responses to solicitations and performing a Prime Contract to supply goods to, or to perform non-Construction services on behalf of, the City. Joint ventures are manifested by written agreements between two or more Independently

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Owned and Controlled business firms to form a third business entity solely for purposes of undertaking distinct roles and responsibilities in the completion of a given contract. Under this business arrangement, each joint venture partner shares in the management of the joint venture and also shares in the profits or losses of the joint venture enterprise commensurately with its contribution to the venture. Incentives under this API may include Evaluation Preferences that are tied to the percentage of SBE or M/WBE participation in the joint venture, expedited issuance of building permits and extra contract option years in certain Other Services and Goods & Supplies contracts.

Minority/Women Business Enterprise (M/WBE) – firm that is certified as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

M/WBE Directory – a listing of M/WBEs that have been certified for participation in the City's M/WBE Program APIs.

M/WBE Subcontracting Program – an API in which Prime Contractors or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified M/WBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing Commercially Useful Functions wherein:

- (1) There have been ongoing disparities in the utilization of available M/WBE Subcontractors; or
- (2) Race-Neutral efforts have failed to eliminate persistent and significant disparities in the award of prime contracts to M/WBEs in a particular Industry Category or industry segment (e.g., Construction contracts, Professional Services contracts, and Architectural and Engineering contracts), and subcontract opportunities are limited outside of City contracts.

When specified by the GSC, the M/WBE Subcontracting Program may also be required to reflect Good Faith Efforts that a Prime Contractor or vendor has taken (or commits to taking in the case of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation), toward attainment of subcontracting goals for M/WBE firms.

M/WBE Evaluation Preference – an API that the City may apply to requests for proposals or qualifications (RFPs or RFQs) on City Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contracts that are issued pursuant to a Best Value Contracting method or other methods of procurement wherein criteria other than lowest price are factored into the selection process. M/WBEs that submit responses for these kinds of solicitations are awarded additional Points in the scoring of their responses when evaluating and ranking their responses against those submitted by non-minority firms. Where specified in contract specifications as approved by the Goal Setting Committee, the M/WBE Evaluation Preference may be limited to Emerging M/WBE firms.

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Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified as being at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the City. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term “MBE” as used in the SBEDA Ordinance is not inclusive of women-owned business enterprises (WBEs).

Minority Group Members – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

African-Americans: Persons with origins in any of the black racial groups of Africa.

Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

Originating Department – the City department or authorized representative of the City which issues solicitations or for which a solicitation is issued.

Payment – dollars actually paid to Prime Contractors and/or Subcontractors and vendors for City contracted goods and/or services.

Points – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contracts (e.g., up to 20 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).

Prime Contractor – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City.

Race-Conscious – any business classification or API wherein the race or gender of business owners is taken into consideration (e.g., references to M/WBE programs and APIs that are listed herein under the heading of “Race-Conscious”). To be eligible for the benefits of race- and gender-conscious APIs as provided in this Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.

Race-Neutral – any business classification or API wherein the race or gender of business owners is not taken into consideration (e.g., references to SBE programs and APIs that are listed herein under the heading of “Race-Neutral”).

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Relevant Marketplace – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the 2015 Disparity Study, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

Respondent – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City.

Responsible – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

Responsive – a firm's submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

San Antonio Metropolitan Statistical Area (SAMSA) – also known as the Relevant Marketplace, the geographic market area from which the City's 2015 Disparity Study analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

Segmented M/WBE Goals – the application of multiple goals for M/WBE participation within Annual Aspirational Goals or for M/WBE Subcontracting Goals on an individual City contract wherein an overall combined M/WBE goal is accompanied by subsets of one or more smaller goals. Such segmented goals specifically target the participation of a particular segment of business enterprises owned and Controlled by WBEs or certain Minority Group Members (e.g., African-Americans or Hispanic-Americans) based upon relative availability and significantly greater patterns of underutilization and disparity within an industry as compared to other gender and Minority Group Member categories of M/WBEs. The application of Segmented M/WBE Goals is intended to ensure that those segments of M/WBEs that have been most significantly and persistently underutilized receive a fair measure of remedial assistance.

SBE Directory – a listing of small businesses that have been certified for participation in the City's SBE Program APIs.

Significant Business Presence – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

Small Business Enterprise (SBE) – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by

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Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

Small Business Office (SBO) – the office within the Economic Development Department (EDD) of the City that is primarily responsible for general oversight and administration of the S/M/WBE Program.

Small Minority Women Business Enterprise Program (S/M/WBE Program) – the combination of SBE Program and M/WBE Program features contained in this Ordinance.

Solicitation Incentives – additional inducements or enhancements in the solicitation process that are designed to increase the chances for the selection of S/M/WBE firms in competition with other firms. Such inducements and enhancements may include such terms as additional contract option years, increased quantities in supply contracts, and evaluation preferences, where not prohibited by law. These solicitation incentives may be applied as appropriate to solicitations, contracts, and letter agreements for Construction, Architecture and Engineering services, Professional Services, Other Services, and Goods & Supplies contracts, including change orders and amendments.

Subcontractor – any vendor or contractor that is providing goods or services to a Prime Contractor in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of the binding agreement between the Prime Contractor and the Subcontractor shall be submitted prior to the City's issuance of a notice to proceed.

Suspension – the temporary stoppage of an SBE or M/WBE firm's beneficial participation in the City's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7, or pursuant to the Penalties and Sanctions set forth in Section III.E.13.

Subcontractor/Supplier Utilization Plan – a binding part of this contract agreement which states the CONTRACTOR's commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract agreement, and states the name, scope of work, and dollar value of work to be performed by each of CONTRACTOR's Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this agreement to be approved by the EDD Director or designee.

Women Business Enterprises (WBEs) - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased

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by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term "WBE" as used in this Ordinance is not inclusive of MBEs.

B. SBEDA Program Compliance – General Provisions

As CONTRACTOR acknowledges that the terms of the CITY's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY's SBEDA Policy & Procedure Manual are in furtherance of the CITY's efforts at economic inclusion and, moreover, that such terms are part of CONTRACTOR's scope of work as referenced in the CITY's formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. CONTRACTOR voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, CONTRACTOR further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. CONTRACTOR shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding CONTRACTOR's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its subcontractors with this term;
2. CONTRACTOR shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of CONTRACTOR or its subcontractors or suppliers;
3. CONTRACTOR shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;
4. CONTRACTOR shall notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CONTRACTOR's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CONTRACTOR to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by CONTRACTOR of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of

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previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

5. CONTRACTOR shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.
6. CONTRACTOR shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.
7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a CONTRACTOR's Subcontractor / Supplier Utilization Plan, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE or HUBZone Subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the CONTRACTOR and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
8. CONTRACTOR acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the CONTRACTOR for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System (CVR), and CONTRACTOR has represented to CITY which primary commodity codes each Subcontractor will be performing under for this contract. CITY recommends all Subcontractors to be registered in the CVR.

C. SBEDA Program Compliance – Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiatives to this contract. CONTRACTOR hereby acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent contract modification and, absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

SBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 5. (d), this contract is being awarded pursuant to the SBE Prime Contract Program, and as such, CONTRACTOR affirms that if it is presently certified as an SBE (see *Small Business Enterprise* definition), CONTRACTOR agrees not to subcontract more than 49% of the contract value to a non-SBE firm, and

M/WBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 6. (d), this contract is being awarded pursuant to the M/WBE Prime Contract Program and as such, CONTRACTOR affirms that if it is presently certified as an M/WBE (see *Minority/Women*

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Business Enterprise definition), CONTRACTOR agrees not to subcontract more than 49% of the contract value to a non-M/WBE firm.

D. (Reserved)

E. (Reserved)

F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

G. Prompt Payment

Upon execution of this contract by CONTRACTOR, CONTRACTOR shall be required to submit to CITY accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the CONTRACTOR's reported subcontract participation is accurate. CONTRACTOR shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from CITY. In the event of CONTRACTOR's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to CONTRACTOR, and no new CITY contracts shall be issued to the CONTRACTOR until the CITY's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

H. Violations, Sanctions and Penalties

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In addition to the above terms, CONTRACTOR acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;
2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;
3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

Any person who violates the provisions of this section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions and remedies available under law including, but not limited to:

1. Suspension of contract;
2. Withholding of funds;
3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;
4. Refusal to accept a response or proposal; and
5. Disqualification of CONTRACTOR or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

Attachment VII

**Additional OMB Provisions
from Appendix II to Part 200—Contract Provisions
for Non-Federal Entity Contracts Under Federal Awards**

In addition to other provisions required by HHS or the City, all contracts made by the City under the Federal award must contain provisions covering the following, as applicable (2 C.F.R. 200, Appendix II).

Hereinafter in this Attachment VI, Center shall be referred to as “contractor.”

<u>Provision</u>	<u>Page Number</u>
Equal Employment Opportunity	2
Davis Bacon Act	4
Contract Work Hours and Safety Standards Act	9

Attachment VII

EQUAL EMPLOYMENT OPPORTUNITY provisions (60 C.F.R. 1.4(b)).

During the performance of this contract, contractor agrees:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to CONTRACTOR's books, records, and accounts by the U.S. Department of Health and Human Services ("HHS") and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as HHS may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request HHS to enter into such litigation to protect the interests of the United States.

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DAVIS BACON ACT provisions (29 C.F.R. § 5.5(a))

For any contract or subcontract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from federal funds, and which is subject to the labor standards provisions of any of the acts listed in 29 C.F.R. §5.1, the following § 5.5(a) must be included and complied with:

(1) Minimum wages.

- (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor, which is incorporated herein by reference, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in §5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an

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authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. HHS or the City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, HHS may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

- (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected,

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and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HHS if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to HHS. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HHS if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to HHS, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of HHS or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner,

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take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees—

- (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program,

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the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

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CONTRACT WORK HOURS AND SAFETY STANDARDS ACT provisions (29 C.F.R. § 5.5(b))

(1) Overtime requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages.

In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages.

The U.S. Department of Health and Human Services or the City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.