

AN ORDINANCE 2018-03-29-0203

**AUTHORIZING THE SUBMISSION OF A HEAD START GRANT APPLICATION TO THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES AND ACCEPTANCE UPON AWARD OF AN AMOUNT UP TO \$22,706,657.00 FOR THE PERIOD OF JULY 1, 2018 TO JUNE 30, 2019; A BUDGET, INCLUDING AN IN-KIND MATCH OF \$5,676,664.00 AND A PERSONNEL COMPLEMENT OF 95 POSITIONS; THE EXECUTION OF TWO SERVICE PROVIDER CONTRACTS IN A COMBINED AMOUNT UP TO \$16,228,623.00 FOR THE GRANT YEAR AND RENEWABLE THROUGH JUNE 30, 2023.**

\* \* \* \* \*

**WHEREAS**, the Head Start program is a federally-funded early childhood education program administered by the U.S. Department of Health and Human Services (HHS) and provides education and family support services to children between the ages of three and five; and

**WHEREAS**, the City, through the Department of Human Services, has served as a Head Start grantee for over 35 years and currently serves 3,020 children and their families in 21 Head Start centers located in the San Antonio and Edgewood Independent School Districts; and

**WHEREAS**, on April 27, 2017, HHS notified the City of funding up to \$22,706,657.00 for continuation of Head Start services through June 30, 2019, and on January 23, 2018, the Head Start Policy Council approved a grant application; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** Submission of a grant application to the U.S. Department of Health and Human Services (HHS) and acceptance upon award of up to \$22,706,657.00 for the period July 1, 2018 to June 30, 2019 is approved. A copy of the application is on file with Department of Human Services (DHS).

**SECTION 2.** The City Manager or her designee, or the Director of the DHS or her designee, is authorized to execute the service provider contracts attached hereto and incorporated herein as **Attachments I & II** with the San Antonio and Edgewood Independent School Districts (SAISD and EISD) in a combined amount not to exceed \$16,228,623.00 for the grant period, renewable through June 30 2023 after review and approval by the City Attorney's Office, and allowing for amendments based on (1) program improvements, (2) additional awards, and (3) updates to renewal due dates, amounts and terms.

**SECTION 3.** The City Manager or her designee, or the Director of the DHS or her designee, is further authorized to negotiate and execute any and all necessary documents to effectuate the application and acceptance of this grant and grant contract, and to execute grant contract amendments pertaining to the grant when approved by HHS, to include: a) carry-over funds; b) line item budget revisions; c) modifications to the performance measures so long as the terms stay



within the general parameters of the intent of the grant; d) no cost extensions; e) supplemental grant funds in an amount up to 20% of the total amount initially awarded; f) reimbursement increases or decreases due to a change in the number of participant served; g) one-time equipment purchases or defined program services; and h) changes in regulations.

**SECTION 4.** The disposition of a federally-funded Ford E-350 twelve-passenger van by either transfer at no cost to SAISD or sale as directed by HHS, and all actions necessary to effectuate such disposition, are approved.


**SECTION 5.** A proposed budget of \$28,383,321.00, including an in-kind matching budget of \$5,676,664.00, is attached hereto and incorporated herein for all purposes as **Attachment III**, and is approved. Upon acceptance of this award, new funds and internal order numbers will be created, upon which the award amount of up to \$22,706,657.00 from HHS will be appropriated in the fund. A formal final budget which will include a department specific fund, an Internal Order number, and General Ledger numbers will be submitted by the department upon award.

**SECTION 6.** The proposed personnel complement of ninety-five (95) positions, attached hereto and incorporated herein for all purposes as **Attachment IV**, is hereby approved.

**SECTION 7.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 8.** This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

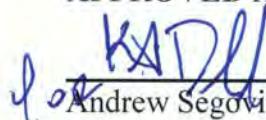
**PASSED AND APPROVED this 29th day of March, 2018.**

  
M A Y O R  
Ron Nirenberg

ATTEST:

  
\_\_\_\_\_  
Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Andrew Segovia, City Attorney

<b>Agenda Item:</b>	<b>19 ( in consent vote: 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 21, 22, 23, 24, 25, 28A, 28B )</b>						
<b>Date:</b>	03/29/2018						
<b>Time:</b>	09:47:34 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	Ordinance approving the following: a) submission - and acceptance upon award - of a Head Start grant application to the U.S. Department of Health and Human Services for up to \$22,706,657.00 for the period of July 1, 2018 to June 30, 2019; b) an in kind match of \$5,676,664.00 c) a personnel complement; and d) the execution of two service provider contracts in a combined amount up to \$16,228,623.00 for the grant year and renewable through June 30, 2023. [María Villagómez, Assistant City Manager; Melody Woosley, Director, Human Services]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x				x
William Cruz Shaw	District 2		x			x	
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				
Clayton H. Perry	District 10		x				

KD  
03/29/2018  
Item No. 19

# Attachment I



Contract No. \_\_\_\_\_

STATE OF TEXAS \* HEAD START AGREEMENT  
COUNTY OF BEXAR \* FOR EDUCATION SERVICES  
CITY OF SAN ANTONIO \* BETWEEN THE CITY OF SAN ANTONIO  
&  
EDGEWOOD INDEPENDENT SCHOOL DISTRICT (EISD)

This Agreement 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 \_\_\_\_\_, 2018, and the Edgewood Independent School District (EISD) ("Contractor"), a political subdivision of the State of Texas, acting by and through its Board of Managers (individually "the Party" and collectively "the Parties") sets forth the objectives, understandings, and agreements between the Parties in connection with the use of Head Start grant funds. This Agreement is made and entered into by the Parties pursuant to the authority granted under the Interlocal Cooperation Act, Texas Gov't Code 791 *et seq.*

WITNESSETH:

WHEREAS, the City has received a grant ("Grant") from the U.S. Department of Health and Human Services ("HHS") Administration for Children and Families ("ACF") pursuant to the Head Start Act (42 U.S.C. §9831 *et seq.*, as amended) for the purpose of providing Head Start services to children and families in the San Antonio and Edgewood Independent School Districts; and

WHEREAS, the City is authorized and desires through its Department of Human Services ("DHS") to execute an agreement with Contractor to provide Head Start services to children in Contractor's school district (hereinafter referred to as the "Project" or "Program"); and

WHEREAS, Contractor desires, and is appropriately licensed and qualified, to enter into this Agreement with City and agrees to deliver the services described in accordance with applicable Head Start Performance Standards and other federal, state and local requirements;

NOW THEREFORE, City and Contractor 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, attached to and included here for all purposes as Attachment I, this Agreement, and the Terms of the Grant (as defined in this Article). If the terms of this Agreement 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 Agreement, the terms listed below 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, except in those instances where this Agreement expressly calls for "Contractor business days."
  - (C) "Contractor business day" means every day of the week except all Saturdays, Sundays and those scheduled holidays officially adopted and approved by Contractor for Contractor employees.



- (D) "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 Agreement.
- (E) "Equipment" and "property" means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit, and includes not only furniture and other durable property but also vehicles, although will not include supplies and consumables.
- (F) "Program Income" means earnings of Contractor realized from activities resulting from this Agreement 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 Agreement-supported services of individuals or employees or from the use of equipment or facilities of Contractor provided as a result of this Agreement; and if applicable, payments from clients or third parties for services rendered by Contractor pursuant to this Agreement
- (G) "Relevant HHS directives" means written directives of HHS or its subdivision, including the ACF, Head Start Bureau, Program Operations Division and ACF Region VI, including any updates.
- (H) "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), rules, Executive Orders, the award document from 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 the program design manual applicable to the Head Start Program, as such requirements exist as of the date of this Agreement and as such requirements may be established or modified (by amendment, deletion, addition or otherwise) during the period of the Agreement.

- 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. Such policies and procedures must be consistent with the Terms of the Grant, the policies and procedures approved by the City's Head Start 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 other Head Start services in the San Antonio and Bexar County area. Contractor agrees to allow the City's other such contractors access to the facilities leased and/or owned by Contractor, so long as access would not cause disruption of Contractor's educational activities or purpose as an educational entity. Contractor agrees to cooperate with City and third-party Head Start contractors to establish, modify and comply with a set of policies and procedures and/or a program design manual governing the City's Head Start Program and the protocol for collaboration between Head Start service providers. Contractor agrees that, notwithstanding the fact that another Head Start service provider under the City of San Antonio Head Start Program may be contracted to provide a category of service, Contractor, under the leadership of its Head Start Program Director, will be responsible for coordinating with Head Start service providers and working with the City to ensure provision of full array of services to which the children are entitled under the Terms of the Grant.

## II. TERM

- 2.1 Except as otherwise provided, this Agreement will begin on July 1, 2018 and will terminate on June 30, 2019, the end of the GY 18-19 budget period. The City, subject to continued award from HHS of through the end of the project period, June 30, 2023, will have the option to periodically renew this Agreement, after review and approval by the City Attorney's Office, upon the Parties' signatures without the necessity



of further City Council approval. If renewed under these options, appropriate revisions will be made to the budget, associated due dates, and Scope of Work to reflect the Grant obligations and 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 **\$4,175,378.00** ("the Federal Share") during the period in which this Agreement is in effect for costs incurred in accordance with the Program Budget attached to and included in this Agreement 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 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 **\$1,043,845.00**) 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. Contractor may provide additional Non-Federal Share funds if Contractor, in its discretion, determines such funds are available. To meet the requirements of this Agreement, all claimed Non-Federal Share must meet the requirements of 45 C.F.R. § 75.306, as applicable.
- 3.2 Prior to commencement of this Agreement, Contractor must submit for City approval, Contractor's proposed monthly budget by line item for the entire term of the Agreement along with its program budget, including detail by category alone. Until the City receives and approves the initial proposed monthly budget for the entire term of the Agreement, the City reserves the right to redirect Contractor's proposed funding under this Agreement. City will notify the Contractor of the amount redirected and the revised Agreement funding. Additionally, beginning July 1,, 2018 and throughout the Term of the Agreement, Contractor will submit for City review quarterly forecasts of the projected expenses for each month remaining in the Agreement (e.g., for Q1, Contractor will submit the projected expenses by month for July, August, September and so on until June 30, 2019 by June 30, 2018; for Q2, Contractor will submit the projected expenses by month for October, November, December and so on by September 30, 2018). Contractor's budgeted development and administrative costs (as defined by 45 C.F.R. Part 1305) may not exceed twelve percent (12%) of the Program Budget, unless the total Program Budget is modified in accordance with this Agreement in which case the amount will be reduced proportionately unless the Parties otherwise agree.
- 3.3 Approval required. Contractor must seek and obtain City's prior written approval 30 calendar days before making budget modifications. City may make exceptions to the 30-day notice requirement on a case by case basis, but Contractor must make a request in writing or via email and be accompanied by a justification for the change and indicate which lines items are affected by such change
- 3.4 Contractor understands and agrees that should Contractor fail to meet or maintain (for a 30 day period) its funded enrollment level as set forth in the Scope of Work, City may reduce Contractor's funding by an amount equal to the difference between funded and actual enrollment at the per capita rate.
- 3.5 The funding level of this Agreement is based on an allocation from the U.S. Department of Health and Human Services (HHS) – Head Start Funds Catalog of Federal Domestic Assistance # 93.600.
- Consequently, Contractor agrees to comply with the Terms of the Grant and Relevant HHS Directives, and with the Special Provisions, attached to and included in this Agreement as **Attachment III**.
- 3.6 It is expressly understood and agreed by the City and Contractor that the City's obligations under this Agreement are contingent upon the actual receipt of adequate Grant funds from HHS to meet City's liabilities. This Agreement may be terminated by the City if HHS terminates the City as a grantee or reduces the amount granted to City, in which event the Parties will use best efforts to amend this Agreement 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 under this Agreement is limited to making reimbursements for Allowable Costs incurred as a direct result of services provided in accordance with the terms of this Agreement. All requested reimbursed costs must be consistent with the terms and provisions of the approved budget line items described in **Attachment II** of this Agreement, unless (a) in cases where the total Agreement 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 Agreement Budget, an amendment has been approved and signed by the Director of DHS pursuant to Section 24.1 of this Agreement ("budget amendment"). Approved budget revisions and amendments modify the Budget attached hereto, and in such cases Contractor's requested reimbursed costs must be consistent with the last revised, approved budget. Approved budget revisions and amendments supersede prior conflicting or inconsistent agreements with regard to the referenced Project Budget, and all references in the Agreement to the budget will mean the budget as revised through approved budget revisions or amendments.
- (A) Budget revision requests must be submitted in advance of anticipated expense(s). The City will not accept budget revision requests submitted after May 31, 2019, unless Contractor requests a reasonable extension before that date, which request will not be unreasonably denied by City.
  - (B) City will not be liable for any cost of Contractor not eligible for reimbursement as defined within the Agreement. Contractor will remit to City within ten (10) Contractor 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) Contractor 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 Agreement, Contractor must submit to the Director of DHS a written request for approval of such advance payment, including the specific reason for such request in the form prescribed by City. Contractor understands that the City will not be obligated to approve any advances 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) Contractor business days prior to the actual ostensible cash need, (b) each request will be considered by the Director of DHS on a case-by-case basis, and (c) the decision by the Director of DHS whether or not to approve an advance payment is final. When advance payments are authorized:
- (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 ten (10) business days after the Contractor is notified that an advance payment check is available from the City.
  - (B) The Contractor must deposit Agreement 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, Contractor must arrange 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 forty-fifth (45<sup>th</sup>) day after the end 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 as described in Article I, including supporting documentation of the costs as may be required by City. The Request for Payment must also specify the Program Income received or projected during the same time period. The Director of DHS may require 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 Contractor of any undisputed amounts in accordance with established procedures. City will make payment to Contractor within 30 calendar days of receiving a valid and approved Request for Payment.
- 4.5 The 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 during the Term, no later than the forty-fifth (45<sup>th</sup>) day after the end of the Term. In addition, all purchase orders that have been encumbered by the end of the Agreement term must be received and paid no later than August 15, 2019. In the event of early termination of this Agreement, Contractor will submit the information 45 calendar days from the date of early termination. 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 Agreement and applicable Head Start regulations and federal directives such as 2 C.F.R. 200 *et seq.* 45 C.F.R. § 75.302 *et seq.*, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" and must provide:
- (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 Agreement. If accrual basis reports are required, the Contractor will develop accrual data 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, unobligated 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 Agreement;
  - (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, and the terms of the award, Grant, and Agreement, 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 Agreement 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 and plan, to ensure that costs allocated and charged to the Grant 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 beginning of the Agreement 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 June 30, 2019, which is due to the City no later than July 15, 2019. Reimbursement will be made within 20 calendar days of receipt of written notification to 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 returned to the City within twenty (20) days of receipt of written notice.
- 4.12 Upon execution of this Agreement or at any time during its term, a person designated by the City may review and approve 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 this Agreement, 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 DHS, Contractor must return such Program Income to City within the timeframe specified by the Director of DHS. If the Director of DHS does not specify a timeframe, then Contractor must return Program Income on the same date that Contractor submits its statement of expenditures and revenues to DHS. If the Director of DHS grants Contractor authority to retain Program Income, Contractor must submit all reports required by DHS within the timeframe specified in the Agreement.
- 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 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 DHS. Failure by Contractor to



report Program Income as required is grounds for suspension, cancellation, or termination of this Agreement.

- 5.5 Contractor is prohibited from charging fees or soliciting donations and is prohibited from contracting with vendors who would charge fees or solicit donations from Head Start participants and their parents in any Agreement-funded project without the prior written approval of the Director of DHS. However, Contractor may engage in general school activity that is not specifically targeted at Head Start families.
- 5.6 Contractor will include this Article, in its entirety, in all of its subcontracts involving income-producing services or activities.

## VI. ADMINISTRATION OF THIS AGREEMENT

- 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 included in this Agreement 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 Agreement 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 the City secure an interpretation or opinion from HHS in order to assist in resolution of the dispute and the City will request it.
- 6.3 Contractor will not use funds awarded from this Agreement as matching funds for any federal, state or local grant without the prior written approval of the Director of DHS.
- 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 Agreement 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 Agreement.
- 6.5 Employee Integrity. The Contractor's Board of Directors or Board of Managers, as applicable, and Contractor's management staff must adopt and approve an Employee Integrity Policy, if Contractor has none, 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 required revision(s).
- 6.6 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 Agreement 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 Contractor 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 the next Contractor business day due to the financial institution's posting policies so long as the checks are actually deposited by Contractor within the required next business day timeframe. Upon cancellation of any outstanding check, the check may either be reissued to Contractor if deemed appropriate by City; if not, the check will be immediately returned to City.
  - (D) For checks other than petty cash reimbursement, Contractor will adopt and comply with a policy requiring no less than two (2) signatures of authorized representatives of Contractor on each check. The signatures may be computer generated so long as they comply with Contractor's internal policies established to reduce the risk of fraud, theft, or embezzlement. Contractor agrees that City's reimbursement is subject to compliance with this provision.
- 6.7 Wherever in this Agreement, Contractor is required to perform an action within a specified number of days or hours, Contractor may request additional time to perform. City will give Contractor's request due consideration and grant Contractor's request whenever reasonable practicable, unless immediate compliance is required or needed.
- 6.8 If the starting date of the Agreement term has already passed at the time of approval of the Agreement by Contractor, all deadlines imposed on Contractor for providing information to the City on or before the date of approval or within seven (7) Contractor business days of approval will be extended in order for the Contractor to reasonably comply with the City's requirements; except and unless, the information has already been provided to the City. City and Contractor agree to confer and make best efforts to reasonably permit Contractor to comply with the extended deadlines.

## VII. AUDIT

- 7.1 Funds from City. If Contractor expends \$750,000.00 or more of funds provided under this Agreement, 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 Agreement, the Contractor shall have completed an independent audit of Contractor's Head Start Program, with the report submitted to City within the earlier of 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) of the Head Start Program 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) 30 days after receipt of the auditor's report(s), or (ii) nine 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. 10<sup>th</sup> 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) calendar 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 Agreement, 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 Agreement, 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 Agreement at any time, and in accordance with Section 8.9 of this Agreement. 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 services for the Head Start 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 necessary by City and/or the applicable state or federal governing agency or other auditing entity, make available the books, records, documents, reports, and evidence with respect to all matters covered by this Agreement, and continue to maintain such records for a minimum period of four (4) years or whatever period is determined necessary based on the Records Retention guidelines, established by applicable law for this Agreement. Said records must be maintained for the required period beginning immediately after Agreement 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 Agreement, or relating to matters covered by this Agreement.

The City may require the Contractor to use any and all of the City's accounting or administrative procedures that are in conformity with Generally Accepted Accounting Principles for state account standards in Texas in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Agreement, and the Contractor will abide by such requirements. Should a conflict exist between the Parties' accounting procedures, Contractor must use the stricter of the procedures.

- 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 than twenty (20) Contractor business days from the date of notification of the disapproval or disallowance by the City. At its sole option, DHS may 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 twenty (20) Contractor business days from Contractor's receipt of written notification of the disapproval or disallowance by the City. If Contractor is obligated under any provision herein to refund a



disapproved or disallowed cost incurred, the refund is required and will be made to City by check, cashiers check or money order. If a dispute arises as to the allowability of an expenditure or charge pursuant to the federal regulations, then Contractor may request that the City secure an interpretation or opinion from HHS in order to assist in resolution of the dispute, and the City will request it. 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 Contractor and will not be paid from any Project funds received under this Agreement. 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 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. Contractor may recommend the hiring of alternate auditors, but the final decision on the selection of auditors will rest with City. If after the audit is conducted it is determined that Contractor is in compliance with this Agreement, then the cost of the audit, specifically the auditor's bill alone, will be borne by City.

#### 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 as reasonably required by City. Contractor must incorporate and use a City-approved tracking or information system, such as ChildPlus, for the delivery of comprehensive Head Start services and collect, input and update all data required for the Program Information Report in accordance with the City's reasonable 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 as listed in the Scope of Work, in such forms as the City may require pursuant to the Head Start Act, as amended, or as may be required under federal regulations, such as 2 C.F.R. 200 *et seq.* 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 Contractor will provide to DHS all information reasonably requested by DHS relating to the Contractor's Board functions, including but not be limited to:
- (A) Roster of current Board Members (name, title, and business address, telephone number, fax number and board e-mail address);
  - (B) Names and terms of Officers;
  - (C) Schedule of anticipated board meetings for the current Fiscal Year;
  - (D) Board agendas relating to the Head Start Program to be submitted by fax or email at the time of posting prior to each Board meeting. Prior to the time of posting, Contractor's administration will attempt to notify City when a Head Start Program item is anticipated to be placed on the agenda; and
  - (E) Minutes of every board meeting relating to the Head Start Program.
- 8.4 City reserves the right to reasonably request Contractor to provide additional records for travel expenses, long distance and cell phone calls, faxes, internet service, or other electronic communication devices charged to the budget associated with this Agreement.
- 8.5 Contractor must report all notices served, violations found or complaints filed with regard to licensing, or lack thereof, of Contractor's centers within one (1) Contractor business day of receipt of notice from the State licensing, certifying or permit-issuing authority of a violation or complaint.
- 8.6 Child Safety. Contractor must comply with federal regulations (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 administrative procedures to respond to health emergencies, and with which all



Head Start staff should be familiar and trained. These procedures must be in compliance with applicable federal, state and local laws, and must include, but not be limited to, methods of notifying parents in the event of a health emergency involving their child and established methods for handling cases of suspected or known child endangerment, abuse or neglect. 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 Head Start child while in the Program, Contractor will contact City's designated representative immediately, but no later than 24 hours, for the purpose of notification of the incident. Contractor must contact City's designated representative immediately 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 Head Start child in any of the instances cited above, whether or not the instance may be characterized as suspected child abuse. In all cases, the suspected offender must be removed from the EHS-CCP classroom until an investigation, internal or external, has absolved him or her from the claim.

- 8.7 **Final Report Requirements.** Within a period not to exceed forty-five (45) calendar days after the expiration or early termination date of this Agreement, 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.
- 8.8 **Retention.** Contractor must maintain financial records, supporting documents, statistical records, and all other books, documents, papers or other records pertinent to this Agreement or the Grant including records for real property and equipment acquired with Head Start 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 Agreement 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 four (4) year period, Contractor agrees to maintain the Records until completion of the latest requisite time period.
- 8.9 **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 the 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 the 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 unless otherwise prohibited by law, and subject to Contractor's right to use "Educational Records" as that term is understood under the Family Educational Rights and Privacy Act of 1974 ("FERPA") (20 U.S.C. § 1232g; 34 CFR Part 99).
- 8.10 **Tracking.** Contractor agrees to incorporate and use any City-approved tracking or information system for the delivery of comprehensive Program services, to include current, accurate and complete client data.
- 8.11 **Monitoring.** DHS is assigned monitoring, fiscal control, and evaluation of certain projects funded by the City with General or Grant Funds, including the Project covered by this Agreement. 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 Agreement 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 Agreement. Contractor agrees that the failure of the



City to monitor, evaluate, or provide guidance and direction will not relieve the Contactor of any liability to the City for failure to comply with the Terms of the Grant or the terms of this Agreement. Criminal background, sex offender, and child abuse/neglect, check(s) comply with 45 C.F.R. §1302.90(b), and as evidence, the parties agree that City will accept a written statement, from an authorizing agency, that the checks have been conducted and that all persons who are employed have passed, so long as the statement includes the name(s) of the staff member(s) checked, and the date(s) performed. If, at any time, HHS informs the City or Contractor that such written statement does not satisfy the requirements of the Terms of the Grant, Contractor agrees to provide additional information as may be legally permissible or required, or to cooperate with the City and HHS in order to resolve any conflict associated with provision of information related to criminal background checks.

- 8.12 **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, the Head Start Act and with Program goals and objectives for the Agreement term. 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, and will not interfere with Contractor's educational program. Contractor Program staff will be informed by City representative(s) upon arrival of the expected purpose and length of visit so that accommodations may be made. City's representative(s) will provide proper identification to ensure the safety and security of all parties. City's representative(s) visiting or entering a campus site where students are present will comply with Contractor's rules and procedures under Contractor's Board or administrative policies or procedures.
- 8.13 **Findings.** Contractor understands that City will timely inform Contractor of the findings of any review or monitoring, specifically any default under the Agreement or deficiencies in performance. City will inform Contractor in writing of Program strengths and weaknesses and specify a reasonable deadline for corrective action. The City will further assist Contractor in finding solutions for Program improvement as appropriate.
- 8.14 **5-Day Timeline.** Unless otherwise stated, all information requested by DHS will be submitted by Contractor within five (5) Contractor business days of the request via electronic communication or other form of written correspondence. Should Contractor fail to deliver the required information or delivers incomplete requested information, the City may suspend reimbursements to Contractor until the information is delivered to City. Furthermore, the Contractor ensures that all information contained in all required reports or information submitted to City is accurate.
- 8.15 **Confidential Information.**
- (A) Unless disclosure is authorized by the 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, "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Agreement. 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 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 the City to obtain copies, review and audit records or other information, confidential or otherwise, under this Agreement. Upon termination or expiration of this Agreement, Contractor will return to City upon request all copies of materials related to the Project, including the Confidential Information and subject to Contractor's right to use Educational Records. All confidential obligations contained herein (including those pertaining to information transmitted orally) will survive the termination of this Agreement. The Parties



agree to ensure that their respective employees, agents, and contractors are notified of the requirement to comply with these obligations.

- 8.16 Public Information Act. The Public Information Act, Government Code Section 552.021, requires the City to make public information available to the public. Under Government Code Section 552.002(a), public information includes information that is 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 City receives a request under the Public Information Act (i.e., an open records request) for information within Contractor's possession pursuant to this Agreement, Contractor will forward the requested documents to the City within two (2) Contractor 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) Contractor business days of Contractor's receipt of the request. For the purposes of communicating and coordinating with regard to public information requests, all communications shall be made to a 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. The Parties will cooperate with each other to preserve confidential information or records that may be excluded from disclosure under FERPA)and/or the Texas Public Information Act; and the parties will coordinate efforts to seek any required Attorney General decision for the protection of such information from release.

- 8.17 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 record produced by or on the behalf of Contractor pursuant to this Agreement will be the subject of any copyright or proprietary claim by Contractor; however Contractor will be entitled to maintain the confidentiality of Educational Records and to use such records for educational purposes.

With the exception of student records, Contractor acknowledges and agrees that all local government records produced in the course of the work required by this Agreement, are public information and will be made available to the City at any time unless otherwise prohibited by law. The parties agree that Educational Records created pursuant to this Agreement will be maintained and utilized by Contractor as required by law. Contractor further agrees to turn over to City all such records upon termination of this Agreement, unless otherwise prohibited by law. Contractor agrees that it will not, under any circumstances, release any records created during the performance of the Agreement to any entity without the written permission of the Director of DHS, unless required to do so by a court of competent jurisdiction or the Texas Attorney General, or as may be required or permitted by Contractor due to the record being an Educational record" under FERPA. DHS will be notified of such request in accordance with this Article.

- 8.18 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 subject to confidentiality obligations as may be required by federal



and /or state law for Educational Records. 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.

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.

- 8.20 **HIPAA.** Subject to obligations to maintain confidentiality under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the HIPAA Business Associate Agreement, attached to and included in this Agreement as Attachment V, and subject to the requirements of FERPA 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 Agreement 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; subject, however to Contractor's continuing rights regarding Educational Records." City agrees that it will not release to the public Educational Records that come into its possession unless otherwise authorized by law.

#### IX. INSURANCE

- 9.1 Contractor and the City each maintain adequate general liability insurance coverage and self-insurance for worker's compensation claims and causes of action to meet their statutory obligations to each party's employees.

#### X. LIMITED LIABILITY

- 10.1 **CONTRACTOR AND THE CITY ACKNOWLEDGE THEY ARE POLITICAL SUBDIVISIONS OF THE STATE OF TEXAS AND ARE SUBJECT TO, AND COMPLY WITH THE APPLICABLE PROVISIONS OF THE TEXAS TORT CLAIMS ACT, AS SET OUT IN THE CIVIL PRACTICE AND REMEDIES CODE, SECTION 101.001, ET. SEQ., AND THE REMEDIES AUTHORIZED THEREIN REGARDING CLAIMS OR CAUSES OF ACTION THAT MAY BE ASSERTED BY THIRD PARTIES FOR ACCIDENT, INJURY OR DEATH.**

#### XI. THIS ARTICLE INTENTIONALLY LEFT BLANK

#### XII. APPLICABLE LAWS

- 12.1 Contractor, and all of the work performed under this Agreement, 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. Contractor may request additional time to come into and demonstrate compliance, unless immediate compliance is required by the applicable Head Start regulations, the Head Start Act, or Public Information Act. Should the City need to abide by some other law, rule, regulation, policy or procedure, such requirement will be made known to Contractor upon consideration of Contractor's request for additional time.



12.2 Contractor understands that certain funds provided it pursuant to this Agreement are funds which have been made available by the City's General Operating Budget and/or by federal, state, or other granting entities. Contractor agrees to comply with all laws, ordinances, codes, rules, regulations, policies, and procedures, including licensing and accreditation standards applicable to the funds received by Contractor as directed by the City or as otherwise required in this Agreement, including but not limited to:

- (A) The Head Start Act (42 U.S.C. §9831 *et seq.*, as amended);
- (B) 45 C.F.R. Part 1301 *et seq.*;
- (C) The Terms of the 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 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 to the funds received by Contractor hereunder;
- (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.

12.3 Contractor further understands and agrees:

- (A) Contractor will comply with all 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 and as applicable. Contractor agrees to report each violation to City and understands that 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 Agreement 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 (18 U.S.C. §874 and 40 U.S.C 3145), as applicable under Appendix II of the OMB Uniform Guidance 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 applicable under Appendix II of the OMB Uniform Guidance, 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 included in this Agreement as **Attachment VI**, and to include a provision requiring compliance with 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. §§11301 *et seq.* and 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 applicable under Appendix II of the OMB Uniform Guidance, and 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 VI, 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 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 services to children or for the use of the employees of the City or Contractor who provide such services.
  - (J) to 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, and to ensure compliance of any and all subcontractors when applicable.
- 12.4 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 could subject the Contractor to suspension of payments, termination of Agreement, and debarment and suspension actions.
- 12.5 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, and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age, disability, or political belief or affiliation, 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 Orders 13665 and 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.
- 12.5.1 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 VI



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.

- 12.6 Contractor warrants that any and all taxes that 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 Agreement. Contractor will comply with all applicable local, state and federal laws related to and including, but not limited 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.
- 12.7 Contractor agrees to comply with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.*, and all regulations thereunder.
- 12.8 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.
- 12.9 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 of the Agreement.

### **XIII. NO SOLICITATION/CONFLICT OF INTEREST**

- 13.1 Contractor warrants that no person, selling agency or other organization has been retained to solicit or secure this Agreement for a commission, percentage, brokerage, or contingent fee, and further that no such arrangement exists or has existed with any employee of Contractor or City. For breach or violation of this warrant, City will have the right to terminate this Agreement without liability or, at its discretion, to deduct from the Agreement, or otherwise recover, the full amount of such arrangement, or to seek such other remedies as legally may be available.
- 13.2 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 Agreement. 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.
- 13.3 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 private gain for themselves or others, particularly those with which they have family, business, or other ties.
- 13.4 No member of City's governing body or staff who exercises any function or responsibility in the review or approval or carrying out of this Agreement 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 Agreement.
- 13.5 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 (10) percent or more of the voting stock or shares of the entity, or ten (10) percent 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.

- 13.6 Contractor warrants and certifies, and this Agreement is made in reliance thereon, that neither the Contractor nor his or her spouse, parent, child, sibling or first-degree relative is a City officer or employee as defined by Section 2-52(e) of the City Ethics Code. If Contractor is a business entity, the Contractor 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 (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity). Contractor further warrants and certifies that is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

#### XIV. TERMINATION

- 14.1 (A) Termination for Cause. Upon written notice in accordance with the official communication provisions in this Agreement, City may terminate this Agreement as of the date provided in the notice in whole or in part, upon the occurrence of either:

- (1) Failure to fulfill, in a timely and proper manner, obligations under this Agreement to include performance standards established by the City or HHS, or violation of any of the covenants, conditions, or stipulations of this Agreement; or
- (2) 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 Head Start 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 Head Start Program.

(B) Termination for Convenience. This Agreement may be terminated in whole or in part upon providing notice in accordance with the official communication provisions of this Agreement, notice which must specify a date, not sooner than 120 days following the day on which notice is sent but not later than the end of Contractor's fiscal year, unless earlier terminated under any other provision herein.

- 14.2 Contractor will be entitled to receive just and equitable compensation for any work satisfactorily completed prior to any termination date. Satisfactory completion will be reasonably determined by the City, and its decision will be final. If compliance falls under HHS authority to review, or if a dispute arises with regard to interpretation of regulations or law as it applies to this Agreement, Contractor may request that the City secure an interpretation or opinion from HHS in order to assist in resolution of the dispute and the City will request it.
- 14.3 In addition to any other remedy in this Agreement or by law, the City may delay, suspend, limit, or cancel, upon reasonable written notice, the funds, rights or privileges herein given Contractor for failure to comply with the terms and provisions of this Agreement. Specifically, at the option of the City, 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 Agreement. The Contractor will not be relieved of liability for damages sustained by the City by virtue of any breach of this Agreement and City may withhold funds due as damages, in addition to retaining and utilizing any other remedies available to City.
- 14.4 If an employee of Contractor is discharged or leaves employment with Contractor, then Contractor will pay in full to the employee all of his or her earned salaries and wages, within the timeframe specified by law.
- 14.5 Should the Contractor be debarred by the federal government or the City pursuant to a debarment policy currently existing or hereafter adopted, the debarment may be grounds for termination.



- 14.6 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 Agreement. City will pay Contractor the full cost of obligations that were not legally 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 Agreement.

#### **XV. PROHIBITION OF POLITICAL ACTIVITIES**

- 15.1 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.
- 15.2 Contractor agrees that no funds provided under this Agreement may be used in any way to attempt to influence a member of Congress, or other State or local elected or appointed official.
- 15.3 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 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 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.
- 15.4 To ensure that the above policies are complied with, Contractor will provide every member of its personnel paid out of Agreement funds with a statement of the above prohibitions and have each 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.
- 15.5 Contractor agrees that if an investigation of the above is ongoing or has been confirmed based upon then current reasonable evidence of impropriety, salaries paid to the Contractor under this Agreement may, at the City's discretion, be withheld until the situation is resolved.
- 15.6 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.

#### **XVI. PERSONNEL**

- 16.1 Contractor must 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 effective oversight of Program operations. Contractor must ensure that, at a minimum, Contractor's Program staff are responsible for each program management function listed in the Scope of Work.



- 16.2 Classroom Staff. Contractor acknowledges and agrees that Head Start guidelines and City policy require that Contractor staff each Head Start classroom with two teachers, or one teacher and a teacher's aide, at all times. To the fullest extent possible, Contractor will staff each classroom with a volunteer in addition to the two paid staff positions. Contractor must assign adequate staff to fully implement all areas of Program operations, including those needing specific management abilities and / or expertise.
- 16.3 Compliance Report. At the beginning of the Agreement Term and any Renewals, Contractor will submit to City a report which specifically (a) lists the number and percentage of classroom personnel in its center based program having child development associate ("CDA") credentials or associate, baccalaureate or advanced degrees; and (b) describes Contractor's compliance with the goals described in this Article.
- 16.4 Teachers. Contractor understands that the Head Start Act requires grantees and their contractors, if any, ensure, and demonstrate upon request, that all of the teachers staffing center-based program classrooms have (a) a baccalaureate or advanced degree in early childhood education; or (b) a baccalaureate or advanced degree with coursework equivalent to a major relating to early childhood education, with experience teaching preschool-age children. During the term of this Agreement, Contractor will only employ teachers meeting the necessary qualifications.
- 16.5 Teaching Assistants. Contractor understands that the Head Start Act requires grantees and their contractors, if any, ensure, and demonstrate upon request, that all teaching assistants staffing center-based program classrooms (a) have at least a CDA credential; or (b) are enrolled in a program leading to an associate or baccalaureate degree; or (c) are enrolled in a CDA credential program to be completed within two years of the time of hire. During the term of this Agreement, Contractor will only employ teaching assistants in the Head Start classroom meeting the necessary qualifications.
- 16.6 Education Coordinators. Contractor understands that the Head Start Act requires grantees and their contractors, if any, ensure, and demonstrate upon request, that all Head Start education coordinators in its center-based programs, including those who serve as curriculum specialists: (a) have the ability to offer assistance to other teachers in the implementation and adaptation of curricula to the group and individual needs of children in the classroom; and (b) have (i) a baccalaureate or advanced degree in early childhood education or (ii) a baccalaureate or advanced degree with coursework equivalent to a major relating to early childhood education, with experience teaching preschool-age children. During the term of this Agreement, Contractor will only employ education coordinators meeting the necessary qualifications.
- 16.7 Professional Development. Contractor agrees and acknowledges that each of its Head Start teachers will attend not less than 15 clock hours of professional development per Contractor fiscal year. The term "professional development" means high-quality activities that will improve the knowledge and skills of teachers and staff, as relevant to their roles and functions, in Program administration and the provision of services and instruction.
- 16.8 Administrators. Contractor understands the Head Start Act requires grantees and their contractors, if any, ensure and demonstrate upon request that all Head Start staff have the knowledge, skills, and experience they need to perform their assigned functions responsibly. Therefore, at a minimum, Contractor agrees that Contractor's Head Start Director and all Program center site directors, site managers, content coordinators and other administrators must have education or training in the area of early childhood education and family support. To meet these obligations, Contractor will:
- (A) only employ a Head Start Director, and Program center site directors, site managers, content coordinators and other Program administrators meeting the necessary qualifications;
  - (B) promptly notify City of any transfers and/or disciplinary actions affecting Head Start personnel referred to in subsection (A) of this Section; and
  - (C) ensure, in the event a Head Start position referred to in subsection (A) of this Section is vacated for any reason, that a replacement meeting the necessary qualifications is hired within 45 calendar days or, following notification to City of a delay, as soon as reasonably practical, but not later than 60 days after the position first became vacant unless the parties come to a new mutually acceptable deadline.



- 16.9 Professional Development Plan. Contractor will create and implement, in consultation with each of its employees, a Professional Development Plan for all Program employees who provide direct services to children. Contractor will regularly evaluate the Plans to determine their impact on teacher and staff effectiveness.
- 16.10 Wages & Salaries.
- (A) Contractor understands 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. For purposes of this Agreement, the City will accept the wage information set forth in the most recent study commissioned or issued by, the Texas Association of School Boards, in determining the appropriate rate. 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 logical and reasonable reimbursement under the Agreement and its decision shall 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 Agreement budget.
- (B) Contractor expressly understands and agrees that in accordance with 42 U.S.C. §9848, no portion of the Agreement 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 Head Start Grant (e.g., employees who are funded at 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) Contractor agrees to comply with all applicable federal regulations regarding the setting of, and maximum amount allowable for, salaries of Contractor's employees.
- 16.11 Complaints & Grievances. 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.
- 16.12 Job descriptions. Contractor agrees to place written job descriptions for Head Start personnel in individual personnel folders, or online, for each position, and provide the specific job description(s) to the City upon request. All descriptions must be filed or online no later than the expiration date of this Agreement.
- 16.13 List of Employees. Contractor agrees to provide the City with the names and license registration of any employee(s) of Contractor regulated by State law whose activities contribute towards, facilitate, or coordinate the performance of this Agreement.
- 16.14 Relatives. Chief Executive Officers, directors and other supervisory personnel may not supervise a spouse, parent, child, sibling, or in-laws of the same relationship (collectively, "Relatives") who are in any capacity supported by Agreement funds. Relatives, however, may be co-workers in a non-supervisory position.

## XVII. ADVERSARIAL PROCEEDINGS

- 17.1 Except in circumstances where the following is in conflict with federal law or regulations pertaining to the Head Start Program, Contractor agrees to comply with the following special provisions:
- (A) Under no circumstances will the funds received under this Agreement 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.



## XVIII. FEDERAL AND CITY-SUPPORTED PROJECT

- 18.1 This Section is applicable to all publicity, public presentations, signs, public notices, and other informational material intended for the public, to include electronic media, (collectively, "Materials") prepared and/or disseminated during the Term of the Agreement 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 City and Contractor will be mutually agreed to by the Parties in advance. Contractor agrees that all Material(s) regarding the Program shall provide a written statement acknowledging the role of the federal funds provided by HHS through City, which must read as follows: "The City of San Antonio Head Start Program services provided by the Edgewood Independent School District are funded by the City of San Antonio, Department of Human Services, through a federal grant received from the U.S. Department of Health and Human Services." These Materials include, but are not limited to, signs identifying facilities. In addition, all publicity related to Contractor's services must note that the Program is operated on a non-discriminatory basis.
- 18.2 Contractor further agrees to provide City with a copy of all proposed official communications to the public, Head Start parents and employees as it may relate to City's implementation of City's Head Start Program model or the transition of the Program, and to obtain City's approval prior to dissemination.

## XIX. PROPERTY, EQUIPMENT AND SUPPLIES

- 19.1 Ownership. 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 Agreement termination, for whatever reason. Contractor agrees to relinquish and transfer possession of and, if applicable, title to such equipment/property without the requirement of a court order. Equipment that has reverted to Contractor through a City-paid lease agreement with option to buy will be considered the same as though purchased outright with Agreement funds.
- 19.2 Disposal, Loss, and Transfer.
- (A) Contractor agrees that no equipment purchased with Agreement funds may be disposed of without receiving prior written approval from DHS. In cases of theft or loss, it is the responsibility of Contractor to replace it with like equipment and value at the time of the theft or loss, with funds other than Agreement funds and in compliance with the appropriate property standards. All replacement equipment will be treated in the same manner as equipment purchased with Agreement funds.
- (B) City reserves the right to require transfer of property acquired with funds awarded under this Agreement as provided in 45 C.F.R. Part 75, including but not limited to §75.316 *et seq.*
- 19.3 Records. Contractor will maintain accurate and complete records on all equipment and property obtained with Agreement 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 ("City of San Antonio Head Start Program"); and
- (G) A list of disposed items and disposition
- 19.4 Inventory Tracking System. Contractor will maintain a system for tracking, on an ongoing basis, inventory of equipment and supplies purchased with Head Start funds that either (i) has a purchase price of \$5,000.00 or greater; or (ii) meets other criteria as City may prescribe (and notify Contractor 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 system.

Upon request, Contractor will provide DHS an annual inventory of assets purchased with Program funds.



- 19.5 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 Agreement funds. Contractor will inform City of incidents of loss, theft, damage or destruction of equipment or property, excluding supplies and consumables, purchased or leased with Agreement funds.
- 19.6 All equipment purchased under this Agreement must be fully insured against fire, loss and theft. Contractor, at a minimum, will provide the equivalent insurance for real property and equipment acquired with Agreement funds as provided to other property acquired or owned by the Contractor.
- 19.7 Contractor must fully comply with the property and equipment requirements of 45 C.F.R Part 75, including but not limited to Sections 75.316 through 75.323, 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
- 19.8 Purchase thresholds. For equipment, property or supplies purchases in the amount of \$5,000.00 or greater or cumulative purchases in the amount of \$100,000.00 or greater, Contractor must obtain prior approval from DHS. Contractor will not split the purchase of a line item with a value greater than the preceding thresholds in order to avoid obtaining approval from DHS.
- 19.9 Third Party Beneficiary. Contractor acknowledges and agrees that City is the intended third-party beneficiary of any and all facility leases with third-parties to which Contractor is or becomes a party in connection with the approved Program sites listed in Exhibit I-A to Attachment I, or as a consequence of this Agreement. As such, Contractor will use its best efforts to execute an acknowledgment prepared by City that City is an intended third-party beneficiary of such lease. Contractor will honor all of its material obligations under any and all such leases. Contractor will stay in good standing under any and all leases and Contractor will immediately notify City in writing in the event of any breach or alleged breach of any lease that could result in its termination. Contractor will submit to City for review and approval all non-disturbance, subordination and similar agreements it is requested to execute in connection with any such lease. If an event gives rise to a right of first refusal in favor of Contractor under any such lease, Contractor will promptly notify City of the event and allow City to step into Contractor's shoes as tenant under the lease in order to exercise the right.

## XX. TRAVEL

- 20.1 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 Contractor, and 2) must fully comply with Contractor's own established mileage recording policies. Mileage records are subject to spot-checks by City auditors and monitors. Contractor will strongly encourage participation by its employees in an approved defensive driving course.
  - (B) Contractor agrees that in order to obtain reimbursement of costs associated with budgeted out of town travel for business in connection with this Agreement, Contractor will:
    - 1) obtain City's prior approval, unless the expense has been previously approved as part of Contractor's budget, and provide City with detailed documentation, (any amount over



- approved budgeted amount must be pre-approved by City or such overage will not be paid),
- 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 upon request.

#### **XXI. NO USE OF FUNDS FOR RELIGIOUS ACTIVITIES**

- 21.1 Contractor agrees that none of the performance rendered will involve, and no portion of the funds received 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.

#### **XXII. DEBARMENT**

- 22.1 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.
- 22.2 Contractor will provide immediate written notice to City, in accordance with the notice requirements of Article XXVI, if, at any time during the Term of the Agreement, including any renewals hereof, Contractor learns that its certification was erroneous when made or has since become erroneous.

#### **XXIII. ASSIGNMENT**

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

#### **XXIV. AMENDMENT**

- 24.1 Any alterations, additions or deletions to the terms of this Agreement must be by amendment in writing executed by both Parties. The Director of DHS has the authority to execute an amendment of this Agreement without the necessity of seeking any further City Council approval if in the following circumstances:
- A. increases to the funding of this Agreement in an amount not exceeding (a) twenty-five percent (25%) of the total amount or (b) \$25,000.00, whichever is 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 of this Agreement that receive the prior written approval of the City's Risk Manager and the Director of DHS.
  - D. decreases (and increases) in Agreement funding based upon Program enrollment levels, and any modifications 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.
- 24.2 Contractor's Superintendent will have the authority to execute an amendment of this Agreement to the same extent as the Director of DHS under Section 24.1 of this Agreement without the necessity of seeking any further approval by Contractor's Board of Managers, if not otherwise prohibited by federal or state law or regulation or prohibited by Contractor's policies, rules or Board directives.



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

#### XXV. SUBCONTRACTING

- 25.1 None of the work or services covered by this Agreement may be sub-contracted without the prior written consent of the City and the Grantor, if required by Grantor. If allowed, subcontracting methods must meet City requirements; subcontractor compliance with this Agreement must be the responsibility of the Center to monitor.
- 25.2 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 that City has the authority to monitor, audit, examine, and make copies and transcripts of all sub-contracts, as often as deemed appropriate by City. If, in the sole determination of City, it is found that Contractor is not in compliance with said rules or standards with respect to any of its sub-contracts, then Contractor will be deemed to be in default of this Agreement, and will be subject to termination in accordance with the Termination article.
- 25.3 Any work or services for sub-contracting, may be sub-contracted only by written agreement, and unless specific waiver is granted in writing by City, will be subject by its terms to each and every provision of this Agreement. Compliance by sub-contractors with this Agreement will be the responsibility of Contractor. Contractor agrees that payment for services of any sub-contractor will be submitted through Contractor, and Contractor is responsible for all payments to sub-contractors.
- 25.4 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.
- 25.5 Contractor understands and agrees that all subcontracts in excess of \$10,000.00 must address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement.

#### XXVI. OFFICIAL COMMUNICATIONS

- 26.1 Except where the terms of this Agreement expressly provide otherwise, any communication under this Agreement 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, or upon receipt if sending the same by certified mail or a commercial courier service (e.g. Federal Express) at the addresses set forth below.

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

Contractor:  
Superintendent  
Edgewood Independent School District (EISD)  
5358 W. Commerce Street  
San Antonio, TX 78237

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.

#### XXVII. VENUE

- 27.1 The Parties agree that this Agreement 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.

#### XXVIII. GENDER

- 28.1 Words of any gender used in this Agreement 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.



#### **XXIX. REPRESENTATIONS AND OTHER OBLIGATIONS**

- 29.1 Contractor's signatory below represents, warrants and guarantees that (s)he has full legal authority to execute this Agreement 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. Upon request by the City, Contractor will provide DHS verification of the foregoing requirements.
- 29.2 This Agreement 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 Head Start services; and that Program funds disbursed to Contractor will be expended only for Allowable Costs in the implementation of the Contractor's 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 would not be used for the Program.
- 29.3 If circumstances arise which might result in interference with Contractor's ability to provide services under this Agreement, Contractor agrees to inform City of those circumstances immediately. 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.

#### **XXX. LICENSES AND TRAINING**

- 30.1 Contractor warrants and certifies that its employees and subcontractors have the requisite training, license or certification, and meet all competence standards promulgated by the appropriate authoritative bodies.

#### **XXXI. INDEPENDENT CONTRACTOR**

- 31.1 It is expressly understood and agreed that 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 has authority to bind the other nor to hold out to third parties that it has the authority to bind the other.
- 31.2 Nothing contained herein may be deemed or construed as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar relationship, between the Parties.
- 31.3 Any and all employees of Contractor, wherever located, while engaged in the performance of any work required by City under this Agreement will be considered employees of Contractor only, and not of 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 Contractor.

#### **XXXII. SEVERABILITY**

- 32.1 If any clause or provision of this Agreement 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 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 Agreement will be construed as if said clause or provision was never a part; it is also the intention of the Parties hereto that in lieu of said clause or provision, there be added to this Agreement 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 Agreement will be construed as a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee. Further, any failure of City to insist in any one or more cases upon the



strict performance of any of the covenants of this Agreement, or to exercise any possible option, will not be construed as a waiver or a future relinquishment of such covenant or option.

#### XXXIV. CONTRIBUTION PROHIBITIONS

- 34.1 Contractor acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory to a proposed contractual relationship that applies for a "high profile" discretionary contract, as defined by the City of San Antonio Contracting Policy and Process Manual, may not make a campaign contribution to any councilmember or candidate at any time from the tenth business day after the Request for Proposal (RFP) or Request for Qualifications (RFQ) or other solicitation is released, or for a contract for which no competitive solicitation has been issued by the City from the time the City begins discussions or negotiations, and ending on the 30<sup>th</sup> calendar day following the contract award. Contractor understands that if the legal signatory entering the Agreement has made such a contribution, the City may not award the Agreement to that contributor or to that contributor's business entity. Any legal signatory for a proposed high-risk contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response.
- 34.2 Contractor acknowledges that the City has identified this Agreement as high profile.
- 34.3 Contractor warrants and certifies, and this Agreement is made in reliance thereon, that the individual signing this Agreement has not made any contributions in violation of City Code section 2-309, and will not do so for 30 calendar days following the award of this Agreement. Should the signor of this Agreement violate this provision, the City Council may, in its discretion, declare the Agreement void.

#### XXXV. ENTIRE AGREEMENT

- 35.1 This Agreement and its attachments constitute the entire and integrated Agreement between the Parties and contain all terms and conditions, and supersede all prior negotiations, representations, or agreements, 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 Agreement.

This Agreement has been executed as of the date of the last party to sign below,  
the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**CITY OF SAN ANTONIO:**  
Department of Human Services

\_\_\_\_\_  
Melody Woosley, Director

Date

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant City Attorney

**CONTRACTOR:**  
Edgewood Independent School District (EISD)

\_\_\_\_\_  
Dr. Emilio P. Castro, Superintendent

2/22/18  
Date

\_\_\_\_\_  
Board President (if required)

#### ATTACHMENTS

- Attachment I – Scope of Work
- Attachment II – Program Budget
- Attachment III – Special Provisions
- Attachment IV – HHS Award Document
- Attachment V – HIPAA Business Associate Agreement, if applicable
- Attachment VI – Additional OMB Provisions



**SCOPE OF WORK**

**I. Summary**

The Contractor will ensure full enrollment as soon as reasonably possible in accordance with Head Start Performance Standards and will serve the number of income, age and categorically eligible children as indicated below. The Contractor will provide Head Start services in accordance with the Head Start Performance Standards as provided in Head Start Regulations, 45 CFR Part 1301 *et seq* with the Head Start Act, as amended, 42 U.S.C. 9831 *et seq*, 2018-2019 City policies (except as they may differ from this Agreement), the 2018-2019 Data Entry & Benchmark Due Date Guide, and with the terms of this Agreement. The Contractor will operate full-day classroom(s) at the City-approved sites for a minimum of 75,600 minutes of planned class operations for the Head Start grant period.

Number of children in full-day care on the first day of the program year	777
Minimum number of children with disabilities	78
Service Area	Children who reside in San Antonio and are served in the Independent School District

**2. Eligibility, Recruitment, Selection, Enrollment and Attendance (ERSEA)**

A. Contractor will have primary responsibility for the following activities: eligibility, recruitment, enrollment, selection, and attendance of children, in accordance with policies established by the City. Contractor will lead and work jointly with Family and Community Support Service staff conducting recruitment activities, receiving applications, determining eligibility, and completing enrollment forms for Contractor's service area. Contractor will comply with the eligibility, recruitment, selection, enrollment and attendance provisions of the Head Start Act, the Head Start Performance Standards, the City's program policies and other federal guidance related to the Head Start program.

B. Contractor will establish and maintain full funded enrollment of 777 Head Start eligible children in the Contractor's Program from the first day of operations, or as soon as reasonably possible in accordance with Head Start Performance Standards. Funded enrollment means the number of children which the Contractor is to serve, as indicated by the City and terms of this Agreement. To maintain full enrollment, Contractor must ensure that once it determines that a vacancy exists, no more than 30 calendar days may lapse before the vacancy is filled. Contractor will document its efforts to fill all vacancies within 30 calendar days.

C. If full funded enrollment is not maintained for a period of 30 days, the City may reduce Contractor's funding at the established per capita rate based on the difference between funded enrollment slots and actual enrollment. Contractor will develop at the beginning of each program year and maintain a waiting list that ranks children according to the program's selection criteria and ERSEA policies. Children on the waiting list may include children who are currently enrolled in the State Prekindergarten (Pre-K) program. If Contractor is under-enrolled and does not have a waiting list, the Contractor may fill Head Start vacancies from state Pre-K classes. City will have the right to place additional children in the Contractor's Program, in coordination with the Contractor, up to the point where the Contractor's Program is fully enrolled.

D. Contractor will develop a plan that includes recruitment, selection and enrollment services in accordance with City's established ERSEA policies and in a manner that will promote children receiving two (2) years of Head Start services or more, if appropriate. Contractor will submit to the City its August Program Design that establishes intact and separate 3-year old and 4-year old classrooms prior to the first day of school. Any changes to the Program Design must be reported to the City within two Contractor business days. If Contractor is unable to implement the required Program Design, Contractor will seek approval from the City prior to submitting an alternative Program Design.



E. Contractor will notify the city within forty-eight (48) hours of any Contractor policy, regulation, administrative decision, and/or any programmatic change that will impact the Program Design or reduce enrollment by five percent (5%) or more after the program year begins.

F. In accordance with the Head Start Act and subject to subsections (i) and (ii) of this Section 2(E), Contractor will ensure that a minimum of 10% of the children enrolled in Contractor's Program are children with disabilities who are determined to be eligible for special education and related services. Contractor must meet this 10% requirement by mid-point of the program year, as determined by the City.

- (i) If Contractor recognizes it is having difficulty in meeting the percentage of children with disabilities requirement during its enrollment, recruitment and selection period, Contractor must provide the City with the following:
  - a. a written description of specific steps the Contractor has taken to meet the requirement in the current program year to include efforts made to collaborate with the local agencies providing services under Section 619 and Part C of IDEA, and an explanation of why, despite these efforts, it was unable to meet the 10% requirement
  - b. a written confirmation from local Early Childhood Intervention (ECI) agencies of Contractor's efforts to actively collaborate with them to promote the enrollment of children with disabilities and specific efforts to recruit and enroll eligible children with disabilities; and
  - c. a written description of the Contractor's proposed approach to improve the enrollment of children with disabilities to reach the 10% requirement to include a description of how the ECI agencies in the community will work with the Contractor to implement this approach.
- (ii) Additionally, if Contractor is unable to meet the 10% requirement, the City will have the right to place additional children with disabilities in Contractor's Program up to the point where Contractor achieves a 10% enrollment of children with disabilities. City and Contractor will coordinate placement of additional children with disabilities.

F. Contractor agrees when the monthly average daily attendance rate in a center-based program falls below 85 percent, Contractor will initiate and collaborate with the City on the provision of absentee services in accordance with §1302.16 of the Head Start Performance standards. Absentee services include an analysis of the causes of absenteeism and the provision of additional support, which may include, but is not limited to, face-to-face meeting(s) with the family and other direct contact with the child's parents/legal guardians. Contractor will establish and maintain procedures for the removal of children from the program due to the lack of attendance in accordance with the City's policies.

**3. Submission of Center Information and Program Design**

A. At the beginning of each Program year but not later than August, Contractor will submit to the City for its approval a center list, which will include the number of centers and the name and address for each center operated by Contractor. When Contractor proposes a change to the center list, discussions will be held between the Contractor and the City; the Contractor will formally notify the City, and the Contractor will receive the City's prior approval to proceed with the change, which approval shall not be unreasonably delayed or denied.

B. Prior to execution and each renewal of this agreement, Contractor will submit to the City the Contractor's program design, which will include: the total number of children enrolled, number of sites, and number of classrooms, classroom age group designation, language designation, and hours of operation, among other things. If at any time Contractor proposes a change to the program design,



Contractor will discuss the proposed changes with City and then formally request and receive the City's approval prior to making said change, which approval will not be unreasonably delayed or denied.

4. **Program Services**

A. Contractor will provide Head Start Program Services (defined below) to eligible children in its School District. Such services will be provided to eligible children within Contractor's Service Area(s) without regard to race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, or political belief or affiliation. Any proposal to extend or modify the Service Area(s) or the sites at which services are to be delivered will be formally submitted in writing to City for approval.

B. Contractor will provide: (i) Education and Early Childhood Development Services; (ii) Child Disability Services; and (iii) Child Nutrition Services and will collaborate with City to ensure the provision of Family and Community Support Services, Child Mental Health Services, Medical Health and Dental Health Services to meet the needs of the children and families served by Contractor's Program ("Head Start Program Services"). Contractor agrees that, regardless of the fact that another Head Start service provider under the City of San Antonio Head Start program may be contracted to provide a category of service, Contractor will be responsible for coordinating with Head Start service providers and working with the City to ensure provision of a full array of services to which the children are entitled under the Terms of the Grant.

C. Contractor will 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 and support to ensure the effective oversight of the Head Start Program operations. Contractor will ensure at a minimum, the following program management functions are assigned to and adopted by staff within the Program:

- i. **Program management** must be assigned to an individual serving in the role of the Head Start Director. This individual must have demonstrated skills and abilities in a management capacity relevant to human services program management and must have ultimate responsibility for ensuring the children enrolled in Contractor's Head Start Program are provided (by Contractor or a collaborating Head Start service provider) the full array of services to which the children and families are entitled under the Terms of the Grant.
- ii. **Management of education and early childhood development** must be assigned to an individual serving in the role of an Education and Early Childhood Development Coordinator. This individual and any additional supporting staff or consultants must have training and experience in areas including theories and principles of child growth and development, early childhood education, and family support. Staff and consultants must meet the qualifications for classroom teachers, as specified in the Head Start Act, Section 648A, and any subsequent amendments.
- iii. **Management of health services** including medical and dental health must be assigned to an individual serving in the role of Health Services Coordinator. The City recommends this individual and any additional supporting staff or consultants have training and experience in public health, nursing, health education, maternal and child health, or health administration. Contractor must also coordinate with health service providers and follow established protocols to facilitate health care providers' ability to ensure children receive all the required Head Start health services.
- iv. **Management of child nutrition services** must be assigned to an individual serving in the role of Nutrition Services Coordinator. This individual and any supporting staff or



consultants must be supported by those who are registered dietitians or nutritionists. This person must also coordinate with City and City's nutrition service provider(s).

- v. **Coordination with mental health services** must be assigned to an individual serving in the role of Education and Early Childhood Development Coordinator, Family & Community Support Services Coordinator, Health Services Coordinator, or Disabilities Coordinator. The City recommends this individual have experience in serving children and families with mental health needs. This person must also coordinate with City and City's mental health services provider(s).
- vi. **Coordination with family and community support services staff**, including parent activities, must be assigned to an individual serving in the role of Family and Community Support Services Liaison. The City recommends this individual and any supporting staff or consultants have training and experience in field(s) related to social, human, or family services, and coordinate with City. It is also recommended that parent involvement services be supported by staff or consultants with training, experience, and skills in assisting the parents of young children in advocating and decision-making for families.
- vii. **Management of disabilities services** must be assigned to an individual serving in the role of Disabilities Coordinator or Education and Early Childhood Development Coordinator. This individual and any supporting staff or consultants must have training and experience in securing and individualizing needed services for children with disabilities, and will coordinate with City.
- viii. **Management of ERSEA responsibilities** must be assigned to an individual serving in the role of ERSEA Coordinator. This individual and any supporting staff or consultants must have knowledge, training and experience in the eligibility, recruitment, selection, enrollment and attendance provisions of the Head Start Act, the Head Start Performance Standards, the City's program policies and other federal guidance related to the Head Start Program.
- ix. **Management of monitoring responsibilities** must be assigned to an individual serving as the Monitoring Coordinator. This individual and any supporting staff or consultants must have knowledge, training and experience with the Head Start Performance Standards, the Head Start Act, and monitoring of the Head Start Program. Contractor will ensure these individuals further develop their knowledge of the various Head Start content areas.
- x. **Coaching responsibilities** must be assigned to individuals serving as Coaches or individuals assigned to provide coaching support. These individuals and any supporting staff or consultants must have a minimum of a baccalaureate degree in early childhood education or a related field as well as adequate training and experience in adult learning and in using assessment data to drive coaching strategies.
- xi. **Safe Environments and Facilities management of responsibilities** must be assigned to an individual serving as Safe Environments and Facilities Coordinator or an individual assigned to provide support. This individual and any supporting staff or consultants must have adequate training and experience in safe environments and facilities.

Contractor will ensure members of program's management team and any other necessary staff provides uninterrupted Head Start Program management services throughout the Agreement term, including the summer months to ensure adequate planning, coordination and performance of critical program activities. Critical program activities include, but are not limited to, ongoing recruitment activities and services, determination of eligibility and selection, development of a waitlist for the upcoming school year, and completion of enrollment.



D. Contractor will provide the following education and early childhood development services in compliance with the requirements of 45 C.F.R Part1302.31, *et. seq.*:

- i. Contractor must help children gain the skills and confidence necessary to be prepared to succeed in their present environment and with later responsibilities, in school and in life. The Contractor's approach to child development and education must be developmentally and linguistically appropriate; recognize the child's rate of development, language, cultural background and learning style; be inclusive of children with disabilities; provide an environment of acceptance that supports and respects gender, culture, language, ethnicity and family composition; provide a balanced daily program of child-initiated and adult-directed activities; and allow and enable children to independently use toilet facilities when it is developmentally appropriate and the efforts are supported by the parents.
- ii. Contractor will encourage and support parents in their efforts to become involved in the development of the program's curriculum and approach to child development and education; provide opportunities to increase parents' child observation skills and share assessments with staff that will help plan the learning experience; and encourage parents to participate in staff-parent conferences and home visits to discuss their child's development and education.
- iii. Contractor must support social and emotional development by encouraging development which enhances child's strengths by building trust; fostering independence; encouraging self-control and respect for the feelings and rights of others; supporting and respecting the home language, culture, and family composition in ways that support the child's health and well-being; and planning for routines and transitions.
- iv. Contractor must provide for the development of each child's cognitive and language skills by supporting each child's learning, using various strategies including experimentation, inquiry, observation, play and exploration; ensuring opportunities for creative self-expression through activities such as art, music, movement, and dialogue; promoting interaction and language use among children and between children and adults; and supporting emerging literacy and numeracy developments through materials and activities according to the child's developmental level.
- v. Contractor must promote each child's physical development by providing sufficient time, indoor and outdoor space, equipment, materials and adult guidance for active play and movement that support the development of gross and fine motor skills according to the child's developmental level; and providing an appropriate environment and adult guidance for the participation of children with special needs.
- vi. Contractor, in collaboration with parents, must implement a researched-based curriculum that aligns with the Head Start Early Learning Outcomes Framework (HSELOF, 2015), and state Prekindergarten Guidelines that supports each child's individual pattern of development and learning; provides for the development of cognitive skills; integrates all educational aspects of health, nutrition, and mental health services into program activities; helps children develop emotional security, facility in social relationships, feelings of competence, self-esteem, and positive attitudes toward learning; enhances each child's understanding of self as an individual and as a member of a group; and provides individual and small group experiences both indoors and outdoors.
- vii. Contractor must implement a plan of action to achieve school readiness goals that are age appropriate and will address, at a minimum, the domains of language, literacy, cognition, motor and physical well-being, social and emotional development and



approaches to learning; and achieve integration with the Parent, Family, and Community Engagement Framework. Contractor will participate in updating school readiness goals on an annual basis: analyze achievement: and identify areas for improvement. As part of this plan of action, the Contractor must align the program's curriculum with school readiness goals to include improving the quality of teacher-child interactions, evidence-based teaching practices, and curriculum and inclusion of parents to support school readiness.

- viii. Contractor will assess child progress on an ongoing basis, conduct data aggregation, and submit analyses of child progress assessments to the City at least three times per year (at the beginning, midpoint and end of school year) to demonstrate program-level progress. Contractor will also provide the City direct access to the assessment data management system for the purposes of aggregating, analyzing, and producing program-wide reports. Contractor will make mid-year adjustments in instruction and/or professional development support should patterns or trends be identified in the analysis and coordinate with City, as needed. Contractor must maintain and use the information from ongoing child assessment data to inform teachers and survey parents on how best to individualize each child's learning and progress across domains.
  - ix. Contractor will implement a comprehensive training and professional development plan for all staff, consultants, and volunteers as it relates to the specifics below in compliance with the requirements of 1302.92
  - x. Contractor must provide Head Start orientation for all staff, consultants, and volunteers annually.
  - xi. Contractor will establish and implement a system for all staff to obtain 30 clock hours of professional development annually with a minimum of 15 hours focused on early education practices and pedagogy.
  - xii. Contractor will implement a research-based, coordinated coaching plan for all education staff, including teachers and paraprofessionals. The plan must include assessment of staff to identify strengths and needs, a method to determine staff in need of intensive coaching, and documentation of coaching provided.
  - xiii. Contractor will provide the written training, coaching and professional development plans to the City before the beginning of the program year
  - xiv. Contractor will provide data to the City in its possession related to student performance of Head Start students from kindergarten through third grade.
- E. Contractor will perform the following services as it relates to the specific service listed below in compliance with the requirements of 45 C.F.R Chapter XIII Parts 1302.40 – 1302.47 and 1302.33.

**i. Health Services**

- a. Contractor must, within 30 calendar days after each child first attends the program, consult with parents to determine whether each child has ongoing sources of continuous, accessible health care and health insurance coverage. If the child does not have such a source of ongoing care and health insurance coverage, the contractor must assist families in accessing a source of care and health insurance that will meet these criteria, as quickly as reasonably possible.



- b. Contractor must ensure the following occurs within 90 calendar days of each child's entry into the program and every school year: Obtain determinations from health care and oral health care professionals as to whether or not each child is up-to-date on a schedule of age appropriate preventive and primary medical and oral health care. This should be based on the well-child visits and dental periodicity schedules as prescribed by the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program of the Medicaid agency of Texas, and the latest immunization recommendations issued by the Centers for Disease Control and Prevention, as well as any additional recommendations from the local Health Services Advisory Committee. Contractor will assist parents with making arrangements to bring each child up-to-date as quickly as reasonably possible; and if necessary, directly facilitate provision of health services to bring the child up-to-date with parent consent.
  - c. Contractor will collaborate with the Head Start health service providers and Family and Community Support staff to develop and implement procedures for ongoing care to identify any new or recurring medical, dental, or developmental concerns so that it can quickly make the appropriate referrals.
  - d. Contractor must ensure the following occurs within 45 calendar days of each child's entry into the program and every school year: that the following services have been provided or health documents obtained: evidence-based vision and hearing screenings, current developmental screening to identify concerns regarding behavioral, motor, language, cognitive, and social and emotional skills. Contractor must use the information from the screening to address developmental, sensory, and behavioral concerns. Ongoing observations, medical and dental evaluations and treatments, and insights from the child's parents/guardians are to be utilized to help staff and parents/guardians determine how the program can best respond to each child's individual characteristics, strengths and needs.
  - e. Contractor must promote effective oral health hygiene by ensuring all children with teeth are assisted by appropriate staff, or volunteers, in brushing their teeth with toothpaste containing fluoride once daily.
  - f. Contractor must document in ChildPlus all referrals and services provided and monitor the implementation of a follow-up plan to meet any treatment needs associated with a health, oral health, social and emotional or developmental concerns.
  - g. Contractor must use program funds for the provision of diapers and formula for enrolled children during the program day. Contractor may use program funds for professional medical and oral health services when no other source of funding is available.
- ii. **Safety Practices**
- a. Contractor must establish, train staff, implement, and enforce a system of health and safety practices to ensure children are kept safe at all times and never left unsupervised. Contractor should consult *Caring for our Children Basics* for additional information to develop and implement adequate safety practices described in this section.
  - b. Contractor must develop and implement a system of management, including ongoing training, oversight, correction and continuous improvement in accordance with 1302.102 of Head Start regulations, that includes policies and



practices to ensure all facilities, equipment and materials, background checks, safety training, safety and hygiene practices and administrative safety procedures are adequate to ensure child safety. Contractor must establish, follow, and practice, as appropriate, procedures for, at a minimum: (i) emergencies, (ii) fire prevention and response, (iii) protection from contagious diseases, including appropriate inclusion and exclusion policies for when a child is ill, and from an infectious disease outbreak, including appropriate notifications of any reportable illness, (iv) the handling, storage, administration, and record of administration of medication, (v) maintain procedures and systems to ensure children are only released to an authorized adult, and (vi) child specific health care needs and food allergies that include an accessible plan of action for emergencies. For food allergies, Contractor must also post and make available, where staff can view as needed, any individual child food allergies wherever food is served.

- c. Contractor must maintain well-supplied first aid kits, appropriate for all ages served and the program size, at each facility and available on outings away from the sites.
- d. Contractor must establish, follow and practice, as appropriate, a disaster preparedness plan for events including natural and human-made disasters and emergencies, and violence in or near the program.

**iii. Child Nutrition**

- a. Contractor must implement nutrition services that are culturally and developmentally appropriate, meet the nutritional needs of, and accommodate, the feeding requirements of each child, including children with special dietary needs and children with disabilities. Family style meals are encouraged but not required. Contractor must identify each child's nutritional health needs, including special dietary requirements and food allergies.
- b. Contractor must ensure that each child in a program that operates for six hours or more per day receives meals and snacks that provide one half to two thirds of the child's daily nutritional needs, depending upon the length of the program day.
- c. Contractor must use funds from United States Department of Agriculture (USDA) Food, Nutrition, and Consumer Services child nutrition programs as the primary source of payment for meal services.
- d. Contractor must serve three- to five-year-olds meals and snacks that conform to USDA Code of Federal Regulation (CFR) parts 210, 220, and 226, and are high in nutrients and low in fat, sugar, and salt.
- e. Contractor must serve all children in morning center-based settings who have not received breakfast, upon arrival at the program, a nourishing breakfast.
- f. Contractor must make safe drinking water available to children during the program day.
- g. Contractor must report amount of meals and snacks served to Head Start children on a monthly basis to City.



**iv. Child Mental Health**

- a. Contractor must work collaboratively with parents to solicit information, observations, and concerns about their child's mental health; share staff observations of their child and discuss with parents their child's behavior and development.
- b. Subject to compliance with Section 38.010 of the Texas Education Code, Contractor will collaborate with the City to refer children, when appropriate, to the services of a mental health agency or mental health professional. Mental Health consultation services will be provided on a schedule of sufficient frequency to enable the timely and effective identification of and intervention in family and staff concerns about a child's mental health.

**v. Family and Community Support**

- a. Contractor, in collaboration with the City's Family and Community Support staff, must provide parent involvement and education activities that are responsive to the ongoing and expressed needs of the parents.
- b. Contractor and City will collaborate with the other service providers and community agencies to provide opportunities to enhance parenting knowledge, skills, and an understanding of the educational and developmental needs of their children.
- c. Contractor must conduct two (2) teacher home visits, unless parents expressly forbid such visits, and at least two (2) teacher-parent conferences per child per program year to enhance the knowledge and understanding of the educational and developmental progress and activities of children in the program. Contractor must not require that parents permit home visits as a condition of the child's participation in the program.
- d. Contractor, in collaboration with the City's Family and Community Support staff, must establish and maintain procedures to support successful transitions for enrolled children and families from previous child care programs into Head Start and from Head Start to elementary school; and assist parents in becoming their children's advocates as they transition.
- e. Contractor will provide office space, internet access with adequate network permissions, and faxing and printing capability for the Family Community Support staff assigned to their centers/campuses.

F. Contractor, in collaboration with City's Family and Community Support staff, will encourage parent participation and attendance in center Parent Connection Committee meetings, Head Start Policy Council, volunteer events, and other parent activities.

G. Contractor will participate in developing an annual School Readiness Plan of Action according to the timeline and requirements provided by the City. Such School Readiness Plan must be developed in compliance with the Head Start Program Performance Standards 1302.102(a)(3) and 1304.11(b)-(2)(i-ii). Each Provider will maintain a School Readiness Leadership Team that includes, at a minimum, teachers, site administrators, parents, and Education and Family and Community Support staff. The School Readiness Leadership Teams meet no less than twice per year to review and discuss outcomes as applicable to the defined school readiness goals.



H. Contractor will submit to City all Contractor eligibility, recruitment, selection, enrollment and attendance, and performance and staffing plans, which must be in accordance with the City's policies that are not in conflict with this Agreement, by established due dates.

I. Contractor will provide a substantial portion of the substantive programmatic work provided for under this Scope of Work, Attachment I, directly. However, should Contractor desire to perform this work through one or more sub-awards to third parties, Contractor will seek written approval from the City prior to doing so. In all such sub-awards, Contractor will ensure it passes through all of the requirements that apply to Contractor hereunder to the sub-recipient of such sub-awarded funds.

J. Contractor will establish and maintain an ongoing monitoring system 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 not in conflict with this Agreement, or terms of this Agreement. Contractor's monitoring system will be a Contractor-developed monitoring instrument or checklist prepared no less than quarterly, and must include monitoring of all fiscal matters relating to the Head Start Program and this Agreement. Contractor will make copies of monitoring reports available to the City upon request.

**5. Program Governance**

A. Contractor's Governing Board will be in full compliance with Head Start requirements regarding governance, management and programmatic operations applicable to recipients of Head Start grant funds, including those set forth at 45 C.F.R. §1301 *et. seq.*

B. Contractor will assure that City is kept fully apprised of the composition and actions of Contractor's Governing Board to the extent such actions affect Contractor's Head Start Program.

C. Contractor will seek and obtain the City's written approval before making any material revisions in Contractor's Head Start Program that conflicts with or violates (i) the City's refunding application, as amended, to the U.S. Department of Health and Human Services (HHS), (ii) the Terms of the Grant, (iii) the terms of this Agreement or (iv) the approved locations of Contractor's Head Start centers.

D. Contractor will collaborate with the City and Family and Community Support staff to elect one or more parent members from center locations to serve on City's Head Start Policy Council in accordance with the Policy Council By-laws.

**6. Financial and Program Reports**

Additionally, Contractor will maintain and furnish to City the following financial and programmatic information and reports, and required Data Entry & Benchmark Due Date, in such forms as the City may prescribe, and any others as may be required pursuant to the Head Start Act, as amended, and 45 C.F.R. Chapter XIII. If a following information or report due date falls on a weekend or holiday, then it will be due by the following business day.

- A. End of the Month (EOM) Enrollment Report containing the information for the preceding month, submitted upon request;
- B. Head Start Service Provider total amount of United States Department of Agriculture (USDA) reimbursement received for Head Start children and staff will be submitted on a monthly basis;
- C. The total amount of public and private funds received by Contractor and the amount from each source;
- D. Financial reports showing all actual and/or projected costs of the Program, an explanation of budgetary expenditures, Program Income, and non-Federal Share amounts;



- E. The results of the most recent financial audit involving the Head Start Program;
- F. Reports showing employee credentials and a list of personnel serving to satisfy Contractor's in-kind non-Federal Share requirement;
- G. Reports showing the wages of each employee;
- H. Student Assessment Data Analysis Report, as periodically required by the City;
- I. School Readiness Plan of Action update, due bi-annually, submitted as directed or when requested by City;
- J. Child Development Outcomes Progress Report based on Contractor's assessment tool, submitted as directed or when requested by City; and
- K. Any other information reasonably requested by City.

7. Licensure/Staffing

A. Contractor will obtain and maintain all necessary and appropriate State licenses, permits, certifications, and approvals required for the operation of Contractor's facilities and programs including those supported by this Agreement, unless exempt from such requirement. Upon commencement of the Agreement and any renewal thereafter, Contractor will notify the City that it is in compliance with this provision. If at any time Contractor is out of compliance with this provision, Contractor will 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 will take all necessary steps to cure such violation. Contractor further agrees all personnel, either employed or contracted, assigned by Contractor to perform the Head Start Program Services set forth above will, as appropriate or required by law, be fully qualified and authorized under applicable law, to perform such Head Start Program Services.

B. Contractor will ensure that staffing will comply with the Head Start Performance Standards, this Agreement, and other applicable law.

8. Facilities

All Contractor facilities at the approved sites will meet applicable federal, state and local safety standards. Contractor will at all times during the term of this Contract, keep the facility, including play grounds, campus and classroom furniture and equipment, kitchens, restrooms and other areas within the building in good, clean, safe, and reasonable operating condition and repair, and in compliance with the Head Start Performance Standards, and any other required direction received from HHS.

If facilities are found to be out of compliance with Head Start Health and Safety standards, the Contractor will take corrective action in accordance with subsection B below. City will be allowed to inspect the facilities and the licensing and/or certification documents relating to the facility during Contractor's normal operating time as long as the said inspection does not disrupt the delivery of Head Start Program Services or at any other time as agreed by the Contractor. Upon commencement of this Agreement, or any renewal thereafter, and upon request, Contractor will provide City an up-to-date copy of any leases or other agreements (as well as any amendments or modifications thereto) for facilities used to provide services to children enrolled in the Head Start program and funded pursuant to this Agreement.

A. In the case of non-compliance with the Head Start Health and Safety standards, the City will notify the Contractor via a monitoring report with photographs when possible.



B. When any work order request is submitted for necessary internal repair at Head Start Centers/Campuses, Contractor will address each problem within 10 Contractor business days from the submission of the work order or from the time the need for repair is brought to the attention of Contractor, whichever is earlier. For larger and/or more expensive projects, when 10 days is not practicable, the Contractor will notify the City in writing of the timeline for projected completion.

C. City will follow up on all Health and Safety non-compliances immediately following the 10 Contractor business days for corrective actions to be completed and submit a follow-up report stating either completed or not completed.

**9. Participation**

Contractor will 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 plans, communication and program development activities; (ii) participation in technical assistance trainings and service enhancements developed by City and the Head Start training and technical assistance service providers, as well as other Head Start trainings that may be developed by relevant federal or state agencies; and (iii) an appropriate level of attendance of Contractor's program management team and parent committee meetings at national, regional and/or state Head Start conferences/trainings.

Contractor, in collaboration with Family and Community Support staff, will ensure that resources are made available through reasonable accommodations to low-income parents to participate in, and attend Parent Connection Committee meetings.

**10. Transportation Services/Vehicles**

Contractor will provide transportation services in compliance with the requirements of 45 CFR part 1303.75, et. seq., subject to any waiver that may be obtained by City and/or Contractor.

A. Contractor will successfully complete an annual inspection of all school buses and other vehicles used for the transportation of children under this Agreement.

B. Contractor will ensure that all drivers be certified for the operation of said vehicles, and all bus monitors assigned to vehicles used to provide such services receive appropriate training. Contractor will otherwise be in compliance with all applicable federal, state, and local requirements governing the transportation of children.

C. Contractor will, upon request, submit to City a complete set of such documents regarding vehicles used for the transportation of children and the drivers operating the vehicles.



**Attachment II**

**[INSERT THE PROGRAM BUDGET]**



**ATTACHMENT III  
SPECIAL PROVISIONS — Program Year 2018-2019**

**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:**

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

**Each child’s Information:**

Client Number  
First Name  
Middle Initial  
Last Name  
Social Security Number (Optional)  
Birth Date  
Gender  
Race  
Handicap (Optional)

- 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.



**Attachment IV**

**[INSERT THE HHS AWARD DOCUMENT]**



WITNESSETH:

HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement is entered into by and between the City of San Antonio ("Covered Entity"), and Edgewood Independent School District, a Business Associate ("BA").

WHEREAS, the City of San Antonio and BA have entered into an agreement to provide Head Start services ("Service Contract"), effective July 1, 2018; and

WHEREAS, Covered Entity and BA may need to use, disclose and/or make available certain information pursuant to the terms of the Service Contract, 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 Service Contract 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 Agreement 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 Agreement, 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 CFR 160.103. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 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.



**Attachment V**

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

(6) "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.

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

(8) "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.

(9) 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 Agreement 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 Agreement, 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 Agreement;

(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 Agreement 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 Agreement 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;



**Attachment V**

(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 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 Agreement, 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 US 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 dated of the breach and date of discover; 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;

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

(12) 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 Agreement, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- (2) Except as otherwise limited in this Agreement, 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.
- (3) Except as otherwise limited in this Agreement, 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 Agreement shall commence on July 1, 2018. This Agreement shall terminate when all PHI encompassed by this Agreement 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 Service Contract or, if the BA does not cure the breach or end the violation within the time for cure specified in the Service Contract, end the violation and terminate this Agreement and the Contract; or (b) immediately terminate this Agreement and the Service Contract if BA has breached a material term of this Agreement 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 Agreement 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, except as required by law.

(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 Agreement 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 Agreement 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 Agreement.

I. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit Covered Entity to comply with the Privacy Rule.

J. Regulatory References. A reference in this Agreement 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 Agreement 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. **LIMITED LIABILITY.** *CONTRACTOR AND THE CITY ACKNOWLEDGE THEY ARE POLITICAL SUBDIVISIONS OF THE STATE OF TEXAS AND ARE SUBJECT TO, AND COMPLY WITH THE APPLICABLE PROVISIONS OF THE TEXAS TORT CLAIMS ACT, AS SET OUT IN THE CIVIL PRACTICE AND REMEDIES CODE, SECTION 101.001, ET. SEQ., AND THE REMEDIES AUTHORIZED THEREIN REGARDING CLAIMS OR CAUSES OF ACTION THAT MAY BE ASSERTED BY THIRD PARTIES FOR ACCIDENT, INJURY OR DEATH.*
- 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 Agreement 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 Agreement 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 Agreement constitutes the complete agreement between BA and Covered Entity relating to the matters specified in this Agreement, 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 Agreement and the terms of the Service Contracts or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Service Contract comply with the federal law and regulations commonly referred to as the Privacy Standards and the Security Standards. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. This Agreement 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 Agreement, nor shall any third party have any rights as a result of this Agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**



**Attachment V**

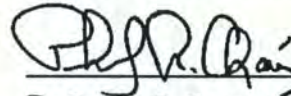
Q. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas.

**EXECUTED** to be effective on July 1, 2018.


**COVERED ENTITY**  
City of San Antonio

**BUSINESS ASSOCIATE:**  
Edgewood Independent School District

\_\_\_\_\_  
Melody Woosley, Director  
Department of Human Services

 for Dr. Emilio P. Castro  
Dr. Emilio P. Castro, Superintendent

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Assistant City Attorney



## **Attachment VI**

### **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.”

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



## Attachment VI

### **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.



## Attachment VI

(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.



## Attachment VI

### 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



## Attachment VI

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,



## Attachment VI

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,



## Attachment VI

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,



## Attachment VI

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.



## Attachment VI

### 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.



KD  
03/29/2018  
Item No. 19

# Attachment II







- (D) "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 Agreement.
- (E) "Equipment" and "property" means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit, and includes not only furniture and other durable property but also vehicles, although will not include supplies and consumables.
- (F) "Program Income" means earnings of Contractor realized from activities resulting from this Agreement 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 Agreement-supported services of individuals or employees or from the use of equipment or facilities of Contractor provided as a result of this Agreement; and if applicable, payments from clients or third parties for services rendered by Contractor pursuant to this Agreement
- (G) "Relevant HHS directives" means written directives of HHS or its subdivision, including the ACF, Head Start Bureau, Program Operations Division and ACF Region VI, including any updates.
- (H) "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), rules, Executive Orders, the award document from 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 the program design manual applicable to the Head Start Program, as such requirements exist as of the date of this Agreement and as such requirements may be established or modified (by amendment, deletion, addition or otherwise) during the period of the Agreement.
- 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. Such policies and procedures must be consistent with the Terms of the Grant, the policies and procedures approved by the City's Head Start 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 other Head Start services in the San Antonio and Bexar County area. Contractor agrees to allow the City's other such contractors access to the facilities leased and/or owned by Contractor, so long as access would not cause disruption of Contractor's educational activities or purpose as an educational entity. Contractor agrees to cooperate with City and third-party Head Start contractors to establish, modify and comply with a set of policies and procedures and/or a program design manual governing the City's Head Start Program and the protocol for collaboration between Head Start service providers. Contractor agrees that, notwithstanding the fact that another Head Start service provider under the City of San Antonio Head Start Program may be contracted to provide a category of service, Contractor, under the leadership of its Head Start Program Director, will be responsible for coordinating with Head Start service providers and working with the City to ensure provision of full array of services to which the children are entitled under the Terms of the Grant.

## II. TERM

- 2.1 Except as otherwise provided, this Agreement will begin on July 1, 2018 and will terminate on June 30, 2019, the end of the GY 18-19 budget period. The City, subject to continued award from HHS through the end of the project period, June 30, 2023, will have the option to periodically renew this Agreement, after review and approval by the City Attorney's Office, upon the Parties' signatures without the necessity of



further City Council approval. If renewed under these options, appropriate revisions will be made to the budget, associated due dates, and Scope of Work to reflect the Grant obligations and 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 **\$12,053,245.00** ("the Federal Share") during the period in which this Agreement is in effect for costs incurred in accordance with the Program Budget attached to and included in this Agreement 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 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 **\$3,013,311.00**) 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. If legally permissible, Contractor may provide additional Non-Federal Share funds if Contractor, in its discretion, determines such funds are available. To meet the requirements of this Agreement, all claimed Non-Federal Share must meet the requirements of 45 C.F.R. § 75.306, as applicable.
- 3.2 Prior to commencement of this Agreement, Contractor must submit for City approval, Contractor's proposed monthly budget by line item for the entire term of the Agreement along with its program budget, including detail by category alone. Until the City receives and approves the initial proposed monthly budget for the entire term of the Agreement, the City reserves the right to redirect Contractor's proposed funding under this Agreement. City will notify the Contractor of the amount redirected and revised Agreement funding. Additionally, beginning July 1,, 2018 and throughout the Term of the Agreement, Contractor will submit for City review quarterly forecasts of the projected expenses for each month remaining in the Agreement (e.g., for Q1, Contractor will submit the projected expenses by month for July, August, September and so on until June 30, 2019 by June 30, 2018; for Q2, Contractor will submit the projected expenses by month for October, November, December and so on by September 30, 2018). Contractor's budgeted development and administrative costs (as defined by 45 C.F.R. Part 1305) may not exceed twelve percent (12%) of the Program Budget, unless the total Program Budget is modified in accordance with this Agreement in which case the amount will be reduced proportionately unless the Parties otherwise agree.
- 3.3 Approval required. Contractor must seek and obtain City's prior written approval 30 calendar days before making budget modifications. City may make exceptions to the 30-day notice requirement on a case by case basis, but Contractor must make a request in writing or via email and be accompanied by a justification for the change and indicate which lines items are affected by such change
- 3.4 Contractor understands and agrees that should Contractor fail to meet or maintain (for a 30 day period) its funded enrollment level as set forth in the Scope of Work, City may reduce Contractor's funding by an amount equal to the difference between funded and actual enrollment at the per capita rate.
- 3.5 The funding level of this Agreement is based on an allocation from the following funding sources:  
  
U.S. Department of Health and Human Services (HHS) – Head Start Funds Catalog of Federal Domestic Assistance # 93.600  
  
Consequently, Contractor agrees to comply with the Terms of the Grant and Relevant HHS Directives, and with the Special Provisions, attached to and included in this Agreement as **Attachment III**.
- 3.6 It is expressly understood and agreed by the City and Contractor that the City's obligations under this Agreement are contingent upon the actual receipt of adequate Grant funds from HHS to meet City's liabilities. This Agreement may be terminated by the City if HHS terminates the City as a grantee or



reduces the amount granted to City, in which event the Parties will use best efforts to amend this Agreement 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 under this Agreement is limited to making reimbursements for Allowable Costs incurred as a direct result of services provided in accordance with the terms of this Agreement. All requested reimbursed costs must be consistent with the terms and provisions of the approved budget line items described in Attachment II of this Agreement, unless (a) in cases where the total Agreement 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 Agreement Budget, an amendment has been approved and signed by the Director of DHS pursuant to Section 24.1 of this Agreement ("budget amendment"). Approved budget revisions and amendments modify the Budget attached hereto, and in such cases Contractor's requested reimbursed costs must be consistent with the last revised, approved budget. Approved budget revisions and amendments supersede prior conflicting or inconsistent agreements with regard to the referenced Project Budget, and all references in the Agreement to the budget will mean the budget as revised through approved budget revisions or amendments.

(A) Budget revision requests must be submitted in advance of anticipated expense(s). The City will not accept budget revision requests submitted after May 31, 2019, unless Contractor requests a reasonable extension before that date, which request will not be unreasonably denied by City.

(B) City will not be liable for any cost of Contractor not eligible for reimbursement as defined within the Agreement. Contractor will remit to City within ten (10) Contractor 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) Contractor 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 Agreement, Contractor must submit to the Director of DHS a written request for approval of such advance payment, including the specific reason for such request in the form prescribed by City. Contractor understands that the City will not be obligated to approve any advances 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) Contractor business days prior to the actual ostensible cash need, (b) each request will be considered by the Director of DHS on a case-by-case basis, and (c) the decision by the Director of DHS whether or not to approve an advance payment is final. When advance payments are authorized:

(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 ten (10) business days after the Contractor is notified that an advance payment check is available from the City.

(B) The Contractor must deposit Agreement 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, Contractor must arrange 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 forty-fifth (45<sup>th</sup>) day after the end 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 expended in the previous month for the services delivered as described in Article I, including supporting documentation of the costs as may be required by City. The Request for Payment must also specify the Program Income received or projected during the same time period. The Director of DHS may require 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 Contractor of any undisputed amounts in accordance with established procedures. City will make payment to Contractor within 30 calendar days of receiving a valid and approved Request for Payment.
- 4.5 The 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 during the Term, no later than the forty-fifth (45<sup>th</sup>) day after the end of the Term. In addition, all purchase orders that have been encumbered by the end of the Agreement term must be received and paid no later than August 15, 2019. In the event of early termination of this Agreement, Contractor will submit the information 45 calendar days from the date of early termination. 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 Agreement and applicable Head Start regulations and federal directives such as 2 C.F.R. 200 *et seq.* 45 C.F.R. § 75.302 *et seq.*, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" and must provide:
- (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 Agreement. If accrual basis reports are required, the Contractor will develop accrual data 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, unobligated 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 Agreement;
  - (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, and the terms of the award, Grant, and Agreement, 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 Agreement 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 and plan, to ensure that costs allocated and charged to the Grant 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 beginning of the Agreement 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 June 30, 2019, which is due to the City no later than July 15, 2019. Reimbursement will be made within 20 calendar days of receipt of written notification to 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 returned to the City within twenty (20) days of receipt of written notice.
  - 4.12 Upon execution of this Agreement or at any time during its term, a person designated by the City may review and approve 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 this Agreement, 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 DHS, Contractor must return such Program Income to City within the timeframe specified by the Director of DHS. If the Director of DHS does not specify a timeframe, then Contractor must return Program Income on the same date that Contractor submits its statement of expenditures and revenues to DHS. If the Director of DHS grants Contractor authority to retain Program Income, Contractor must submit all reports required by DHS within the timeframe specified in the Agreement.
- 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 DHS. Failure by Contractor to report Program Income as required is grounds for suspension, cancellation, or termination of this Agreement.
- 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 Head Start participants and their parents in any Agreement-funded project without the prior written approval of the Director of DHS. However, Contractor may engage in general school activity that is not specifically targeted at Head Start families.
- 5.6 Contractor will include this Article, in its entirety, in all of its subcontracts involving income-producing services or activities.

#### VI. ADMINISTRATION OF THIS AGREEMENT

- 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 included in this Agreement 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 Agreement 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 the City secure an interpretation or opinion from HHS in order to assist in resolution of the dispute and the City will request it.
- 6.3 Contractor will not use funds awarded from this Agreement as matching funds for any federal, state or local grant without the prior written approval of the Director of DHS.
- 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 Agreement 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 Agreement.
- 6.5 Employee Integrity. The Contractor's Board of Directors or Board of Trustees, as applicable, and Contractor's management staff must adopt and approve an Employee Integrity Policy, if Contractor has none, 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 required revision(s).
- 6.6 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 Agreement 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 Contractor 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 the next Contractor business day due to the financial institution's posting policies so long as the checks are actually deposited by Contractor within the required next business day timeframe. Upon cancellation of any outstanding check, the check may either be reissued to Contractor if deemed appropriate by City; if not, the check will be immediately returned to City.

(D) For checks other than petty cash reimbursement, Contractor will adopt and comply with a policy requiring no less than two (2) signatures of authorized representatives of Contractor on each check. The signatures may be computer generated so long as they comply with Contractor's internal policies established to reduce the risk of fraud, theft, or embezzlement. Contractor agrees that City's reimbursement is subject to compliance with this provision.

6.7 Wherever in this Agreement, Contractor is required to perform an action within a specified number of days or hours, Contractor may request additional time to perform. City will give Contractor's request due consideration and grant Contractor's request whenever reasonable practicable, unless immediate compliance is required or needed.

6.8 If the starting date of the Agreement term has already passed at the time of approval of the Agreement by Contractor, all deadlines imposed on Contractor for providing information to the City on or before the date of approval or within seven (7) Contractor business days of approval will be extended in order for the Contractor to reasonably comply with the City's requirements; except and unless, the information has already been provided to the City. City and Contractor agree to confer and make best efforts to reasonably permit Contractor to comply with the extended deadlines.

## VII. AUDIT

7.1 Funds from City. If Contractor expends \$750,000.00 or more of funds provided under this Agreement, 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 Agreement, the Contractor shall have completed an independent audit of Contractor's Head Start Program, with the report submitted to City within the earlier of 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) of the Head Start Program 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) 30 days after receipt of the auditor's report(s), or (ii) nine 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. 10<sup>th</sup> 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) calendar 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 Agreement, 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 Agreement, 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 Agreement at any time and in accordance with 8.9 of this Agreement. 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 services for the Head Start Program, and, Contractor, accordingly, agrees to make available to City all accounting and Project records.

During the term of this Agreement, Contractor shall, during Contractor's normal business hours and as often as necessary by City and/or the applicable state or federal governing agency or other auditing entity, make available the books, records, documents, reports, and evidence with respect to all matters covered by this Agreement, and continue to maintain such records for a minimum period of four (4) years or whatever period is determined necessary based on the Records Retention guidelines, established by applicable law for this Agreement. Said records must be maintained for the required period beginning immediately after Agreement 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 Agreement, or relating to matters covered by this Agreement.

The City may require the Contractor to use any and all of the City's accounting or administrative procedures that are in conformity with Generally Accepted Accounting Principles for state account standards in Texas in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Agreement, and the Contractor will abide by such requirements. Should a conflict exist between the Parties' accounting procedures, Contractor must use the stricter of the procedures.

- 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 than twenty (20) Contractor business days from the date of notification of the disapproval or disallowance by the City. At its sole option, DHS may 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 twenty (20) Contractor business days from Contractor's receipt of written notification of the disapproval or disallowance by the City. If Contractor is obligated under any provision herein to refund a disapproved or disallowed cost incurred, the refund is required and will be made to City by check, cashiers check or money order. If a dispute arises as to the allowability of an expenditure or charge pursuant to the federal regulations, then Contractor may request that the City secure an interpretation or opinion from HHS in order to assist in resolution of the dispute, and the City will request it. 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 Contractor and will not be paid from any Project funds received under this Agreement. 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 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. Contractor may recommend the hiring of alternate auditors, but the final decision on the selection of auditors will rest with City. If after the audit is conducted it is determined that Contractor is in compliance with this Agreement, then the cost of the audit, specifically the auditor's bill alone, will be borne by City.

#### 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 as reasonably required by City. Contractor must incorporate and use a City-approved tracking or information system, such as ChildPlus, for the delivery of comprehensive Head Start services and collect, input and update all data required for the Program Information Report in accordance with the City's reasonable 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 as listed in the Scope of Work, in such forms as the City may require pursuant to the Head Start Act, as amended, or as may be required under federal regulations, such as 2 C.F.R. 200 *et seq.* 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 Contractor will provide to DHS all information reasonably requested by DHS relating to the Contractor's Board functions, including but not be limited to:
- (A) Roster of current Board Members (name, title, and business address, telephone number, fax number and board e-mail address);
  - (B) Names and terms of Officers;
  - (C) Schedule of anticipated board meetings for the current Fiscal Year;
  - (D) Board agendas relating to the Head Start Program to be submitted by fax or email at the time of posting prior to each Board meeting. Prior to the time of posting, Contractor's administration will attempt to notify City when a Head Start Program item is anticipated to be placed on the agenda; and
  - (E) Minutes of every board meeting relating to the Head Start Program.
- 8.4 City reserves the right to reasonably request Contractor to provide additional records for travel expenses, long distance and cell phone calls, faxes, internet service, or other electronic communication devices charged to the budget associated with this Agreement.



- 8.5 Contractor must report all notices served, violations found or complaints filed with regard to licensing, or lack thereof, of Contractor's centers within one (1) Contractor business day of receipt of notice from the State licensing, certifying or permit-issuing authority of a violation or complaint.
- 8.6 Child Safety. Contractor must comply with federal regulations (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 administrative procedures to respond to health emergencies, and with which all Head Start staff should be familiar and trained. These procedures must be in compliance with applicable federal, state and local laws, and must include, but not be limited to, methods of notifying parents in the event of a health emergency involving their child and established methods for handling cases of suspected or known child endangerment, abuse or neglect. 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 Head Start child while in the Program, Contractor will contact City's designated representative immediately, but no later than 24 hours, for the purpose of notification of the incident. Contractor must contact City's designated representative immediately 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 Head Start child in any of the instances cited above, whether or not the instance may be characterized as suspected child abuse. In all cases, the suspected offender must be removed from the EHS-CCP classroom until an investigation, internal or external, has absolved him or her from the claim.
- 8.7 Final Report Requirements. Within a period not to exceed forty-five (45) calendar days after the expiration or early termination date of this Agreement, 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.
- 8.8 Retention. Contractor must maintain financial records, supporting documents, statistical records, and all other books, documents, papers or other records pertinent to this Agreement or the Grant including records for real property and equipment acquired with Head Start 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 Agreement 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 four (4) year period, Contractor agrees to maintain the Records until completion of the latest requisite time period.
- 8.9 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 the 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 the 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 unless otherwise prohibited by law, and subject to Contractor's right to use "Educational Records" as that term is understood under the Family Educational Rights and Privacy Act of 1974 ("FERPA") (20 U.S.C. § 1232g; 34 CFR Part 99).
- 8.10 Tracking. Contractor agrees to incorporate and use any City-approved tracking or information system for the delivery of comprehensive Program services, to include current, accurate and complete client data.
- 8.11 Monitoring. DHS is assigned monitoring, fiscal control, and evaluation of certain projects funded by the City with General or Grant Funds, including the Project covered by this Agreement. 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 Agreement 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 Agreement. Contractor agrees that the failure of the City to monitor, evaluate, or provide guidance and direction will not relieve the Contractor of any liability to the City for failure to comply with the Terms of the Grant or the terms of this Agreement. Criminal background, sex offender, and child abuse/neglect, check(s) comply with 45 C.F.R. §1302.90(b), and as evidence, , the parties agree that City will accept a written statement, from an authorizing agency, that the checks have been conducted and that all persons who are employed have passed, so long as the statement includes the name(s) of the staff member(s) checked, and the date(s) performed. If, at any time, HHS informs the City or Contractor that such written statement does not satisfy the requirements of the Terms of the Grant, Contractor agrees to provide additional information as may be legally permissible or required, or to cooperate with the City and HHS in order to resolve any conflict associated with provision of information related to criminal background checks.

- 8.12 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, the Head Start Act and with Program goals and objectives for the Agreement term. 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, and will not interfere with Contractor's education program. Contractor Program staff will be informed by City representative(s) upon arrival of the expected purpose and length of visit so that accommodations may be made. City's representative(s) will provide proper identification to ensure the safety and security of all parties. City's representative(s) visiting or entering a campus site where students are present will comply with Contractor's rules and procedures under Contractor's Board or administrative policies or procedures.
- 8.13 Findings. Contractor understands that City will timely inform Contractor of the findings of any review or monitoring, specifically any default under the Agreement or deficiencies in performance. City will inform Contractor in writing of Program strengths and weaknesses and specify a reasonable deadline for corrective action. The City will further assist Contractor in finding solutions for Program improvement as appropriate.
- 8.14 5-Day Timeline. Unless otherwise stated, all information requested by DHS will be submitted by Contractor within five (5) Contractor business days of the request via electronic communication or other form of written correspondence. Should Contractor fail to deliver the required information or delivers incomplete requested information, the City may suspend reimbursements to Contractor until the information is delivered to City. Furthermore, the Contractor ensures that all information contained in all required reports or information submitted to City is accurate.
- 8.15 Confidential Information.
- (A) Unless disclosure is authorized by the 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, "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Agreement. 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 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 the City to obtain copies, review and audit records or other information, confidential or otherwise, under this Agreement. Upon termination or expiration of this Agreement, Contractor will return to City upon request all copies of materials related to the Project, including the Confidential Information and subject to Contractor's right to use Educational Records. All confidential obligations contained herein (including those pertaining to information transmitted orally) will survive the termination of this Agreement. The Parties agree to ensure that their respective employees, agents, and contractors are notified of the requirement to comply with these obligations.

8.16 Public Information Act. The Public Information Act, Government Code Section 552.021, requires the City to make public information available to the public. Under Government Code Section 552.002(a), public information includes information that is 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 City receives a request under the Public Information Act (i.e., an open records request) for information within Contractor's possession pursuant to this Agreement, Contractor will forward the requested documents to the City within two (2) Contractor 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) Contractor business days of Contractor's receipt of the request. For the purposes of communicating and coordinating with regard to public information requests, all communications shall be made to a 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. The Parties will cooperate with each other to preserve confidential information or records that may be excluded from disclosure under FERPA)and/or the Texas Public Information Act; and the parties will coordinate efforts to seek any required Attorney General decision for the protection of such information from release.

8.17 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 record produced by or on the behalf of Contractor pursuant to this Agreement will be the subject of any copyright or proprietary claim by Contractor; however Contractor will be entitled to maintain the confidentiality of Educational Records and to use such records for educational purposes.

With the exception of student records, Contractor acknowledges and agrees that all local government records produced in the course of the work required by this Agreement, are public information and will be made available to the City at any time unless otherwise prohibited by law. The parties agree that Educational Records created pursuant to this Agreement will be maintained and utilized by Contractor as required by law. Contractor further agrees to turn over to City all such records upon termination of this Agreement, unless otherwise prohibited by law. Contractor agrees that it will not, under any circumstances, release any records created during the performance of the Agreement to any entity without the written permission of the Director of DHS, unless required to do so by a court of competent jurisdiction or the Texas Attorney General, or as may be required or permitted by Contractor due to the record being an Educational record" under FERPA. DHS will be notified of such request in accordance with this Article.

8.18 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 subject to confidentiality obligations as may be required by federal and /or state law for Educational Records. 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.

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.

- 8.20 **HIPAA.** Subject to obligations to maintain confidentiality under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the HIPAA Business Associate Agreement, attached to and included in this Agreement as Attachment V, and subject to the requirements of FERPA 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 Agreement 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; subject, however to Contractor's continuing rights regarding Educational Records." City agrees that it will not release to the public Educational Records that come into its possession unless otherwise authorized by law.

#### IX. INSURANCE

- 9.1 Contractor and the City each maintain adequate general liability insurance coverage and self-insurance for worker's compensation claims and causes of action to meet their statutory obligations to each party's employees.

#### X. LIMITED LIABILITY

- 10.1 **CONTRACTOR AND THE CITY ACKNOWLEDGE THEY ARE POLITICAL SUBDIVISIONS OF THE STATE OF TEXAS AND ARE SUBJECT TO, AND COMPLY WITH THE APPLICABLE PROVISIONS OF THE TEXAS TORT CLAIMS ACT, AS SET OUT IN THE CIVIL PRACTICE AND REMEDIES CODE, SECTION 101.001, ET. SEQ., AND THE REMEDIES AUTHORIZED THEREIN REGARDING CLAIMS OR CAUSES OF ACTION THAT MAY BE ASSERTED BY THIRD PARTIES FOR ACCIDENT, INJURY OR DEATH.**

#### XI. THIS ARTICLE INTENTIONALLY LEFT BLANK

#### XII. APPLICABLE LAWS

- 12.1 Contractor, and all of the work performed under this Agreement, 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. Contractor may request additional time to come into and demonstrate compliance, unless immediate compliance is required by the applicable Head Start regulations, the Head Start Act, or Public Information Act. Should the City need to abide by some other law, rule, regulation, policy or procedure, such requirement will be made known to Contractor upon consideration of Contractor's request for additional time.

12.2 Contractor understands that certain funds provided it pursuant to this Agreement are funds which have been made available by the City's General Operating Budget and/or by federal, state, or other granting entities. Contractor agrees to comply with all laws, ordinances, codes, rules, regulations, policies, and procedures, including licensing and accreditation standards applicable to the funds received by Contractor as directed by the City or as otherwise required in this Agreement, including but not limited to:

- (A) The Head Start Act (42 U.S.C. §9831 *et seq.*, as amended);
- (B) 45 C.F.R. Part 1301 *et seq.*;
- (C) The Terms of the 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 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 to the funds received by Contractor hereunder;
- (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.

12.3 Contractor further understands and agrees:

- (A) Contractor will comply with all 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 and as applicable. Contractor agrees to report each violation to City and understands that 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 Agreement 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 (18 U.S.C. §874 and 40 U.S.C 3145), as applicable under Appendix II of the OMB Uniform Guidance 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 applicable under Appendix II of the OMB Uniform Guidance, 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 included in this Agreement as Attachment VI, and to include a provision requiring compliance with 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. §§11301 *et seq.* and 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 applicable under Appendix II of the OMB Uniform Guidance, and 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 VI, 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 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 services to children or for the use of the employees of the City or Contractor who provide such services.
  - (J) to 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, and to ensure compliance of any and all subcontractors when applicable.
- 12.4 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 could subject the Contractor to suspension of payments, termination of Agreement, and debarment and suspension actions.
- 12.5 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, and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age, disability, or political belief or affiliation, 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 Orders 13665 and 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.

- 12.5.1 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 VI 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.
- 12.6 Contractor warrants that any and all taxes that 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 Agreement. Contractor will comply with all applicable local, state and federal laws related to and including, but not limited 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.
- 12.7 Contractor agrees to comply with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.*, and all regulations thereunder.
- 12.8 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.
- 12.9 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 of the Agreement.

### XIII. NO SOLICITATION/CONFLICT OF INTEREST

- 13.1 Contractor warrants that no person, selling agency or other organization has been retained to solicit or secure this Agreement for a commission, percentage, brokerage, or contingent fee, and further that no such arrangement exists or has existed with any employee of Contractor or City. For breach or violation of this warrant, City will have the right to terminate this Agreement without liability or, at its discretion, to deduct from the Agreement, or otherwise recover, the full amount of such arrangement, or to seek such other remedies as legally may be available.
- 13.2 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 Agreement. 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.
- 13.3 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 private gain for themselves or others, particularly those with which they have family, business, or other ties.
- 13.4 No member of City's governing body or staff who exercises any function or responsibility in the review or approval or carrying out of this Agreement 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 Agreement.
- 13.5 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 (10) percent or more of the voting stock or shares of the entity, or ten (10) percent 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.
- 13.6 Contractor warrants and certifies, and this Agreement is made in reliance thereon, that neither the Contractor nor his or her spouse, parent, child, sibling or first-degree relative is a City officer or employee as defined by Section 2-52(e) of the City Ethics Code. If Contractor is a business entity, the Contractor 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 (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity). Contractor further warrants and certifies that is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

#### XIV. TERMINATION

- 14.1 (A) Termination for Cause. Upon written notice in accordance with the official communication provisions in this Agreement, City may terminate this Agreement as of the date provided in the notice in whole or in part, upon the occurrence of either:
- (1) Failure to fulfill, in a timely and proper manner, obligations under this Agreement to include performance standards established by the City or HHS, or violation of any of the covenants, conditions, or stipulations of this Agreement; or
  - (2) 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 Head Start 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 Head Start Program.
- (B) Termination for Convenience. This Agreement may be terminated in whole or in part upon providing notice in accordance with the official communication provisions of this Agreement, notice which must specify a date, not sooner than 120 days following the day on which notice is sent but not later than the end of Contractor's fiscal year, unless earlier terminated under any other provision herein.
- 14.2 Contractor will be entitled to receive just and equitable compensation for any work satisfactorily completed prior to any termination date. Satisfactory completion will be reasonably determined by the City, and its decision will be final. If compliance falls under HHS authority to review, or if a dispute arises with regard to interpretation of regulations or law as it applies to this Agreement, Contractor may request that the City secure an interpretation or opinion from HHS in order to assist in resolution of the dispute and the City will request it.
- 14.3 In addition to any other remedy in this Agreement or by law, the City may delay, suspend, limit, or cancel, upon reasonable written notice, the funds, rights or privileges herein given Contractor for failure to comply with the terms and provisions of this Agreement. Specifically, at the option of the City, 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 Agreement. The Contractor will not be relieved of liability for damages sustained by the City by virtue of any breach of this Agreement and City may withhold funds due as damages, in addition to retaining and utilizing any other remedies available to City.



- 14.4 If an employee of Contractor is discharged or leaves employment with Contractor, then Contractor will pay in full to the employee all of his or her earned salaries and wages, within the timeframe specified by law.
- 14.5 Should the Contractor be debarred by the federal government or the City pursuant to a debarment policy currently existing or hereafter adopted, the debarment may be grounds for termination.
- 14.6 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 Agreement. City will pay Contractor the full cost of obligations that were not legally 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 Agreement.

#### XV. PROHIBITION OF POLITICAL ACTIVITIES

- 15.1 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.
- 15.2 Contractor agrees that no funds provided under this Agreement may be used in any way to attempt to influence a member of Congress, or other State or local elected or appointed official.
- 15.3 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 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 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.
- 15.4 To ensure that the above policies are complied with, Contractor will provide every member of its personnel paid out of Agreement funds with a statement of the above prohibitions and have each 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.
- 15.5 Contractor agrees that if an investigation of the above is ongoing or has been confirmed based upon then current reasonable evidence of impropriety, salaries paid to the Contractor under this Agreement may, at the City's discretion, be withheld until the situation is resolved.
- 15.6 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.



## XVI. PERSONNEL

- 16.1 Contractor must 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 effective oversight of Program operations. Contractor must ensure that, at a minimum, Contractor's Program staff are responsible for each program management function listed in the Scope of Work.
- 16.2 Classroom Staff. Contractor acknowledges and agrees that Head Start guidelines and City policy require that Contractor staff each Head Start classroom with two teachers, or one teacher and a teacher's aide, at all times. To the fullest extent possible, Contractor will staff each classroom with a volunteer in addition to the two paid staff positions. Contractor must assign adequate staff to fully implement all areas of Program operations, including those needing specific management abilities and / or expertise.
- 16.3 Compliance Report. At the beginning of the Agreement Term and any Renewals, Contractor will submit to City a report which specifically (a) lists the number and percentage of classroom personnel in its center based program having child development associate ("CDA") credentials or associate, baccalaureate or advanced degrees; and (b) describes Contractor's compliance with the goals described in this Article.
- 16.4 Teachers. Contractor understands that the Head Start Act requires grantees and their contractors, if any, ensure, and demonstrate upon request, that all of the teachers staffing center-based program classrooms have (a) a baccalaureate or advanced degree in early childhood education; or (b) a baccalaureate or advanced degree with coursework equivalent to a major relating to early childhood education, with experience teaching preschool-age children. During the term of this Agreement, Contractor will only employ teachers meeting the necessary qualifications.
- 16.5 Teaching Assistants. Contractor understands that the Head Start Act requires grantees and their contractors, if any, ensure, and demonstrate upon request, that all teaching assistants staffing center-based program classrooms (a) have at least a CDA credential; or (b) are enrolled in a program leading to an associate or baccalaureate degree; or (c) are enrolled in a CDA credential program to be completed within two years of the time of hire. During the term of this Agreement, Contractor will only employ teaching assistants in the Head Start classroom meeting the necessary qualifications.
- 16.6 Education Coordinators. Contractor understands that the Head Start Act requires grantees and their contractors, if any, ensure, and demonstrate upon request, that all Head Start education coordinators in its center-based programs, including those who serve as curriculum specialists: (a) have the ability to offer assistance to other teachers in the implementation and adaptation of curricula to the group and individual needs of children in the classroom; and (b) have (i) a baccalaureate or advanced degree in early childhood education or (ii) a baccalaureate or advanced degree with coursework equivalent to a major relating to early childhood education, with experience teaching preschool-age children. During the term of this Agreement, Contractor will only employ education coordinators meeting the necessary qualifications.
- 16.7 Professional Development. Contractor agrees and acknowledges that each of its Head Start teachers will attend not less than 15 clock hours of professional development per Contractor fiscal year. The term "professional development" means high-quality activities that will improve the knowledge and skills of teachers and staff, as relevant to their roles and functions, in Program administration and the provision of services and instruction.
- 16.8 Administrators. Contractor understands the Head Start Act requires grantees and their contractors, if any, ensure and demonstrate upon request that all Head Start staff have the knowledge, skills, and experience they need to perform their assigned functions responsibly. Therefore, at a minimum, Contractor agrees that Contractor's Head Start Director and all Program center site directors, site managers, content coordinators and other administrators must have education or training in the area of early childhood education and family support. To meet these obligations, Contractor will:  
(A) only employ a Head Start Director, and Program center site directors, site managers, content coordinators and other Program administrators meeting the necessary qualifications;



- (B) promptly notify City of any transfers and/or disciplinary actions affecting Head Start personnel referred to in subsection (A) of this Section; and
- (C) ensure, in the event a Head Start position referred to in subsection (A) of this Section is vacated for any reason, that a replacement meeting the necessary qualifications is hired within 45 calendar days or, following notification to City of a delay, as soon as reasonably practical, but not later than 60 days after the position first became vacant unless the parties come to a new mutually acceptable deadline.
- 16.9 Professional Development Plan. Contractor will create and implement, in consultation with each of its employees, a Professional Development Plan for all Program employees who provide direct services to children. Contractor will regularly evaluate the Plans to determine their impact on teacher and staff effectiveness.
- 16.10 Wages & Salaries.
- (A) Contractor understands 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. For purposes of this Agreement, the City will accept the wage information set forth in the most recent study commissioned or issued by, the Texas Association of School Boards, in determining the appropriate rate. 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 logical and reasonable reimbursement under the Agreement, and its decision shall 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 Agreement budget.
- (B) Contractor expressly understands and agrees that in accordance with 42 U.S.C. §9848, no portion of the Agreement 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 Head Start Grant (e.g., employees who are funded at 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) Contractor agrees to comply with all applicable federal regulations regarding the setting of, and maximum amount allowable for, salaries of Contractor's employees.
- 16.11 Complaints & Grievances. 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.
- 16.12 Job descriptions. Contractor agrees to place written job descriptions for Head Start personnel in individual personnel folders, or online, for each position, and provide the specific job description(s) to the City upon request. All descriptions must be filed or online no later than the expiration date of this Agreement.
- 16.13 List of Employees. Contractor agrees to provide the City with the names and license registration of any employee(s) of Contractor regulated by State law whose activities contribute towards, facilitate, or coordinate the performance of this Agreement.
- 16.14 Relatives. Chief Executive Officers, directors and other supervisory personnel may not supervise a spouse, parent, child, sibling, or in-laws of the same relationship (collectively, "Relatives") who are in any capacity supported by Agreement funds. Relatives, however, may be co-workers in a non-supervisory position.

## XVII. ADVERSARIAL PROCEEDINGS

- 17.1 Except in circumstances where the following is in conflict with federal law or regulations pertaining to the Head Start Program, Contractor agrees to comply with the following special provisions:



- (A) Under no circumstances will the funds received under this Agreement 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.

#### XVIII. FEDERAL AND CITY-SUPPORTED PROJECT

- 18.1 This Section is applicable to all publicity, public presentations, signs, public notices, and other informational material intended for the public, to include electronic media, (collectively, "Materials") prepared and/or disseminated during the Term of the Agreement 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 City and Contractor will be mutually agreed to by the Parties in advance. Contractor agrees that all Material(s) regarding the Program shall provide a written statement acknowledging the role of the federal funds provided by HHS through City, which must read as follows: "The City of San Antonio Head Start Program services provided by the San Antonio Independent School District are funded by the City of San Antonio, Department of Human Services, through a federal grant received from the U.S. Department of Health and Human Services." These Materials include, but are not limited to, signs identifying facilities. In addition, all publicity related to Contractor's services must note that the Program is operated on a non-discriminatory basis.
- 18.2 Contractor further agrees to provide City with a copy of all proposed official communications to the public, Head Start parents and employees as it may relate to City's implementation of City's Head Start Program model or the transition of the Program, and to obtain City's approval prior to dissemination.

#### XIX. PROPERTY, EQUIPMENT AND SUPPLIES

- 19.1 Ownership. 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 Agreement termination, for whatever reason. Contractor agrees to relinquish and transfer possession of and, if applicable, title to such equipment/property without the requirement of a court order. Equipment that has reverted to Contractor through a City-paid lease agreement with option to buy will be considered the same as though purchased outright with Agreement funds.
- 19.2 Disposal, Loss, and Transfer.
  - (A) Contractor agrees that no equipment purchased with Agreement funds may be disposed of without receiving prior written approval from DHS. In cases of theft or loss, it is the responsibility of Contractor to replace it with like equipment and value at the time of the theft or loss, with funds other than Agreement funds and in compliance with the appropriate property standards. All replacement equipment will be treated in the same manner as equipment purchased with Agreement funds.
  - (B) City reserves the right to require transfer of property acquired with funds awarded under this Agreement as provided in 45 C.F.R. Part 75, including but not limited to §75.316 *et seq.*
- 19.3 Records Contractor will maintain accurate and complete records on all equipment and property obtained with Agreement 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 ("City of San Antonio Head Start Program"); and
  - (G) A list of disposed items and disposition



- 19.4 Inventory Tracking System. Contractor will maintain a system for tracking, on an ongoing basis, inventory of equipment and supplies purchased with Head Start funds that either (i) has a purchase price of \$5,000.00 or greater; or (ii) meets other criteria as City may prescribe (and notify Contractor 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.

Upon request, Contractor will provide DHS an annual inventory of assets purchased with funds received through the City.

- 19.5 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 Agreement funds. Contractor will inform City of incidents of loss, theft, damage or destruction of equipment or property, excluding supplies and consumables, purchased or leased with Agreement funds.
- 19.6 All equipment purchased under this Agreement must be fully insured against fire, loss and theft. Contractor, at a minimum, will provide the equivalent insurance for real property and equipment acquired with Agreement funds as provided to other property acquired or owned by the Contractor.
- 19.7 Contractor must fully comply with the property and equipment requirements of 45 C.F.R Part 75, including but not limited to Sections 75.316 through 75.323, 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

- 19.8 Purchase thresholds. For equipment, property or supplies purchases in the amount of \$5,000.00 or greater or cumulative purchases in the amount of \$100,000.00 or greater, Contractor must obtain prior approval from DHS. Contractor will not split the purchase of a line item with a value greater than the preceding thresholds in order to avoid obtaining approval from DHS.

- 19.9 Third Party Beneficiary. Contractor acknowledges and agrees that City is the intended third-party beneficiary of any and all facility leases with third-parties to which Contractor is or becomes a party in connection with the approved Program sites listed in Exhibit I-A to Attachment I, or as a consequence of this Agreement. As such, Contractor will use its best efforts to execute an acknowledgment prepared by City that City is an intended third-party beneficiary of such lease. Contractor will honor all of its material obligations under any and all such leases. Contractor will stay in good standing under any and all leases and Contractor will immediately notify City in writing in the event of any breach or alleged breach of any lease that could result in its termination. Contractor will submit to City for review and approval all non-disturbance, subordination and similar agreements it is requested to execute in connection with any such lease. If an event gives rise to a right of first refusal in favor of Contractor under any such lease, Contractor will promptly notify City of the event and allow City to step into Contractor's shoes as tenant under the lease in order to exercise the right.

## XX. TRAVEL

- 20.1 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 Contractor, and 2) must fully comply with Contractor's own established mileage recording policies. Mileage records are subject to spot-checks by City auditors and monitors. Contractor will strongly encourage participation by its employees in an approved defensive driving course.

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

- 1) obtain City's prior approval, unless the expense has been previously approved as part of Contractor's budget, and provide City with detailed documentation, (any amount over approved budgeted amount must be pre-approved by City or such overage will not be paid),
- 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 upon request.

#### **XXI. NO USE OF FUNDS FOR RELIGIOUS ACTIVITIES**

- 21.1 Contractor agrees that none of the performance rendered will involve, and no portion of the funds received 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.

#### **XXII. DEBARMENT**

- 22.1 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.
- 22.2 Contractor will provide immediate written notice to City, in accordance with the notice requirements of Article XXVI, if, at any time during the Term of the Agreement, including any renewals hereof, Contractor learns that its certification was erroneous when made or has since become erroneous.

#### **XXIII. ASSIGNMENT**

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

#### **XXIV. AMENDMENT**

- 24.1 Any alterations, additions or deletions to the terms of this Agreement must be by amendment in writing executed by both Parties. The Director of DHS has the authority to execute an amendment of this Agreement without the necessity of seeking any further City Council approval if in the following circumstances:
- A. increases to the funding of this Agreement in an amount not exceeding (a) twenty-five percent (25%) of the total amount or (b) \$25,000.00, whichever is 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 of this Agreement that receive the prior written approval of the City's Risk Manager and the Director of DHS.



- D. decreases (and increases) in Agreement funding based upon Program enrollment levels, and any modifications 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.
- 24.2 Contractor's Superintendent will have the authority to execute an amendment of this Agreement to the same extent as the Director of DHS under Section 24.1 of this Agreement without the necessity of seeking any further approval by Contractor's Board of Trustees, if not otherwise prohibited by federal or state law or regulation or prohibited by Contractor's policies, rules or Board directives.
- 24.3 Contractor further agrees that except when the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to its terms must be by amendment in writing.

#### XXV. SUBCONTRACTING

- 25.1 None of the work or services covered by this Agreement may be sub-contracted without the prior written consent of the City and the Grantor, if required by Grantor. If allowed, subcontracting methods must meet City requirements; subcontractor compliance with this Agreement must be the responsibility of the Center to monitor.
- 25.2 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 that City has the authority to monitor, audit, examine, and make copies and transcripts of all sub-contracts, as often as deemed appropriate by City. If, in the sole determination of City, it is found that Contractor is not in compliance with said rules or standards with respect to any of its sub-contracts, then Contractor will be deemed to be in default of this Agreement, and will be subject to termination in accordance with the Termination article.
- 25.3 Any work or services for sub-contracting, may be sub-contracted only by written agreement, and unless specific waiver is granted in writing by City, will be subject by its terms to each and every provision of this Agreement. Compliance by sub-contractors with this Agreement will be the responsibility of Contractor. Contractor agrees that payment for services of any sub-contractor will be submitted through Contractor, and Contractor is responsible for all payments to sub-contractors.
- 25.4 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.
- 25.5 Contractor understands and agrees that all subcontracts in excess of \$10,000.00 must address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement.

#### XXVI. OFFICIAL COMMUNICATIONS

- 26.1 Except where the terms of this Agreement expressly provide otherwise, any communication under this Agreement 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, or upon receipt if sending the same by certified mail or a commercial courier service (e.g. Federal Express) at the addresses set forth below.

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

Contractor:  
 Superintendent  
 San Antonio Independent School District (SAISD)  
 141 Lavaca Street  
 San Antonio, TX 78210

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.



#### **XXVII. VENUE**

- 27.1 The Parties agree that this Agreement 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.

#### **XXVIII. GENDER**

- 28.1 Words of any gender used in this Agreement 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.

#### **XXIX. REPRESENTATIONS AND OTHER OBLIGATIONS**

- 29.1 Contractor's signatory below represents, warrants and guarantees that (s)he has full legal authority to execute this Agreement 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. Upon request by the City, Contractor will provide DHS verification of the foregoing requirements.
- 29.2 This Agreement 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 Head Start services; and that Program funds disbursed to Contractor will be expended only for Allowable Costs in the implementation of the Contractor's 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 would not be used for the Program.
- 29.3 If circumstances arise which might result in interference with Contractor's ability to provide services under this Agreement, Contractor agrees to inform City of those circumstances immediately. 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.

#### **XXX. LICENSES AND TRAINING**

- 30.1 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 the appropriate authoritative bodies, to provide services under this Agreement.

#### **XXXI. INDEPENDENT CONTRACTOR**

- 31.1 It is expressly understood and agreed that 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 has authority to bind the other nor to hold out to third parties that it has the authority to bind the other.
- 31.2 Nothing contained herein may be deemed or construed as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar relationship, between the Parties.
- 31.3 Any and all employees of Contractor, wherever located, while engaged in the performance of any work required by City under this Agreement will be considered employees of Contractor only, and not of 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 Contractor.

#### **XXXII. SEVERABILITY**

- 32.1 If any clause or provision of this Agreement 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 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 Agreement will be construed as if said clause or provision was never a part; it is also the intention of the Parties hereto that in lieu of said clause or provision, there be added to this Agreement 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 Agreement will be construed as a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee. Further, any failure of City to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any possible option, will not be construed as a waiver or a future relinquishment of such covenant or option.

**XXXIV. CONTRIBUTION PROHIBITIONS**

34.1 Contractor acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory to a proposed contractual relationship that applies for a "high profile" discretionary contract, as defined by the City of San Antonio Contracting Policy and Process Manual, may not make a campaign contribution to any councilmember or candidate at any time from the tenth business day after the Request for Proposal (RFP) or Request for Qualifications (RFQ) or other solicitation is released, or for a contract for which no competitive solicitation has been issued by the City from the time the City begins discussions or negotiations, and ending on the 30<sup>th</sup> calendar day following the contract award. Contractor understands that if the legal signatory entering the Agreement has made such a contribution, the City may not award the Agreement to that contributor or to that contributor's business entity. Any legal signatory for a proposed high-risk contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response.

34.2 Contractor acknowledges that the City has identified this Agreement as high profile.

34.3 Contractor warrants and certifies, and this Agreement is made in reliance thereon, that the individual signing this Agreement has not made any contributions in violation of City Code section 2-309, and will not do so for 30 calendar days following the award of this Agreement. Should the signor of this Agreement violate this provision, the City Council may, in its discretion, declare the Agreement void.

**XXXV. ENTIRE AGREEMENT**

35.1 This Agreement and its attachments constitute the entire and integrated Agreement between the Parties and contain all terms and conditions, and supersede all prior negotiations, representations, or agreements, 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 Agreement.

This Agreement has been executed as of the date of the last party to sign below,  
the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**CITY OF SAN ANTONIO:**  
Department of Human Services

\_\_\_\_\_  
Melody Woosley, Director

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant City Attorney

**CONTRACTOR:**  
San Antonio Independent School District (SAISD)

\_\_\_\_\_  
Pedro Martinez, Superintendent

2-20-18  
Date

\_\_\_\_\_  
Board President (if required)



ATTACHMENTS

- Attachment I – Scope of Work
- Attachment II – Program Budget
- Attachment III – Special Provisions
- Attachment IV – HHS Award Document
- Attachment V – HIPAA Business Associate Agreement, if applicable
- Attachment VI – Additional OMB Provisions



## ATTACHMENT I

### SCOPE OF WORK

#### 1. Summary

The Contractor will ensure full enrollment as soon as reasonably possible in accordance with Head Start Performance Standards and will serve the number of income, age and categorically eligible children as indicated below. The Contractor will provide Head Start services in accordance with the Head Start Performance Standards as provided in Head Start Regulations, 45 CFR Part 1301 *et seq* with the Head Start Act, as amended, 42 U.S.C. 9831 *et seq*, 2018-2019 City policies (except as they may differ from this Agreement), the 2018-2019 Data Entry & Benchmark Due Date Guide, and with the terms of this Agreement. The Contractor will operate full-day classroom(s) at the City-approved sites for a minimum of 75,600 minutes of planned class operations for the Head Start grant period.

Number of children in full-day care on the first day of the program year	2,243
Minimum number of children with disabilities	224
Service Area	Children who reside in San Antonio and are served in the Independent School District

#### 2. Eligibility, Recruitment, Selection, Enrollment and Attendance (ERSEA)

A. Contractor will have primary responsibility for the following activities: eligibility, recruitment, enrollment, selection, and attendance of children, in accordance with policies established by the City. Contractor will lead and work jointly with Family and Community Support Service staff conducting recruitment activities, receiving applications, determining eligibility, and completing enrollment forms for Contractor's service area. Contractor will comply with the eligibility, recruitment, selection, enrollment and attendance provisions of the Head Start Act, the Head Start Performance Standards, the City's program policies and other federal guidance related to the Head Start program.

B. Contractor will establish and maintain full funded enrollment of 2,243 Head Start eligible children in the Contractor's Program from the first day of operations, or as soon as reasonably possible in accordance with Head Start Performance Standards. Funded enrollment means the number of children which the Contractor is to serve, as indicated by the City and terms of this Agreement. To maintain full enrollment, Contractor must ensure that once it determines that a vacancy exists, no more than 30 calendar days may lapse before the vacancy is filled. Contractor will document its efforts to fill all vacancies within 30 calendar days.

C. If full funded enrollment is not maintained for a period of 30 days, the City may reduce Contractor's funding at the established per capita rate based on the difference between funded enrollment slots and actual enrollment. Contractor will develop at the beginning of each program year and maintain a waiting list that ranks children according to the program's selection criteria and ERSEA policies. Children on the waiting list may include children who are currently enrolled in the State Prekindergarten (Pre-K) program. If Contractor is under-enrolled and does not have a waiting list, the Contractor may fill Head Start vacancies from state Pre-K classes. City will have the right to place additional children in the Contractor's Program, in coordination with the Contractor, up to the point where the Contractor's Program is fully enrolled.

D. Contractor will develop a plan that includes recruitment, selection and enrollment services in accordance with City's established ERSEA policies and in a manner that will promote children receiving two (2) years of Head Start services or more, if appropriate. Contractor will submit to the City its August Program Design that establishes intact and separate 3-year old and 4-year old classrooms prior to the first day of school. Any changes to the Program Design must be reported to the City within two Contractor



business days. If Contractor is unable to implement the required Program Design, Contractor will seek approval from the City prior to submitting an alternative Program Design.

E. Contractor will notify the city within forty-eight (48) hours of any Contractor policy, regulation, administrative decision, and/or any programmatic change that will impact the Program Design or reduce enrollment by five percent (5%) or more after the program year begins.

F. In accordance with the Head Start Act and subject to subsections (i) and (ii) of this Section 2(E), Contractor will ensure that a minimum of 10% of the children enrolled in Contractor's Program are children with disabilities who are determined to be eligible for special education and related services. Contractor must meet this 10% requirement by mid-point of the program year, as determined by the City.

- (i) If Contractor recognizes it is having difficulty in meeting the percentage of children with disabilities requirement during its enrollment, recruitment and selection period, Contractor must provide the City with the following:
  - a. a written description of specific steps the Contractor has taken to meet the requirement in the current program year to include efforts made to collaborate with the local agencies providing services under Section 619 and Part C of IDEA, and an explanation of why, despite these efforts, it was unable to meet the 10% requirement
  - b. a written confirmation from local Early Childhood Intervention (ECI) agencies of Contractor's efforts to actively collaborate with them to promote the enrollment of children with disabilities and specific efforts to recruit and enroll eligible children with disabilities; and
  - c. a written description of the Contractor's proposed approach to improve the enrollment of children with disabilities to reach the 10% requirement to include a description of how the ECI agencies in the community will work with the Contractor to implement this approach.
- (ii) Additionally, if Contractor is unable to meet the 10% requirement, the City will have the right to place additional children with disabilities in Contractor's Program up to the point where Contractor achieves a 10% enrollment of children with disabilities. City and Contractor will coordinate placement of additional children with disabilities.

F. Contractor agrees when the monthly average daily attendance rate in a center-based program falls below 85 percent, Contractor will initiate and collaborate with the City on the provision of absentee services in accordance with §1302.16 of the Head Start Performance standards. Absentee services include an analysis of the causes of absenteeism and the provision of additional support, which may include, but is not limited to, face-to-face meeting(s) with the family and other direct contact with the child's parents/legal guardians. Contractor will establish and maintain procedures for the removal of children from the program due to the lack of attendance in accordance with the City's policies.

### **3. Submission of Center Information and Program Design**

A. At the beginning of each Program year but not later than August, Contractor will submit to the City for its approval a center list, which will include the number of centers and the name and address for each center operated by Contractor. When Contractor proposes a change to the center list, discussions will be held between the Contractor and the City; the Contractor will formally notify the City, and the Contractor will receive the City's prior approval to proceed with the change, which approval shall not be unreasonably delayed or denied.

B. Prior to execution and each renewal of the agreement, Contractor will submit to the City the Contractor's program design, which will include: the total number of children enrolled, number of sites, and number of classrooms, classroom age group designation, language designation, and hours of



operation, among other things. If at any time Contractor proposes a change to the program design, Contractor will discuss the proposed changes with City and then formally request and receive the City's approval prior to making said change, which approval will not be unreasonably delayed or denied.

4. Program Services

A. Contractor will provide Head Start Program Services (defined below) to eligible children in its School District. Such services will be provided to eligible children within Contractor's Service Area(s) without regard to race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, or political belief or affiliation. Any proposal to extend or modify the Service Area(s) or the sites at which services are to be delivered will be formally submitted in writing to City for approval.

B. Contractor will provide: (i) Education and Early Childhood Development Services; (ii) Child Disability Services; and (iii) Child Nutrition Services and will collaborate with City to ensure the provision of Family and Community Support Services, Child Mental Health Services, Medical Health and Dental Health Services to meet the needs of the children and families served by Contractor's Program ("Head Start Program Services"). Contractor agrees that, regardless of the fact that another Head Start service provider under the City of San Antonio Head Start program may be contracted to provide a category of service, Contractor will be responsible for coordinating with Head Start service providers and working with the City to ensure provision of a full array of services to which the children are entitled under the Terms of the Grant.

C. Contractor will 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 and support to ensure the effective oversight of the Head Start Program operations. Contractor will ensure at a minimum, the following program management functions are assigned to and adopted by staff within the Program:

- i. **Program management** must be assigned to an individual serving in the role of the Head Start Director. This individual must have demonstrated skills and abilities in a management capacity relevant to human services program management and must have ultimate responsibility for ensuring the children enrolled in Contractor's Head Start Program are provided (by Contractor or a collaborating Head Start service provider) the full array of services to which the children and families are entitled under the Terms of the Grant.
- ii. **Management of education and early childhood development** must be assigned to an individual serving in the role of an Education and Early Childhood Development Coordinator. This individual and any additional supporting staff or consultants must have training and experience in areas including theories and principles of child growth and development, early childhood education, and family support. Staff and consultants must meet the qualifications for classroom teachers, as specified in the Head Start Act, Section 648A, and any subsequent amendments.
- iii. **Management of health services** including medical and dental health must be assigned to an individual serving in the role of Health Services Coordinator. The City recommends this individual and any additional supporting staff or consultants have training and experience in public health, nursing, health education, maternal and child health, or health administration. Contractor must also coordinate with health service providers and follow established protocols to facilitate health care providers' ability to ensure children receive all the required Head Start health services.
- iv. **Management of child nutrition services** must be assigned to an individual serving in the role of Nutrition Services Coordinator. This individual and any supporting staff or



consultants must be supported by staff or consultants who are registered dietitians or nutritionists. This person must also coordinate with City and City's nutrition service provider(s).

- v. **Coordination with mental health services** must be assigned to an individual serving in the role of Education and Early Childhood Development Coordinator, Family & Community Support Services Coordinator, Health Services Coordinator, or Disabilities Coordinator. The City recommends this individual have experience in serving children and families with mental health needs. This person must also coordinate with City and City's mental health services provider(s).
- vi. **Coordination with family and community support services staff**, including parent activities, must be assigned to an individual serving in the role of Family and Community Support Services Liaison. The City recommends this individual and any supporting staff or consultants have training and experience in field(s) related to social, human, or family services, and coordinate with City. It is also recommended that parent involvement services be supported by staff or consultants with training, experience, and skills in assisting the parents of young children in advocating and decision-making for families.
- vii. **Management of disabilities services** must be assigned to an individual serving in the role of Disabilities Coordinator or Education and Early Childhood Development Coordinator. This individual and any supporting staff or consultants must have training and experience in securing and individualizing needed services for children with disabilities, and will coordinate with City.
- viii. **Management of ERSEA responsibilities** must be assigned to an individual serving in the role of ERSEA Coordinator. This individual and any supporting staff or consultants must have knowledge, training and experience in the eligibility, recruitment, selection, enrollment and attendance provisions of the Head Start Act, the Head Start Performance Standards, the City's program policies and other federal guidance related to the Head Start Program.
- ix. **Management of monitoring responsibilities** must be assigned to an individual serving as the Monitoring Coordinator. This individual and any supporting staff or consultants must have knowledge, training and experience with the Head Start Performance Standards, the Head Start Act, and monitoring of the Head Start Program. Contractor will ensure these individuals further develop their knowledge of the various Head Start content areas.
- x. **Coaching responsibilities** must be assigned to individuals serving as Coaches or individuals assigned to provide coaching support. These individuals and any supporting staff or consultants must have a minimum of a baccalaureate degree in early childhood education or a related field as well as adequate training and experience in adult learning and in using assessment data to drive coaching strategies.
- xi. **Safe Environments and Facilities management of responsibilities** must be assigned to an individual serving as Safe Environments and Facilities Coordinator or an individual assigned to provide support. This individual and any supporting staff or consultants must have adequate training and experience in safe environments and facilities.

Contractor will ensure members of program's management team and any other necessary staff provides uninterrupted Head Start Program management services throughout the Agreement term, including the summer months to ensure adequate planning, coordination and performance of critical program activities. Critical program activities include, but are not limited to, ongoing recruitment activities and services,



determination of eligibility and selection, development of a waitlist for the upcoming school year, and completion of enrollment.

D. Contractor will provide the following education and early childhood development services in compliance with the requirements of 45 C.F.R Part1302.31, *et. seq.*:

- i. Contractor must help children gain the skills and confidence necessary to be prepared to succeed in their present environment and with later responsibilities, in school and in life. The Contractor's approach to child development and education must be developmentally and linguistically appropriate; recognize the child's rate of development, language, cultural background and learning style; be inclusive of children with disabilities; provide an environment of acceptance that supports and respects gender, culture, language, ethnicity and family composition; provide a balanced daily program of child-initiated and adult-directed activities; and allow and enable children to independently use toilet facilities when it is developmentally appropriate and the efforts are supported by the parents.
- ii. Contractor will encourage and support parents in their efforts to become involved in the development of the program's curriculum and approach to child development and education; provide opportunities to increase parents' child observation skills and share assessments with staff that will help plan the learning experience; and encourage parents to participate in staff-parent conferences and home visits to discuss their child's development and education.
- iii. Contractor must support social and emotional development by encouraging development which enhances child's strengths by building trust; fostering independence; encouraging self-control and respect for the feelings and rights of others; supporting and respecting the home language, culture, and family composition in ways that support the child's health and well-being; and planning for routines and transitions.
- iv. Contractor must provide for the development of each child's cognitive and language skills by supporting each child's learning, using various strategies including experimentation, inquiry, observation, play and exploration; ensuring opportunities for creative self-expression through activities such as art, music, movement, and dialogue; promoting interaction and language use among children and between children and adults; and supporting emerging literacy and numeracy developments through materials and activities according to the child's developmental level.
- v. Contractor must promote each child's physical development by providing sufficient time, indoor and outdoor space, equipment, materials and adult guidance for active play and movement that support the development of gross and fine motor skills according to the child's developmental level; and providing an appropriate environment and adult guidance for the participation of children with special needs.
- vi. Contractor, in collaboration with parents, must implement a researched-based curriculum that aligns with the Head Start Early Learning Outcomes Framework (HSELOF, 2015), and state Prekindergarten Guidelines that supports each child's individual pattern of development and learning; provides for the development of cognitive skills; integrates all educational aspects of health, nutrition, and mental health services into program activities; helps children develop emotional security, facility in social relationships, feelings of competence, self-esteem, and positive attitudes toward learning; enhances each child's understanding of self as an individual and as a member of a group; and provides individual and small group experiences both indoors and outdoors.
- vii. Contractor must implement a plan of action to achieve school readiness goals that are age appropriate and will address, at a minimum, the domains of language, literacy,



cognition, motor and physical well-being, social and emotional development and approaches to learning; and achieve integration with the Parent, Family, and Community Engagement Framework. Contractor will participate in updating school readiness goals on an annual basis; analyze achievement; and identify areas for improvement. As part of this plan of action, the Contractor must align the program's curriculum with school readiness goals to include improving the quality of teacher-child interactions, evidence-based teaching practices, and curriculum and inclusion of parents to support school readiness.

- viii. Contractor will assess child progress on an ongoing basis, conduct data aggregation, and submit analyses of child progress assessments to the City at least three times per year (at the beginning, midpoint and end of school year) to demonstrate program-level progress. Contractor will also provide the City direct access to the assessment data management system for the purposes of aggregating, analyzing, and producing program-wide reports. Contractor will make mid-year adjustments in instruction and/or professional development support should patterns or trends be identified in the analysis and coordinate with City, as needed. Contractor must maintain and use the information from ongoing child assessment data to inform teachers and survey parents on how best to individualize each child's learning and progress across domains.
- ix. Contractor will implement a comprehensive training and professional development plan for all staff, consultants, and volunteers as it relates to the specifics below in compliance with the requirements of 1302.92
- x. Contractor must provide Head Start orientation for all staff, consultants, and volunteers annually.
- xi. Contractor will establish and implement a system for all staff to obtain 30 clock hours of professional development annually with a minimum of 15 hours focused on early education practices and pedagogy.
- xii. Contractor will implement a research-based, coordinated coaching plan for all education staff, including teachers and paraprofessionals. The plan must include assessment of staff to identify strengths and needs, a method to determine staff in need of intensive coaching, and documentation of coaching provided.
- xiii. Contractor will provide the written training, coaching and professional development plans to the City before the beginning of the program year
- xiv. Contractor will provide data to the City in its possession related to student performance of Head Start students from kindergarten through third grade.

E. Contractor will perform the following services as it relates to the specific service listed below in compliance with the requirements of 45 C.F.R Chapter XIII Parts 1302.40 – 1302.47 and 1302.33.

**i. Health Services**

- a. Contractor must, within 30 calendar days after each child first attends the program, consult with parents to determine whether each child has ongoing sources of continuous, accessible health care and health insurance coverage. If the child does not have such a source of ongoing care and health insurance coverage, the contractor must assist families in accessing a source of care and health insurance that will meet these criteria, as quickly as reasonably possible.



- b. Contractor must ensure the following occurs within 90 calendar days of each child's entry into the program and every school year: Obtain determinations from health care and oral health care professionals as to whether or not each child is up-to-date on a schedule of age appropriate preventive and primary medical and oral health care. This should be based on the well-child visits and dental periodicity schedules as prescribed by the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program of the Medicaid agency of Texas, and the latest immunization recommendations issued by the Centers for Disease Control and Prevention, as well as any additional recommendations from the local Health Services Advisory Committee. Contractor will assist parents with making arrangements to bring each child up-to-date as quickly as reasonably possible; and if necessary, directly facilitate provision of health services to bring the child up-to-date with parent consent.
- c. Contractor will collaborate with the Head Start health service providers and Family and Community Support staff to develop and implement procedures for ongoing care to identify any new or recurring medical, dental, or developmental concerns so that it can quickly make the appropriate referrals.
- d. Contractor must ensure the following occurs within 45 calendar days of each child's entry into the program and every school year: that the following services have been provided or health documents obtained: evidence-based vision and hearing screenings, current developmental screening to identify concerns regarding behavioral, motor, language, cognitive, and social and emotional skills. Contractor must use the information from the screening to address developmental, sensory, and behavioral concerns. Ongoing observations, medical and dental evaluations and treatments, and insights from the child's parents/guardians are to be utilized to help staff and parents/guardians determine how the program can best respond to each child's individual characteristics, strengths and needs.
- e. Contractor must promote effective oral health hygiene by ensuring all children with teeth are assisted by appropriate staff, or volunteers, in brushing their teeth with toothpaste containing fluoride once daily.
- f. Contractor must document in ChildPlus all referrals and services provided and monitor the implementation of a follow-up plan to meet any treatment needs associated with a health, oral health, social and emotional or developmental concerns.
- g. Contractor must use program funds for the provision of diapers and formula for enrolled children during the program day. Contractor may use program funds for professional medical and oral health services when no other source of funding is available.

**ii. Safety Practices**

- a. Contractor must establish, train staff, implement, and enforce a system of health and safety practices to ensure children are kept safe at all times and never left unsupervised. Contractor should consult *Caring for our Children Basics* for additional information to develop and implement adequate safety practices described in this section.
- b. Contractor must develop and implement a system of management, including ongoing training, oversight, correction and continuous improvement in



accordance with 1302.102 of Head Start regulations, that includes policies and practices to ensure all facilities, equipment and materials, background checks, safety training, safety and hygiene practices and administrative safety procedures are adequate to ensure child safety. Contractor must establish, follow, and practice, as appropriate, procedures for, at a minimum: (i) emergencies, (ii) fire prevention and response, (iii) protection from contagious diseases, including appropriate inclusion and exclusion policies for when a child is ill, and from an infectious disease outbreak, including appropriate notifications of any reportable illness, (iv) the handling, storage, administration, and record of administration of medication, (v) maintain procedures and systems to ensure children are only released to an authorized adult, and (vi) child specific health care needs and food allergies that include an accessible plan of action for emergencies. For food allergies, Contractor must also post and make available, where staff can view as needed, any individual child food allergies wherever food is served.

- c. Contractor must maintain well-supplied first aid kits, appropriate for all ages served and the program size, at each facility and available on outings away from the sites.
- d. Contractor must establish, follow and practice, as appropriate, a disaster preparedness plan for events including natural and human-made disasters and emergencies, and violence in or near the program.

iii. **Child Nutrition**

- a. Contractor must implement nutrition services that are culturally and developmentally appropriate, meet the nutritional needs of, and accommodate, the feeding requirements of each child, including children with special dietary needs and children with disabilities. Family style meals are encouraged but not required. Contractor must identify each child's nutritional health needs, including special dietary requirements and food allergies.
- b. Contractor must ensure that each child in a program that operates for six hours or more per day receives meals and snacks that provide one half to two thirds of the child's daily nutritional needs, depending upon the length of the program day.
- c. Contractor must use funds from United States Department of Agriculture (USDA) Food, Nutrition, and Consumer Services child nutrition programs as the primary source of payment for meal services.
- d. Contractor must serve three- to five-year-olds meals and snacks that conform to USDA Code of Federal Regulation (CFR) parts 210, 220, and 226, and are high in nutrients and low in fat, sugar, and salt.
- e. Contractor must serve all children in morning center-based settings who have not received breakfast, upon arrival at the program, a nourishing breakfast.
- f. Contractor must make safe drinking water available to children during the program day.
- g. Contractor must report amount of meals and snacks served to Head Start children on a monthly basis to City.



**iv. Child Mental Health**

- a. Contractor must work collaboratively with parents to solicit information, observations, and concerns about their child's mental health; share staff observations of their child and discuss with parents their child's behavior and development.
- b. Subject to compliance with Section 38.010 of the Texas Education Code, Contractor will collaborate with the City to refer children, when appropriate, to the services of a mental health agency or mental health professional. Mental Health consultation services will be provided on a schedule of sufficient frequency to enable the timely and effective identification of and intervention in family and staff concerns about a child's mental health.

**v. Family and Community Support**

- a. Contractor, in collaboration with the City's Family and Community Support staff, must provide parent involvement and education activities that are responsive to the ongoing and expressed needs of the parents.
- b. Contractor and City will collaborate with the other service providers and community agencies to provide opportunities to enhance parenting knowledge, skills, and an understanding of the educational and developmental needs of their children.
- c. Contractor must conduct two (2) teacher home visits, unless parents expressly forbid such visits, and at least two (2) teacher-parent conferences per child per program year to enhance the knowledge and understanding of the educational and developmental progress and activities of children in the program. Contractor must not require that parents permit home visits as a condition of the child's participation in the program.
- d. Contractor, in collaboration with the City's Family and Community Support staff, must establish and maintain procedures to support successful transitions for enrolled children and families from previous child care programs into Head Start and from Head Start to elementary school; and assist parents in becoming their children's advocates as they transition.
- e. Contractor will provide office space, internet access with adequate network permissions, and faxing and printing capability for the Family Community Support staff assigned to their centers/campuses.

F. Contractor, in collaboration with City's Family and Community Support staff, will encourage parent participation and attendance in center Parent Connection Committee meetings, Head Start Policy Council, volunteer events, and other parent activities.

G. Contractor will participate in developing an annual School Readiness Plan of Action according to the timeline and requirements provided by the City. Such School Readiness Plan must be developed in compliance with the Head Start Program Performance Standards 1302.102(a)(3) and 1304.11(b)-(2)(i-ii). Each Provider will maintain a School Readiness Leadership Team that includes, at a minimum, teachers, site administrators, parents, and Education and Family and Community Support staff. The School Readiness Leadership Teams meet no less than twice per year to review and discuss outcomes as applicable to the defined school readiness goals.

H. Contractor will submit to City all Contractor eligibility, recruitment, selection, enrollment and attendance, and performance and staffing plans, which must be in accordance with the City's policies that



are not in conflict with this Agreement, by established due dates.

I. Contractor will provide a substantial portion of the substantive programmatic work provided for under this Scope of Work, Attachment I, directly. However, should Contractor desire to perform this work through one or more sub-awards to third parties, Contractor will seek written approval from the City prior to doing so. In all such sub-awards, Contractor will ensure it passes through all of the requirements that apply to Contractor hereunder to the sub-recipient of such sub-awarded funds.

J. Contractor will establish and maintain an ongoing monitoring system 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 not in conflict with this Agreement, or terms of this Agreement. Contractor's monitoring system will be a Contractor-developed monitoring instrument or checklist prepared no less than quarterly, and must include monitoring of all fiscal matters relating to the Head Start Program and this Agreement. Contractor will make copies of monitoring reports available to the City upon request.

5. **Program Governance**

A. Contractor's Governing Board will be in full compliance with Head Start requirements regarding governance, management and programmatic operations applicable to recipients of Head Start grant funds, including those set forth at 45 C.F.R. §1301 *et. seq.*

B. Contractor will assure that City is kept fully apprised of the composition and actions of Contractor's Governing Board to the extent such actions affect Contractor's Head Start Program.

C. Contractor will seek and obtain the City's written approval before making any material revisions in Contractor's Head Start Program that conflicts with or violates (i) the City's refunding application, as amended, to the U.S. Department of Health and Human Services (HHS), (ii) the Terms of the Grant, (iii) the terms of this Agreement or (iv) the approved locations of Contractor's Head Start centers.

D. Contractor will collaborate with the City and Family and Community Support staff to elect one or more parent members from center locations to serve on City's Head Start Policy Council in accordance with the Policy Council By-laws.

6. **Financial and Program Reports**

Additionally, Contractor will maintain and furnish to City the following financial and programmatic information and reports, and required Data Entry & Benchmark Due Date, in such forms as the City may prescribe, and any others as may be required pursuant to the Head Start Act, as amended, and 45 C.F.R. Chapter XIII. If a following information or report due date falls on a weekend or holiday, then it will be due by the following business day.

- A. End of the Month (EOM) Enrollment Report containing the information for the preceding month, submitted upon request;
- B. Head Start Service Provider total amount of United States Department of Agriculture (USDA) reimbursement received for Head Start children and staff will be submitted on a monthly basis;
- C. The total amount of public and private funds received by Contractor and the amount from each source;
- D. Financial reports showing all actual and/or projected costs of the Program, an explanation of budgetary expenditures, Program Income, and non-Federal Share amounts;
- E. The results of the most recent financial audit involving the Head Start Program;



- F. Reports showing employee credentials and a list of personnel serving to satisfy Contractor's in-kind non-Federal Share requirement;
- G. Reports showing the wages of each employee;
- H. Student Assessment Data Analysis Report, as periodically required by the City;
- I. School Readiness Plan of Action update, due bi-annually, submitted as directed or when requested by City;
- J. Child Development Outcomes Progress Report based on Contractor's assessment tool, submitted as directed or when requested by City; and
- K. Any other information reasonably requested by City.

7. Licensure/Staffing

A. Contractor will obtain and maintain all necessary and appropriate State licenses, permits, certifications, and approvals required for the operation of Contractor's facilities and programs including those supported by this Agreement, unless exempt from such requirement. Upon commencement of the Agreement and any renewal thereafter, Contractor will notify the City that it is in compliance with this provision. If at any time Contractor is out of compliance with this provision, Contractor will 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 will take all necessary steps to cure such violation. Contractor further agrees all personnel, either employed or contracted, assigned by Contractor to perform the Head Start Program Services set forth above will, as appropriate or required by law, be fully qualified and authorized under applicable law, to perform such Head Start Program Services.

B. Contractor will ensure that staffing will comply with the Head Start Performance Standards, this Agreement, and other applicable law.

8. Facilities

All Contractor facilities at the approved sites will meet applicable federal, state and local safety standards. Contractor will at all times during the term of this Contract, keep the facility, including play grounds, campus and classroom furniture and equipment, kitchens, restrooms and other areas within the building in good, clean, safe, and reasonable operating condition and repair, and in compliance with the Head Start Performance Standards, and any other required direction received from HHS.

If facilities are found to be out of compliance with Head Start Health and Safety standards, the Contractor will take corrective action in accordance with subsection B below. City will be allowed to inspect the facilities and the licensing and/or certification documents relating to the facility during Contractor's normal operating time as long as the said inspection does not disrupt the delivery of Head Start Program Services or at any other time as agreed by the Contractor. Upon commencement of this Agreement, or any renewal thereafter, and upon request, Contractor will provide City an up-to-date copy of any leases or other agreements (as well as any amendments or modifications thereto) for facilities used to provide services to children enrolled in the Head Start program and funded pursuant to this Agreement.

A. In the case of non-compliance with the Head Start Health and Safety standards, the City will notify the Contractor via a monitoring report with photographs when possible.

B. When any work order request is submitted for necessary internal repair at Head Start



Centers/Campuses, Contractor will address each problem within 10 Contractor business days from the submission of the work order or from the time the need for repair is brought to the attention of Contractor, whichever is earlier. For larger and/or more expensive projects, when 10 days is not practicable, the Contractor will notify the City in writing of the timeline for projected completion.

C. City will follow up on all Health and Safety non-compliances immediately following the 10 Contractor business days for corrective actions to be completed and submit a follow-up report stating either completed or not completed.

**9. Participation**

Contractor will 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 plans, communication and program development activities; (ii) participation in technical assistance trainings and service enhancements developed by City and the Head Start training and technical assistance service providers, as well as other Head Start trainings that may be developed by relevant federal or state agencies; and (iii) an appropriate level of attendance of Contractor's program management team and parent committee meetings at national, regional and/or state Head Start conferences/trainings.

Contractor, in collaboration with Family and Community Support staff, will ensure that resources are made available through reasonable accommodations to low-income parents to participate in, and attend Parent Connection Committee meetings.

**10. Transportation Services/Vehicles**

Contractor will provide transportation services in compliance with the requirements of 45 CFR part 1303.75, et. seq., subject to any waiver that may be obtained by City and/or Contractor.

A. Contractor will successfully complete an annual inspection of all school buses and other vehicles used for the transportation of children under this Agreement.

B. Contractor will ensure that all drivers be certified for the operation of said vehicles, and all bus monitors assigned to vehicles used to provide such services receive appropriate training. Contractor will otherwise be in compliance with all applicable federal, state, and local requirements governing the transportation of children.

C. Contractor will, upon request, submit to City a complete set of such documents regarding vehicles used for the transportation of children and the drivers operating the vehicles.



**ATTACHMENT II**

**[INSERT PROGRAM BUDGET HERE]**



**ATTACHMENT III  
SPECIAL PROVISIONS — Program Year 2018-2019**

**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:

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

Each child’s Information:

Client Number  
First Name  
Middle Initial  
Last Name  
Social Security Number (Optional)  
Birth Date  
Gender  
Race  
Handicap (Optional)

- 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.



[INSERT THE HHS AWARD DOCUMENT]



WITNESSETH:

HIPAA BUSINESS ASSOCIATE AGREEMENT

This **HIPAA Business Associate Agreement** is entered into by and between the City of San Antonio ("Covered Entity"), and the San Antonio Independent School District, a Business Associate ("BA").

WHEREAS, the City of San Antonio and BA have entered into an agreement to provide Head Start services ("Service Contract"), effective July 1, 2018; and

WHEREAS, Covered Entity and BA may need to use, disclose and/or make available certain information pursuant to the terms of the Service Contract, 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 Service Contract 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 Agreement 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 Agreement, 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 CFR 160.103. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 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.



Attachment V

(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 "E PHI" and shall have the meaning given to such term under the HIPAA Rule, including but not limited to 45 CFR Parts 160, 162, 164, and under HITECH.

(6) "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.

(7) "Secretary" shall mean the Secretary of the Department of Health and Human Services ("HHS") or his designee.

(8) "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.

(9) 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 Agreement 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 Agreement, 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 Agreement;

(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 Agreement as well as any security incident that BA becomes 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 Agreement to BA with respect to such information, and further agree to implement reasonable and appropriate administrative, physical and technical safeguards in accordance with HHS guidance specifying the technologies and methodologies that render such PHI unusable, unreadable, or indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI;



## Attachment V

- (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 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 Agreement, 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 business 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 US 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 discover; 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;
- (11) To the extent the BA is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s);;
- (12) 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 Agreement, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- (2) Except as otherwise limited in this Agreement, 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.
- (3) Except as otherwise limited in this Agreement, 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 Agreement shall commence on July 1, 2018. This Agreement shall terminate when all PHI encompassed by this Agreement 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 Service Contract or, if the BA does not cure the breach or end the violation within the time for cure specified in the Service Contract, end the violation and terminate this Agreement and the Contract; or (b) immediately terminate this Agreement and the Service Contract if BA has breached a material term of this Agreement 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 Agreement 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, except as required by law.
  - (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 Agreement 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 Agreement to comply with any federal and state HIPAA privacy requirements 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 Agreement.

I. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit Covered Entity to comply with the Privacy Rule.

J. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or amended.



**Attachment V**

- K. **No Third Party Beneficiaries.** Nothing express or implied in this Agreement 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. **LIMITED LIABILITY. CONTRACTOR AND THE CITY ACKNOWLEDGE THEY ARE POLITICAL SUBDIVISIONS OF THE STATE OF TEXAS AND ARE SUBJECT TO, AND COMPLY WITH THE APPLICABLE PROVISIONS OF THE TEXAS TORT CLAIMS ACT, AS SET OUT IN THE CIVIL PRACTICE AND REMEDIES CODE, SECTION 101.001, ET. SEQ., AND THE REMEDIES AUTHORIZED THEREIN REGARDING CLAIMS OR CAUSES OF ACTION THAT MAY BE ASSERTED BY THIRD PARTIES FOR ACCIDENT, INJURY OR DEATH.**
- 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 Agreement 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 Agreement 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 Agreement constitutes the complete agreement between BA and Covered Entity relating to the matters specified in this Agreement, 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 Agreement and the terms of the Service Contracts or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Service Contract comply with the federal law and regulations commonly referred to as the Privacy Standards and the Security Standards. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. This Agreement 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 Agreement, nor shall any third party have any rights as a result of this Agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**




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

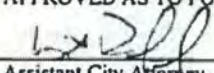
EXECUTED to be effective on July 1, 2018.

**COVERED ENTITY**  
City of San Antonio

**BUSINESS ASSOCIATE:**  
San Antonio Independent School District

\_\_\_\_\_  
Melody Woosley, Director  
Department of Human Services

  
\_\_\_\_\_  
Pedro Martinez, Superintendent

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
Assistant City Attorney



## **Attachment VI**

### **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.”

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



## Attachment VI

### 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.



## Attachment VI

(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.



## Attachment VI

### 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



## Attachment VI

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,



## Attachment VI

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,



## Attachment VI

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,



## Attachment VI

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.



## Attachment VI

### 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.



KD  
03/29/2018  
Item No. 19

# Attachment III



## Attachment III

### HEAD START PK PROGRAM JULY 1, 2018 TO JUNE 30, 2019

	BUDGET
<b>REVENUES:</b>	
4501000 Grants Federal - Operating	\$ 22,706,657
<b>Subtotal Grant</b>	<b>\$ 22,706,657</b>
6500000 In Kind Revenue	\$ 5,676,664
<b>Subtotal (In Kind)</b>	<b>\$ 5,676,664</b>
<b>TOTAL REVENUES</b>	<b>\$ 28,383,321</b>
<b>APPROPRIATIONS:</b>	
<b>13800000xxxx Head Start COSA</b>	
5101010 Regular Salaries	\$ 3,932,084
5101050 Language Skill Pay	\$ 36,000
5103005 FICA & Medicare Expense	\$ 301,569
5103010 Life Insurance	\$ 3,942
5103035 Personal Leave Buy Back	\$ 56,000
5103056 Transportation Allowance	\$ 1,560
5103105 Cell Phone Reimbursement	\$ 2,400
5105010 Retirement Exp	\$ 451,369
5170040 CivIn Actv Healthcr	\$ 686,880
5202010 Temporary Services	\$ -
5201040 Fees to Prof. Contractors	\$ 58,000
5202020 Contractual Services - COSA	\$ 157,000
5203040 Adv and Publications	\$ 5,000
5203060 Binding & Printing	\$ 38,935
5203070 Subs to Publications	\$ 2,000
5203090 Transportation Fees	\$ 15,000
5204010 Linen&Laundry	\$ -
5204020 Maint & Rep-Comrcl	\$ 1,200
5204050 Maintenance -Buildings	\$ 53,657
5204090 Maint & Rep - Automotive	\$ 3,400
5205010 Mail and Parcel Post	\$ 200
5205020 Rental of Office Equipment	\$ 15,000
5207010 Official Travel (out of town)	\$ 15,000
5208530 Alarm and Security Services	\$ 2,000
5301020 M&R Parts Automotive	\$ 2,200
5302010 Office Supplies	\$ 24,787
5304010 Food	\$ 20,000
5304075 Computer Software	\$ 33,000
5403040 Cellular Phone Service	\$ 29,000
5403060 Domain Names	\$ -
5403510 Wireless Data Communications	\$ 6,500
5403545 Motor Fuel and Lubricants	\$ 750
5404530 Gas and Electricity	\$ 31,680
5404540 Water and Sewer	\$ 6,000
5407032 DW Other	\$ 9,000
5501000 Cap <5000 - Computer Equipment	\$ 5,000
5501055 Cap <5000 - Mach & Equip Other	\$ -
5501065 Cap <5000 - Furniture & Fix	\$ -
<b>Total 13800000xxxx</b>	<b>\$ 6,006,113</b>



<b>13800000xxxx</b>	<b>Head Start COSA - T&amp;TA</b>		
	5201025 Education - Classes	\$	109,153
	5201040 Fees to Prof. Contractors	\$	-
	5202020 Contractual Services	\$	78,548
	5203080 Subs - Comp. Serv	\$	25,000
	<b>Total 13800000xxxx</b>	<b>\$</b>	<b>212,701</b>
<b>13800000xxxx</b>	<b>Edgewood ISD-Education</b>		
	5202020 Contractual Services	\$	4,175,378
	<b>Total 13800000xxxx</b>	<b>\$</b>	<b>4,175,378</b>
<b>13800000xxxx</b>	<b>San Antonio ISD-Education</b>		
	5202020 Contractual Services	\$	12,053,245
	<b>Total 13800000xxxx</b>	<b>\$</b>	<b>12,053,245</b>
<b>13800000xxxx</b>	<b>Head Start Support Services</b>		
	5202020 Contractual Services-UHS	\$	-
	5202020 Contractual Services-UIW	\$	77,480
	5202020 Contractual Services-Metro Health	\$	181,740
	<b>Total 13800000xxxx</b>	<b>\$</b>	<b>259,220</b>
<b>13800000xxxx</b>	<b>Head Start In Kind</b>		
	6602025 In Kind Other Contractual	\$	5,676,664
	<b>Total 13800000xxxx</b>	<b>\$</b>	<b>5,676,664</b>
	<b>TOTAL APPROPRIATIONS</b>	<b>\$</b>	<b>28,383,321</b>



KD  
03/29/2018  
Item No. 19

# Attachment IV



HEAD START PK PROGRAM  
 JULY 1, 2018 TO JUNE 30, 2019  
 PERSONNEL COMPLEMENT

POSITIONS	JOB CLASS	CURRENT	ADD/DELETE	2018-2019
ADMINISTRATIVE ASSISTANT I	0040	2		2
ADMINISTRATIVE ASSISTANT II	0041	1		1
MANAGEMENT ANALYST	0046	13		13
SPECIAL PROJECTS MANAGER	0866	3		3
SENIOR MANAGEMENT ANALYST	0999	6		6
HEAD START PROGRAM ADMINISTRATOR	2187	1		1
FISCAL MANAGER	2216	1		1
FISCAL ANALYST	2218	1		1
ACCOUNTANT	2220	1		1
FAMILY SUPPORT COORDINATOR	2290	1		1
FAMILY SUPPORT SUPERVISOR	2289	6		6
FAMILY SUPPORT WORKER	2283	56		56
CASE AIDE	0985	2		2
DESIGN COMMUNICATIONS COORDINATOR	2142	1		1
<b>TOTAL POSITIONS FOR HEAD START PK PROGRAM</b>		<b>95</b>	<b>0</b>	<b>95</b>