Contract No. _____

STATE OF TEXAS	**§**	**AGREEMENT TO PROVIDE HEALTH**
	§	**SCREENINGS AND EXAMINATIONS FOR THE**
COUNTY OF BEXAR	**§**	**CITY OF SAN ANTONIO HEAD START PROGRAM**

This Contract is entered into by and between the City of San Antonio (hereinafter referred to as "City"), a Texas Municipal Corporation, acting by and through its Director of the Department of Human Services pursuant to Ordinance No. _____ dated September 29, 2016, and the Bexar County Hospital District d/b/a University Health System, a hospital district created pursuant to Article IX Section 4 of the Texas Constitution and Chapter 281 of the Health and Safety Code, (hereinafter referred to as "Contractor") (individually "the Party" and collectively "the Parties") to set forth the objectives, understandings, and agreements between the Parties in connection with the use of Head Start grant funds as described herein. 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 pursuant to the Head Start Act (42 U.S.C. §9801 *et seq*., as amended) (the "Grant") for the purpose of providing Head Start services to children and families in the City of San Antonio and the Bexar County area; and

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

WHEREAS, Contractor is a hospital district established under Article IX, Section 4 of the Texas Constitution and Chapter 281 of the Texas Health and Safety Code, whose public purpose is providing medical and hospital care to the needy and indigent of the community; and

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

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

I. SCOPE OF WORK

1.1 The Contractor will provide, oversee, administer, and carry out all activities and services in a manner satisfactory to the City and in compliance with the Contractor's Scope of Work, attached hereto and incorporated herein for all purposes as **Attachment I**, this Contract, and the Terms of the Grant (hereinafter defined). If the terms of this Contract are inconsistent or in conflict with applicable Terms of the Grant, the applicable Terms of the Grant shall be controlling, unless the inconsistency or conflict results from more stringent requirements set forth in this Contract, in which case the terms imposing the most stringent requirements upon the Contractor shall control.

1.2 For purposes of this Contract, the terms listed below shall have the following meanings:

(A) "Terms of the Grant" shall mean 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 U.S. Department of Health and Human Services ("HHS")

to the City, Relevant HHS Directives, or elsewhere, 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 Contract and as such requirements may be established or modified (by amendment, deletion, addition or otherwise) during the period of the Contract.

(B) "Relevant HHS directives" shall mean regulations, manuals, guidelines, or other oral or written directives of HHS or any subdivision thereof, including the Administration for Children and Families, Head Start Bureau, the Program Operations Division and ACF Region VI, as such regulations, manuals, guidelines, or other oral or written directives shall be made applicable to the Grant or Grantee.

1.3 Contractor shall establish and implement policies and procedures governing personnel, financial management, and programmatic management, as specified more fully in 45 C.F.R Parts 1301 *et. seq*, and/or 45 C.F.R. Part 75 as applicable. Such policies and procedures shall be consistent with the Terms of the Grant, the policies and procedures approved by the Grantee's Policy Council and Governing Body, and content and service plans.

1.4 City retains the authority to contract with third-parties for the delivery of other Head Start services in San Antonio and Bexar County area. Contractor agrees to allow the City's other contractors access to the facilities leased and/or owned by Contractor in order to provide said services. 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.

II. TERM

2.1 Except as otherwise provided for pursuant to the provisions hereof, this Contract shall begin on February 1, 2017 and shall terminate on June 2, 2017 The City shall have the option to renew this Agreement, with appropriate revisions to the budget and due dates in order to reflect the grant award and to the Scope of Work in Attachment I in order to best meet the needs of children and families through Head Start Grant activities, for one additional term of up to 6 months without the necessity of further City Council approval.

III. CONSIDERATION

3.1 In consideration of the services to be delivered by Contractor, the City will reimburse Contractor a total amount not to exceed $**20,000.00** ("the Federal Share") during the period in which this Contract is in effect for costs incurred in accordance with the Program Budget attached hereto and incorporated herein for all purposes as **Attachment II**. Contractor's Program Budget is comprised of the Federal Share and the Non-Federal Share. The Federal Share shall 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 **$5,000.00**) 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 eighty percent (80%) of its required non-Federal Share funds, City may limit its reimbursements to Contractor to eighty percent (80%) of City's total obligation to Contractor. To meet the requirements of this Contract, all claimed non-Federal Share must meet the requirements of 45 C.F.R. § 75.306, as applicable.

3.2 Prior to commencement of the Contract, Contractor shall submit to City for its approval a monthly budget by line item for the entire term of the Contract along with its program Budget, including detail by category alone. If the Contractor's budget is not submitted to the City for approval before the beginning of the Contract period, the City reserves the right to redirect Contractor's funding as necessary. Additionally, throughout the term of the Contract, Contractor shall submit on or before the last day of each month a forecast of the projected monthly expenses for each month remaining in the Contract so that the City may

review and compare actual expenses to projected expenditures and address issues associated with Contractor's expenditure rate (e.g., on or before March 31, 2017, Contractor shall submit the projected expenses by month for April, May, and so on until June 2, 2017). Contractor's budgeted development and administrative costs (as defined by 45 C.F.R. §1301.32) shall not exceed twelve percent (12%) of the Program Budget, unless the total Program Budget is modified in accordance with this Contract in which case this amount shall be reduced proportionately unless the Parties otherwise agree.

3.3 Approval required. Contractor shall seek and obtain City's (City's Head Start Program Administrator and DHS's Fiscal Administrator) 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 otherwise Contractor must make request in writing or via email to the City's Head Start Program Administrator. Contractor's written request must be accompanied by a justification for the change and indicate which lines items are affected by such change.

3.4. The funding level of this Contract is based on an allocation from the following funding sources:

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 the Special Provisions**,** affixed hereto and incorporated herein for all purposes as **Attachment III**.

3.5 It is expressly understood and agreed by the City and Contractor that the City's obligations under this Contract are contingent upon the actual receipt of adequate grant funds from HHS to meet City's liabilities hereunder. This Contract may be terminated by the City if HHS terminates the City as a grantee or reduces the amount granted to City, for any reason; provided that, if the reduction of grant funds does not result in complete unavailability of such funds, the Parties will use best efforts to amend this Contract accordingly. City will promptly notify Contractor of any such HHS action.

IV. PAYMENT

4.1 Contractor agrees that this is a cost reimbursement contract and that the City's liability hereunder is limited to making reimbursements for allowable costs incurred as a direct result of services provided by the Contractor in accordance with the terms of this Contract. Allowable costs are defined as 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. . All requested reimbursed costs must be consistent with the terms and provisions of the approved budgeted line items described in **Attachment II** of this Contract, unless (a) 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 in cases where the total Contract Budget remains the same, or (b) a Contract amendment has been approved and signed by the Director of DHS pursuant to Section 24.1 of this Contract in cases where there is an increase or decrease to the total Contract Budget. Approved budget revisions and Contract 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 Contract amendments supersede prior conflicting or inconsistent agreements with regard to the referenced Project Budget, and all references in the Contract to the budget shall mean the budget as revised through approved budget revisions or Contract amendments. Budget revision requests shall be submitted in advance of anticipated expense(s). The City will not accept budget revision requests submitted after May 2, 2017. In no event shall the City be liable for any cost of Contractor not eligible for reimbursement as defined within the Contract. Contractor shall remit to City within ten (10) business days after the City makes the request for remittance any funded amounts which were paid pursuant to this Article IV and used to cover disallowed costs. Any such amounts not remitted within ten (10) business days may, at City's option, be subject to offset against future funding obligations by City. For purposes of this Contract, the term, "business day" shall mean 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 Contract expressly calls for "Contractor business days."

4.2 If specific circumstances require an advance payment on this Contract, Contractor must submit to the Director of DHS a written request for such advance payment, including the specific reason for such request in the form prescribed by City. Contractor agrees that the City shall not be obligated to pay for any advances requested. In those instances in which advance payments are authorized, the Director of DHS may, in the Director's sole discretion, approve an advance payment on this Contract. It is understood and agreed by the Parties hereto that (a) each request requires submission to the Director of DHS no less than ten (10) business days prior to the actual ostensible cash need; (b) each request will be considered by the Director 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. For purposes of this Contract, the term "business day" shall mean 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. In those instances in which advance payments are authorized:

(A) Contractor's payments to its vendors using funds advanced by the City shall be remitted to the vendors in a prompt and timely manner so long as services have been performed by the subject vendor, defined as not later than (10) business days after the Contractor is notified that an advance payment check is available from the City.

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

(C) The City may deduct from monthly reimbursements amounts necessary to offset the amount advanced based upon the number of months remaining in the Contract term, or from a single subsequent monthly reimbursement the full amount previously advanced to Contractor. The City may consider factors such as projected allowable costs and other indicators such as Contractor's financial stability. Contractor shall maintain a financial management system to account for periodic, or a lump sum, deduction from reimbursements.

4.3 Contractor shall submit to City not later than the fifteenth (15^{th}) 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 herein, including supporting documentation of such costs as may be required by the Director of DHS. The Request for Payment shall also specify the Program Income (as defined herein) received or projected during the same time period. The Director of DHS may require the Contractor's submission of original or certified copies of invoices, cancelled checks, Contractor's general ledger and/or receipts to verify invoiced expenses.

4.4 City shall make reimbursement payments of eligible expenses to the Contractor of any undisputed amounts as determined by the Director of DHS in accordance with established procedures, so long as City receives a properly completed and documented Request for Payment. City shall make payment to Contractor within 30 calendar days of receiving a valid and approved Request for Payment.

4.5 The Contractor shall submit to City a full accounting of the Program Income and non-Federal Share funds received and total Program costs incurred, along with all requests for payment for the period February 1,

2017 through June 2, 2017 no later than July 17, 2017. In the event of early termination of this Contract, Contractor shall submit the information 45 calendar days from the early termination date of the Contract. These deadlines may be adjusted only if Contractor receives written authorization from the Director of DHS allowing Contractor to submit a request for payment at a later specified date.

4.6 Contractor agrees that the City shall not be obligated to any subcontractors or third party beneficiaries of the Contractor.

4.7 Contractor shall maintain a financial management system, and acceptable accounting records in accordance with 45 C.F.R. § 75.302 *et seq*, as applicable, and that provide for:

(A) accurate, current, and complete disclosure of financial support from each federal, state and locally sponsored project and program in accordance with the reporting requirements set forth in Article VIII of this Contract. If accrual basis reports are required, the Contractor shall develop accrual data for its reports based on an analysis of the documentation available;

(B) records that adequately identify the source and application of funds for City-sponsored activities. Such records shall contain information pertaining to City awards, authorizations, obligations, un-obligated balances, assets, equity, outlays, and income;

(C) effective control over and accountability for all funds, property, and other assets. The Contractor shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes. Contractor shall maintain a separate numbered account for all funds received and disbursed through this Contract;

(D) comparison of actual outlays with budget amounts for each award. Whenever appropriate or required by the City, financial information should be related to performance and unit cost data;

(E) procedures to minimize the time elapsing between the transfer of funds from the City and the disbursement of said funds by the Contractor;

(F) procedures for determining reasonable, allowable, and allocable costs in accordance with the provisions of any and all applicable cost principles, including but not limited to the cost principles referenced in Article XII hereof, and the terms of the award, grant, or contract, with the City;

(G) accounting records that are supported by source documentation (i.e., timesheets, employee benefits, professional services agreements, purchases, and other documentation as required by City). Contractor shall maintain records and shall meet necessary requirements under Generally Accepted Accounting Principles [GAAP]; and

(H) an accounting system based on generally acceptable accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the Project. A Receipts and Disbursements Ledger must be maintained. A general ledger with an Income and Expense Account for each budgeted line item is necessary. Paid invoices revealing check number, date paid and evidence of goods or services received are to be filed according to the expense account to which they were charged.

4.8 Contractor agrees that Contractor costs or earnings claimed under this Contract may not be claimed under another contract or grant from another agency, organization, business entity or governmental entity.

4.9 Contractor shall establish, and abide by a cost allocation methodology and plan which ensures that the City is paying only its fair share of the costs for services, overhead, and staffing not solely devoted to the Project or funded pursuant to this Contract. The 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 Head Start Grant funds ("Grant Fund") provided hereunder do not subsidize other program(s).

Contractor must ensure that costs allocated and charged to the Head Start 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 shall provide to City prior to the start of the Contract term (i) a matrix identifying the shared use of such facilities and/or program services; and (ii) the Cost Allocation Plan and supporting documentation, along with its Budget, financial statements and audit that are applicable to the Contractor's Project. City shall 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 2, 2017, which balance or Statement sheet shall be due to the City no later than June 17, 2017. Reimbursement shall be made within 20 calendar days of written notification to the Contractor of the need for reimbursement.

4.11 Upon expiration or early termination of this Contract, or at any time during the term of this Contract, all unused funds, rebates, advances exceeding allowable costs, or credits on-hand or collected thereafter relating to the Project, shall be immediately returned by Contractor to the City.

4.12 Upon execution of this Contract or at any time during the term of this Contract, the City's Director of Finance, the City Auditor, or a person designated by the Director of DHS may review and approve all Contractor's systems of internal accounting and administrative controls prior to the release of funds hereunder.

V. PROGRAM INCOME

5.1 For purposes of this Contract, "program income" shall mean earnings of Contractor realized from activities resulting from this Contract or from Contractor's management of funding provided or received hereunder. Such earnings shall include, but shall not be limited to, interest income; usage or rental/lease fees; income produced from Contract-supported services of individuals or employees or from the use of equipment or facilities of Contractor provided as a result of this Contract, and if applicable, payments from clients or third parties for services rendered by Contractor pursuant to this Contract. At the sole option of the Director of DHS, 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 that may be specified by the Director of DHS. If the Director of DHS does not specify a timeframe for Contractor to return program income to City, then Contractor must return such program income to City on the same date that Contractor submits its statement of expenditures and revenues to DHS set forth in Article V, Section 5.4 of this Contract. 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 Contract.

5.3 Contractor shall provide DHS with thirty (30) calendar days written notice prior to the activity that generates program income. Such notice shall detail the type of activity, time, and place of all activities that generate program income.

5.4 The Contractor shall 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 Contract.

5.5 Contractor is prohibited from charging fees or soliciting donations and is prohibited from inviting or contracting with vendors who shall charge fees or solicit donations from Head Start participants and their parents in any Contract-funded project without the prior written approval of the Director of DHS.

5.6 Contractor shall include this Article V, in its entirety, in all of its subcontracts involving income-producing services or activities.

VI. ADMINISTRATION OF CONTRACT

6.1 The Contractor agrees to comply with all the terms and conditions that the City must comply with within its award document from HHS. A copy of said award document is attached hereto and incorporated herein for all purposes as **Attachment IV**. From time to time, the award document may be amended or supplemented, and these shall be incorporated into the Contract collectively as **Attachment IV**.

6.2 In the event that any disagreement or dispute should arise between the Parties hereto pertaining to the interpretation or meaning of any part of this Contract or its governing rules, regulations, laws, codes or ordinances, the City Manager or the Director of DHS, as representatives of the City and the parties ultimately responsible for all matters of compliance with HHS and City rules and regulations, shall have the final authority to render or secure an interpretation.

6.3 Contractor shall not use funds awarded from this Contract as matching funds for any federal, state or local grant without the prior written approval of the Director of DHS.

6.4 The City shall have the authority during normal business hours to make physical inspections to all operating facilities occupied by Contractor for the administration of this Contract and to require such physical safeguarding devices as locks, alarms, security / surveillance systems, safes, fire extinguishers, sprinkler systems, etc. to safeguard property and/or equipment authorized by this Contract.

6.5 The Contractor Board of Managers, as applicable, and Contractor's management staff shall adopt and approve an Employee Integrity Policy and internal program management procedures, and require all staff to abide by these 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 shall require repayment of stolen or erroneously received grant funds or property to the Contractor, or to the applicable Head Start service provider from whom the grant funds or property was received or stolen, if other than the Contractor, and shall specify any other consequences to Contractor's employees and vendors involved in such illegal activities to include but not be limited to termination and prosecution where necessary. Said policies and procedures shall be provided to DHS upon request by DHS. In the event that DHS finds the policies and procedures to be lacking, DHS may recommend revision.

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 shall not exceed $500.00 for any given calendar month during the term of this Contract unless Contractor receives prior written approval from DHS to exceed such limit. Such requests for petty cash must be supported by the submission to DHS of an original receipt.

(C) Checks issued by City to Contractor shall be deposited into the appropriate bank account immediately or by the next Contractor business day after Contractor's receipt of each such check, and shall never be cashed for purposes of receiving the face amount back. If such check(s) are not deposited within the next Contractor business day from the date of issue, such checks shall be investigated by City and stop-payment orders issued, as applicable. Upon cancellation of any outstanding check, if deemed

appropriate by City, such check may be reissued to the Contractor or if deemed by City not to be a valid expense, such check shall be immediately returned to the City.

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

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

VII. AUDIT

7.1 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, then during the term of this Agreement, the Contractor shall have completed an independent audit and the reporting required submitted to the City within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine (9) months after the end of Contractor's fiscal year, expiration or early termination of this Contract, whichever is earlier. Contractor understands and agrees to furnish DHS a copy of the audit report including the corrective action plan(s) on all audit findings, a summary schedule of prior audit findings, management letter and/or conduct of audit letter, within thirty (30) calendar days upon receipt of said report or upon submission of said corrective action plan to the auditor.

Contractor agrees and understands that upon notification from federal, state, or local entities that have conducted program reviews and/or audits of the 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 of the report.

7.2 Contractor agrees that if Contractor receives or 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 shall 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 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the Federal cognizant or oversight agency for audit to the Federal Audit Clearinghouse. A copy of this report must also be provided to City within this same time period. Contractor may submit reports through the following website: *http://harvester.census.gov/sac/* and may also contact the Clearinghouse by telephone at (301) 763-1551 (local), 1-888-222-9907 or 1-800-253-0696 (toll free).

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

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

Contractor agrees to reimburse the City or supplement any disallowed costs with eligible and allowable expenses based upon reconciled adjustments resulting from Contractor's Single Audit. Reimbursement shall 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 Contract, then the Contactor shall complete and submit an unaudited financial statement(s) within a period not to exceed nine months immediately succeeding the end of Contractor's fiscal year, expiration or early termination of this Contract, whichever is earlier. Said financial statement shall include a balance sheet and income statement

prepared by a bookkeeper and a cover letter signed by Contractor attesting to the correctness of said financial statement.

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

7.5 The City reserves the right to conduct, or cause to be conducted an audit or review of all funds received under this Contract at any and all times deemed necessary by City. The City Internal Audit Staff, a Certified Public Accounting (CPA) firm, or other personnel as designated by the City, may perform such audit(s) or reviews. The City reserves the right to determine the scope of every audit. In accordance herewith, Contractor agrees to make available to City all accounting and Project records.

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

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

7.6 When an audit or examination determines that the Contractor has expended funds or incurred costs which are questioned by the City and/or the applicable state or federal governing agency, the Contractor shall 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 such amount to the City no later than ten (10) days from the date of notification of such disapproval or disallowance by the City. At its sole option, DHS may instead deduct such claims from subsequent reimbursements; however, in the absence of prior notice by City of the exercise of such option, Contractor shall provide to City a full refund of such amount no later than ten (10) days from the date of notification of such disapproval or disallowance by the City. If Contractor is obligated under the provision hereof to refund a disapproved or disallowed cost incurred, such refund shall be required and be made to City by check, cashier's check or money order. Should the City, at its sole discretion, 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 shall be the sole responsibility of the Contractor and shall not be paid from any Project funds received by the Contractor under this Contract. Delinquent debts that would otherwise be identified as allowable costs may be paid with Project funds after written approval of DHS.

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

VIII. RECORDS, REPORTING, MONITORING AND INTELLECTUAL PROPERTY

8.1 In addition to those listed in this Contract, the Contractor shall submit to DHS any and all reports as may be required by HHS or the City. Contractor shall incorporate and use any City approved tracking or information system (e.g., ChildPlus) for the delivery of comprehensive Head Start Services and collect, input and update all data in accordance with the City's planned timeline to ensure the reporting of accurate and consistent information to HHS.

8.2 a) Additionally, Contractor shall maintain and furnish to City programmatic information and reports, in such forms as the City may prescribe, as required under the Head Start Act, as amended, and federal regulations such as 45 C.F.R. Part 74, 45 C.F.R. Part 92, or 45 C.F.R. Part 75, as applicable:

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

8.3 City reserves the right to request Contractor to provide additional records for travel expenses, long distance calls, faxes, internet service, cell phone calls, or other electronic communication devices charged to the budget associated with this Contract.

8.4 If applicable, Contractor shall report all notices served, violations found or complaints filed with regard to licensing, or lack thereof, of Contractor's centers within one (1) business day of receipt of the notice, violation or complaint.

8.5 Contractor shall comply with Head Start Performance Standards and regulations, the Head Start Act, and all applicable Federal, State and Local laws relating to child safety. Contractor must establish and implement policies and procedures to respond to medical, dental and other emergencies with which all staff should be familiar and trained. These policies and procedures must include, among other things, methods of notifying parents in the event of an emergency involving their child and established methods for handling cases of suspected or known child endangerment, abuse or neglect that are in compliance with applicable Federal, State, or Local laws. Contractor shall notify the City immediately, but no later than 24 hours, of any instances of actual or suspected cases of child endangerment, neglect or abuse, or in case of a program emergency or likely negative media coverage.

8.6 Within a period not to exceed forty-five (45) calendar days after the expiration or early termination date of the Contract, Contractor shall 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 shall execute and deliver to City a receipt for all sums received and a release of all claims against the Project.

8.7 Contractor shall maintain financial records, supporting documents, statistical records, and all other books, documents, papers or other records pertinent to this Contract or the Grant 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 45 C.F.R §75.361, as applicable, whichever is longer. Notwithstanding the foregoing, Contractor shall maintain all Contract and Grant related documents for no less than four (4) years from the date of City's submission of the annual financial report covering the funds awarded hereunder. 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 the end of the four (4) year period or until the audit, litigation, or other action is completed, whichever is later. Records for real property and equipment acquired with Head Start funds shall be retained for four (4) years after final disposition.

8.8 Contractor shall make available to City, HHS, or any of their duly authorized representatives, upon appropriate notice, such books, records, reports, documents, papers, policies and procedures as may be necessary for audit, examination, excerpt, transcription, and copy purposes, for as long as such records,

reports, books, documents, and papers are retained. This right also includes timely and reasonable access to Contractor's facility and to Contractor's personnel for the purpose of interview and discussion related to such documents. Contractor shall, upon request, transfer certain records to the custody of City or HHS when City or HHS determines that the records possess long-term retention value.

8.9 The Contractor agrees to incorporate and use any City approved tracking or information system for the delivery of comprehensive Head Start services. Contractor shall enter current, accurate and complete client data.

8.10 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 Contract. Therefore, Contractor agrees to permit City and/or HHS to evaluate, through monitoring, reviews, inspection or other means, the quality, appropriateness, and timeliness of services delivered under this Contract and to assess Contractor's compliance with applicable legal and programmatic requirements. At such times and in such form as may be required by DHS, the Contractor shall make available to DHS and the Grantor of the Grant Funds, if applicable, 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 shall permit the City and Grantor of the Grant Funds, if applicable, to have interviews with its personnel, board members and program participants pertaining to the matters covered by this Contract. Contractor agrees that the failure of the City to monitor, evaluate, or provide guidance and direction shall 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 Contract.

8.11 City may, at its discretion, conduct periodic, announced 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 contract period. City reserves the right to make unannounced visits to Contractor Program sites when it is determined that such unannounced visits are in the interest of effective program management and service delivery.

8.12 Contractor understands that the City will inform Contractor in a timely manner of the findings of any such review or monitoring, specifically any default under the Contract or deficiencies in performance, and will also inform Contractor in writing of Program strengths and weaknesses and specify a deadline for corrective action when necessary. The City will assist Contractor in finding solutions for Program improvement if and as appropriate.

8.13 Unless otherwise provided herein, all reports, statements, records, data, policies and procedures or other information requested by DHS shall be submitted by Contractor to City within five (5) working days of the request. The Parties agree that a shorter time frame may be necessary for response in the case of the single audit and shall cooperate to meet deadlines necessary to comply with the single audit requirements. In the event that Contractor fails to deliver the required reports or information or delivers incomplete information within the prescribed time period, the City may, upon reasonable notice, suspend reimbursements to Contractor until such reports are delivered to City. Furthermore, the Contractor ensures that all information contained in all required reports or information submitted to City is accurate.

8.14 (A) Unless disclosure is authorized by the City, Contractor agrees to maintain in confidence all information pertaining to the Project or other information and materials prepared for, provided by, or obtained from City including, without limitation, reports, information, project evaluation, project designs, data, other related information (collectively, the “Confidential Information”) and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Contract. Contractor shall protect the Confidential Information and shall take all reasonable steps to prevent the unauthorized disclosure, dissemination, or publication of the Confidential Information.

(B) However, if disclosure is permitted by law or required by order of a governmental agency or court of competent jurisdiction, Contractor shall give the Director of DHS prior written notice that such disclosure is required with a full and complete description regarding such requirement.

(C) Contractor shall establish specific procedures designed to meet the obligations of this Article VIII, Section 8.14, 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. This Article VIII, Section 8.14 shall not be construed to limit HHS's, the City's or its authorized representatives' right to obtain copies, review and audit records or other information, confidential or otherwise, under this Contract. Upon termination or expiration of this Contract, Contractor shall return to City all copies of materials related to the Project, including the Confidential Information. All confidential obligations contained herein (including those pertaining to information transmitted orally) shall survive the termination of this Contract. The Parties shall ensure that their respective employees, agents, and contractors are aware of and shall comply with the aforementioned obligations.

8.15 The Public Information Act, Government Code Section 552.021, requires the City and Contractor to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is written, produced, collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information has a right of access to it, or has spent or contributed public money for the purpose of its writing, production, collection, assembly or maintenance.. Therefore, if Contractor or City receives inquiries regarding documents within its possession pursuant to this Contract, the Party receiving such request shall (a) within twenty-four (24) hours of receiving the requests forward such requests to the other Party for notification purposes and to afford the other Party the opportunity to assert any applicable arguments or protections necessary to protect its information, and (b) take action as authorized under the Public Information Act to protect information that may be confidential pursuant to State or Federal law. If the requested information is confidential pursuant to State or federal law, the Party receiving such request shall submit to the other Party the list of specific statutory authority mandating confidentiality no later than three (3) business days of Contractor's receipt of such request.

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

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

Contractor acknowledges and agrees that all local government records, as described herein, produced in the course of the work required by this Contract, shall belong to and be the property of City and shall be made available to the City at any time. Contractor further agrees to turn over to City all such records upon termination of this Contract. Contractor agrees that it shall not, under any circumstances, release any records created during the course of performance of the Contract to any entity without the written permission of the Director of DHS, unless required to do so by a court of competent jurisdiction. DHS shall be notified of such request as set forth in Article VIII, Section 8.15 of this Contract.

8.17 Ownership of Intellectual Property. Contractor and City agree that the Project shall be and remain the sole and exclusive proprietary property of City. The Project shall be deemed a "work for hire" within the meaning of the copyright laws of the United States, and ownership of the Project and all rights therein shall be solely vested in City. Contractor hereby grants, sells, assigns, and conveys to City all rights in and to the Project and 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. 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") in the Project shall be solely vested in City. As owner of the tangible and intangible intellectual property, City shall have the right to reproduce, publish, authorize others to reproduce or publish, or otherwise use such material. Contractor agrees to execute all documents reasonably requested by City to perfect and establish City's right to the Intellectual Property Rights. In the event City shall be unable, after reasonable effort, to secure Contractor's signature on any documents relating to Intellectual Property Rights in the Project, including without limitation, any letters patent, copyright, or other protection relating to the Project, for any reason whatsoever, 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 and issuance of letters patent, copyright or other analogous protection thereon with the same legal force and effect as if executed by Contractor. Provided, however, nothing herein contained is intended nor shall it be construed to require Contractor to transfer any ownership interest in Contractor's best practice and benchmarking information to the City.

8.18 In the event that Contractor desires to copyright material or to permit any third-party to do so, Contractor must obtain City's prior written approval to do so and must appropriately acknowledge City's support in any such materials.

8.19 Subject to obligations to maintain confidentiality under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the HIPAA Business Associate Agreement (attached hereto and incorporated herein as **Attachment V),** and the limitations imposed by each regarding transfer of information, any and all writings, documents or information in whatsoever form and character produced by Contractor pursuant to the provisions of this Contract is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Contractor. Contractor understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

IX. INSURANCE AND INDEMNIFICATION

9.1 Insurance

(a) Contractor and City each maintain a self-insurance fund for general liability and worker's compensation claims and causes of action to meet their statutory obligations to each party's employees.

(b) It is the stated policy of both City and Contractor not to acquire commercial general liability insurance for torts committed by employees of the state who are acting within the scope of their employment. Rather, Chapter 101 of the Civil Practice and Remedies Code states that a governmental unit in the state is liable for property damage, personal injury and death proximately caused by the wrongful act or omission or negligence of an employee acting within his scope of employment. Liability of the state government under this chapter is limited to money damages in a maximum amount of $250,000.00 for each person and $500,000.00 for each single occurrence for bodily injury or death and $100,000.00 for each single occurrence for injury to or destruction of property. Employees of the City are provided Workers' Compensation coverage under a self-insuring, self-managed program as authorized by the Texas Labor Code, Chapter 503.

9.2 Indemnification.

Contractor acknowledges that is a political subdivisions of the State of Texas and is subject to, and complies with the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practices 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, including but not limited to those resulting or arising from any and all injuries or death of any person or damage to any property arising from or related to this Contract. Each

Party shall promptly notify the other in writing of any claim or demands that become known against them in relation to or arising out of activities under this Contract.

9.3 Acts and Omissions.

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

X. THIS SECTION INTENTIONALLY LEFT BLANK

XI. APPLICABLE LAWS

11.1 Contractor, and all of the work performed under this Contract, shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Texas and with the charter, ordinances, bond ordinances, and rules and regulations of the City of San Antonio and Bexar County. Contractor agrees to abide by any and all future amendments or additions to such laws, rules, regulations, policies and procedures as they may be promulgated.

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

(A) The Head Start Act (42 U.S.C. §9801 *et seq*., as amended);

(B) 45 C.F.R. Part 1301 *et seq*.;

(C) The Terms of the HHS Grant;

(D) As applicable, 45 C.F.R. 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;

(G) Official record retention schedules as established by the Local Government Records Act of 1989; and

(H) The Texas Public Information Act, at Chapter 552, The Texas Government Code.

11.3 Contractor further understands and agrees:

(A) to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. §§1251-1387), as amended. Contractor agrees to report each violation to the City and understands that the City will, in turn, report each violation as required to the federal agency providing funds for this Contract and the appropriate EPA Regional Office. Additionally, Contractor agrees to include these requirements in each subcontract to this Contract exceeding $150,000.00 financed in whole or in part with federal funds.

(B) to make positive efforts to utilize small businesses, minority-owned firms and women's business enterprises in connection with the work performed hereunder, whenever possible.

(C) to provide for the rights of the Federal Government in any invention resulting from the work performed hereunder, in accordance with 37 C.F.R. Part 401 and any applicable implementing regulations.

(D) to include a provision requiring compliance with the Copeland "Anti-Kickback" Act (40 U.S.C 3145) and as supplemented by Department of Labor regulations at 29 C.F.R. Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or In Part by Loans or Grants from the United States."

(E) to comply with the Davis-Bacon Act, as amended (40 U.S.C. 3141–3144, and 3146–3148), and as supplemented by Department of Labor regulations at 29 C.F.R. Part 5, implementing regulations, and the relevant Additional OMB Provisions attached hereto and incorporated herein for all purposes as **Attachment VI**, and to include a provision requiring compliance with the each in any construction contracts of more than $2,000.00, and report all suspected or reported violations to HHS.

(F) to comply with the certification and disclosure requirements of the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352), and any applicable implementing regulations. Contractor verifies it has tendered said Certificate to the City.

(G) to comply with the applicable standards under the McKinney-Vento Homeless Assistance Act (42 U.S.C. §§11431 *et seq*.), and any applicable implementing regulations, as may be applicable.

(H) to comply with the Contract Work Hours and Safety Standards Act (40 USC 3701-3708), as supplemented by Department of Labor regulations (29 CFR Part 5), relating to all contracts that involve the employment of mechanics or laborers, and the relevant provisions in **Attachment 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 (Head Start) services to children or for the use of the employees of the City or Contractor who provide such services.

(J) that Contractor and its subcontractors shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

11.4 The Contractor certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 701-707 and 8101-8106, as amended). Failure to comply with the above-referenced law and regulations could subject the Contractor to suspension of payments, termination of Contract, and debarment and suspension actions.

11.5 Contractor shall comply with all federal, state, or local laws, rules, and orders prohibiting discrimination, and shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment. As a party to this Contract, Contractor understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as

otherwise established herein. Consistent with the foregoing, Contractor agrees to comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented by regulations at 41 C.F.R. Part 60. Additionally, Contractor certifies that it will comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:

(A) Title VII of the Civil Rights Act of 1964, as amended;

(B) Section 504 of the Rehabilitation Act of 1973, as amended;

(C) The Age Discrimination Act of 1975, as amended;

(D) Title IX of the Education Amendments of 1972, as amended; (Title 20 USC sections 1681-1688);

(E) Fair Labor Standards Act of 1938, as amended;

(F) Equal Pay Act of 1963, P.L. 88-38; and

(G) All applicable regulations implementing the above laws.

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.

11.6 The Contractor warrants that any and all taxes that the Contractor may be obligated for, including but not limited to, federal, state, and local taxes, fees, special assessments, Federal and State payroll and income taxes, personal property, real estate, sales and franchise taxes, are current, and paid to the fullest extent liable as of the execution date of the Contract. The Contractor shall comply with all applicable local, State, and Federal laws including, but not limited to, related to:

(A) worker's compensation;
(B) unemployment insurance;
(C) timely deposits of payroll deductions;
(D) filing of Information on Tax Return form 990 or 990T, Quarterly Tax Return Form 941, W-2's Form 1099 on individuals who received compensation other than wages, such as car allowance, Forms 1099 and 1096 for contract or consultant work, non-employee compensation, etc;
(E) Occupational Safety and Health Act regulations; and
(F) Employee Retirement Income Security Act of 1974, P.L. 93-406.

11.7 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 Contractor and its subcontractors shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, including, but not limited to, the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they relate to the procurement of recovered materials, as required by 2 CFR 200.322 and as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

11.9 All expenditures by the Contractor or any of its subcontractors must be made in accordance with all applicable federal, state and local laws, rules and regulations.

11.10 If applicable, Contractor shall 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 Contract.

XII. NO SOLICITATION/CONFLICT OF INTEREST

12.1 The Contractor warrants that no person or selling agency or other organization has been employed or retained to solicit or secure this Contract upon a contract or understanding for a commission, percentage, brokerage, or contingent fee and further that no such understanding or agreement exists or has existed with any employee of the Contractor or the City. For breach or violation of this warrant, the City shall have the right to terminate this Contract without liability or, at its discretion, to deduct from the Contract or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as legally may be available.

12.2 Contractor covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. Contractor further covenants that in the performance of this Contract, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.

12.3 Contractor further covenants that no member of its governing body or of its staff shall possess any interest in, or use their position for, a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.

12.4 No member of City's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Contract shall:

(A) Participate in any decision relating to this Contract which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest; or

(B) Have any direct or indirect interest in this Contract or the proceeds thereof.

12.5 Contractor acknowledges that it is informed that Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City. An officer or employee has "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 business entity.

12.6 Contractor warrants and certifies, and this Contract is made in reliance thereon, that Contractor is a public entity and Contractor's representative further warrants and certifies that no City officer or employee nor any spouse, parent, child, sibling of first-degree relative of a City officer or employee owns ten (10) percent or more of the voting stock or shares of Contractor, or ten (10) percent or more of the fair market value of the Contractor. 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.

XIII. TERMINATION

13.1 (a) Termination for Cause – Upon written notice in accordance with Article XXVI, Official Communication, CITY may terminate this Contract as of the date provided in the notice in whole or in part, upon the occurrence of either:

(i) Contractor's failure to fulfill, in a timely and proper manner, obligations under this Contract to include performance standards established by the City, or if the Contractor should violate any of the covenants, conditions, or stipulations of the Contract, or

(ii) Notification of any investigation, claim or charge by a local, state or federal agency involving fraud, theft or the commission of a felony by Contractor or Contractor's employee. Contractor shall 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 Contract may be terminated in whole or in part upon providing notice in accordance with Article XXVI, Official Communication, which shall specify a date, not sooner than 120 days following the day on which notice is sent, unless earlier terminated under any other provision herein.

13.2 The Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by the City alone, and its decision shall be final. It is further expressly understood and agreed by the Parties that Contractor's performance upon which final payment is conditioned shall include, but not be limited to, the Contractor's complete and satisfactory performance, of its obligations for which final payment is sought.

13.3 Notwithstanding any other remedy contained herein or provided by law, the City may delay, suspend, limit, or cancel funds, rights or privileges herein given the Contractor for failure to comply with the terms and provisions of this Contract. Specifically, at the sole option of the City, the Contractor may be placed on probation during which time the City may withhold reimbursements in cases where it determines that the Contractor is not in compliance with this Contract. The Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Contract, and the City may withhold funds otherwise due as damages, in addition to retaining and utilizing any other remedies available to the City.

13.4 If an employee of Contractor is discharged or otherwise leaves employment with Contractor, then the Contractor shall pay in full to such employee all of such employee's earned salaries and wages, within the timeframe specified by law.

13.5 Should the Contractor be debarred by federal government or the City pursuant to a debarment policy currently existing or hereafter adopted, said debarment may be grounds for termination.

13.6 This Contract is subject to the availability of federal grant funds to City and may be terminated by the City if HHS terminates the City as a grantee or reduces the amount granted to City, for any reason; provided that, if the reduction of grant funds does not result in complete unavailability of such funds, the Parties will use best efforts to amend this Contract accordingly. City will promptly notify Contractor of any such HHS action.

13.7 In all instances of termination, Contractor shall not incur new obligations after the effective date of termination, and shall cancel as many outstanding obligations as possible. Contractor shall submit to City all required reports including a final financial statement which shall be a statement of all expenditures incurred by Contractor under this Contract. City shall pay Contractor the full cost of obligations that City determines were not subject to cancellation if such costs are properly documented, allowable, within the approved budget, and unavoidably incurred by Contractor prior to termination or expiration. The foregoing shall constitute full and complete reimbursement for all of Contractor's performance under this Contract.

XIV. PROHIBITION OF POLITICAL ACTIVITIES

14.1 Contractor agrees that no funds provided from or through the City shall 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 shall the personnel involved in the administration of the Project provided for in this Contract be assigned to work for or on behalf of any partisan or non-partisan political activity.

14.2 Contractor agrees that no funds provided under this Contract may be used in any way to attempt to influence, in any manner, a member of Congress or any other State or local elected or appointed official.

14.3 The prohibitions set forth in Article XIV, Sections 14.1 and 14.2 of this Contract include, but are not limited to, the following:

(A) an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation;

(B) working or directing other personnel to work on any political activity during time paid for with City funds, including, but not limited to activities such as taking part in 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 activities such as taking part in voter registration drives, voter transportation activities, lobbying, collecting contributions, making speeches, organizing or assisting at meetings or rallies, or distributing political literature; and

(D) using facilities or equipment paid for, in whole or in part with City funds for political purposes including physical facilities such as office space, office equipment or supplies, such as telephones, computers, fax machines, during and after regular business hours.

14.4 To ensure that the above policies are complied with, Contractor shall provide every member of its personnel paid out of Contract funds with a statement provided by Contractor of the above prohibitions and have each said individual sign a statement acknowledging receipt of the policy. Such statement shall include a paragraph that directs any staff person who has knowledge of violations or feels that he or she has been pressured to violate the above policies to call and report the same to DHS. Contractor shall list the name and number of a contact person from DHS on the statement that Contractor's personnel can call to report said violations.

14.5 Contractor agrees that in any instance where an investigation of the above is ongoing or has been confirmed, salaries paid to the Contractor under this Contract may, at the City's discretion, be withheld until the situation is resolved, or the appropriate member of the Contractor's personnel is terminated.

14.6 This Article shall not be construed to 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 time not paid for with Contract funds.

XV. PERSONNEL

15.1 Contractor shall 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 shall ensure that, at a minimum, the program management functions listed in the Scope of Work are assigned to and adopted by staff within the Program.

15.2 Contractor understands that the City shall periodically perform its own wage and salary comparison and shall issue such results to Contractor. Contractor understands and agrees that City shall have no obligation to reimburse Contractor in excess of wages to an employee that exceed the average rate of compensation paid to persons providing substantially comparable services in the area. For purposes of this Contract, the City shall accept the wage information set forth in the most recent study commissioned by, or issued by, the Texas Association of School Boards, in determining the rate of reimbursement. Although the City may consider factors such as training and experience as affecting compensation levels, the City shall have the sole and absolute authority to determine the rate of City's reimbursement under the Contract and its decision shall be final due to the City's obligation of ensuring that wage comparability studies meet the

requirements of the Head Start Act and implementing regulations. Subject to the restriction set forth in 15.3, Contractor may compensate its employees above the rate the City will reimburse, so long as the additional compensation is not charged to the Contract budget.

15. 3 Contractor expressly understands and agrees that in accordance with 42 U.S.C. §9848, no portion of the Contract funds provided hereunder may be used to pay its employee if compensation (including non-federal funds) to that employee exceeds $179,700.00, or the maximum authorized compensation as may be adjusted from time to time. Furthermore, Contractor agrees that all employees must devote to the Head Start Program the time proportionate to the percentage of their compensation funded through the Head Start program grant (e.g., employees who are one hundred percent (100%) funded through the Head Start grant must devote one hundred percent (100%) of their time and effort to support the Head Start program). Contractor agrees to submit employee certifications if requested by the City or HHS.

15.4 The Contractor agrees to establish internal procedures that assure employees of an established complaint and grievance process. The grievance process will include procedures to receive, investigate, and resolve complaints and grievances in an expeditious manner.

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

15.6 Contractor agrees that all copies of written job descriptions will be filed in all individual personnel folders for each position in the organization.

15.7 The Contractor agrees to provide the City with the names and license registration of any employees of Contractor regulated by State law whose activities contribute towards, facilitate, or coordinate the performance of this Contract.

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

(A) To attend annual training in a branch of the Armed Services, not to exceed fifteen (15) business days during the term of this Contract;

(B) To serve as a juror;

(C) To attend the funeral of someone in the immediate family. Immediate family shall include father, step-father, father-in-law, mother, step-mother, mother-in-law, sister, step-sister brother, step-brother, spouse, child, and other relative who was the legal guardian of the employee or for whom the employee had legal guardianship. In such event, the Contractor may grant up to three (3) work days of leave with pay that is not chargeable to annual or personal leave; or

(D) To attend seminars or workshops.

15.9 Chief Executive Officers (CEOs), directors and other supervisory personnel of Contractor may not supervise a spouse, parents, children, brothers, sisters, and in-laws standing in the same relationship, (hereinafter referred to as "Relatives") who are involved in any capacity with program delivery supported through Contract funds. Relatives, however, may be co-workers in the same Project in a non-supervisory position.

XVI. ADVERSARIAL PROCEEDINGS

16.1 Except in circumstances where the following is in conflict with federal law or 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 Contract be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City or any other public entity; and

(B) Contractor, at the City's option, could be ineligible for consideration to receive any future funding while any adversarial proceeding against the City remains unresolved.

XVII. FEDERAL AND CITY-SUPPORTED PROJECT

17.1 This Section is applicable to all publicity, presentations, signs, press releases, public notices, flyers, brochures, marketing materials, and other informational material prepared, created, posted and/or disseminated during the term of the Agreement by Contractor. Contractor shall obtain City's prior approval of the language and logo, as applicable, to be used, and the Parties agree that all publicity regarding the establishment or operation of the Head Start Program affiliation between City and Contractor described herein shall be planned and implemented as mutually agreed to in advance by the Parties. Contractor agrees that all public notices and any publicity, signs and/or marketing materials regarding any program which is funded by this Contract shall provide a written statement in a form approved or provided by City acknowledging the role of the Federal funds provided by HHS through City hereunder. These public notices or signs include, but are not limited to, signs identifying the facilities from which these programs are provided, and electronic media. In addition, all publicity related to Contractor's Head Start services shall note that the Program is operated on a non-discriminatory basis.

17.2 Contractor further agrees to provide City with a copy of all proposed communications to the public, Head Start parents and employees as it may relate to the City's implementation of the City's Head Start Program model, the transition of Head Start contracts or transition of the Head Start Program, and to obtain the City's approval prior to dissemination.

XVIII. PROPERTY, EQUIPMENT AND SUPPLIES

18.1 The City retains ownership of all equipment/property purchased with funds received through the City and such equipment/property shall, at the City's sole option, revert to the City at Contract's termination, for whatever reason. The Contractor agrees to relinquish and transfer possession of and, if applicable, title to said property without the requirement of a court order upon termination of this Contract. Equipment that has reverted to the Contractor through a City-paid lease agreement with option to buy will be considered the same as though the equipment was purchased outright with Contract funds. It is understood that the terms, "equipment" and "property", as used herein, means tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of $5,000.00 or more per unit and shall include not only furniture and other durable property, but also vehicles, but shall not include supplies and consumables.

18.2 Contractor agrees that no equipment purchased with Contract funds may be disposed of without receiving prior written approval from DHS. In cases of theft and/or loss of equipment, it is the responsibility of the Contractor to replace it with like equipment. Contract funds cannot be used to replace equipment in those instances. All replacement equipment will be treated in the same manner as equipment purchased with Contract funds.

18.3 Contractor shall maintain accurate and complete records on all equipment and property obtained with Contract funds to include:

(A) A description of the equipment, including the model and serial number or other identification number, if applicable;
(B) The date of acquisition, cost and procurement source, purchase order number, and vendor number;
(C) An indication of whether the equipment is new or used;
(D) The vendor's name (or transferred from);
(E) The location of the property;

(F) The property number shown on the property tag; and,
(G) A list of disposed items and disposition

18.4 The Contractor is fully and solely responsible for the insuring, safeguarding, maintaining, and reporting of lost, stolen, missing, damaged, or destroyed equipment/property purchased or leased with Contract funds. All lost, stolen, missing, damaged and/or destroyed equipment/property shall be reported to the local Police Department and, if applicable, the Federal Bureau of Investigation (FBI) immediately. The Contractor shall make such reports immediately and shall notify and deliver a copy of the official report to DHS within seventy-two (72) hours from the date that Contractor discovers the lost, stolen, missing, damaged and/or destroyed equipment/property. The report submitted by the Contractor to DHS shall minimally include:

(A) A reasonably complete description of the missing, damaged or destroyed articles of property, including the cost and serial number and other pertinent information;
(B) A reasonably complete description of the circumstances surrounding the loss, theft, damage or destruction; and,
(C) A copy of the official written police report or, should the Police not make such copy available within 72 hours of the discovery and reporting of the loss, a summary of the report made to the Police, including the date the report was made and the name and badge number of the Police Officer who took the report. Contractor shall provide a copy of the official written report to the City within 72 hours of receiving the official written report from law enforcement.

18.5 All equipment (as defined in 18.1 above) purchased under this Contract shall be fully insured against fire, loss and theft. Contractor shall, at a minimum, provide the equivalent insurance for real property and equipment acquired with Contract funds as provided to other property acquired or owned by the Contractor.

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

18.7 Contractor shall fully comply with the property and equipment requirements of 45 C.F.R Part 74, including but not limited to Sections 75.316 through 75.323, related to the following:

(A) Insurance Coverage
(B) Real Property
(C) Federally-owned and exempt property
(D) Equipment
(E) Supplies
(F) Intangible property
(G) Property trust relationship

18.8 Relative to property, equipment and supplies purchased with Head Start grant funds, Contractor shall route all written correspondence through DHS for review, endorsement and processing. For equipment purchases in the amount of $5,000.00 or greater or cumulative purchases in the amount of $100,000.00 or greater Contractor shall obtain written approval from DHS prior to issuance of the bid or other procurement notice and prior to selection of the winning bid or proposal. Contractor shall not split the purchase of a line item greater than the preceding threshold(s) in order to avoid obtaining approval from DHS.

18.9 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 such other criteria as City may prescribe (and which City shall 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 shall have the right to review and approve Contractor's inventory tracking system.

18.10 City reserves the right to require transfer of property acquired with funds awarded under this Contract as provided in 45 C.F.R. Part 75, including but not limited to §75.316 *et seq*.

XIX. TRAVEL

19.1 The costs associated with budgeted travel for business, either in-town or out-of -town, are allowable costs provided documentation of expenses is present.

(A) Contractor agrees that mileage reimbursement paid to Contractor's employees shall 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 for mileage reimbursement, the employees 1) shall be required to possess a valid Texas Driver's License and liability insurance as required by law, and 2) must record, on a daily basis, odometer readings before and after business use, showing total business miles driven each day and must keep such record in the vehicle. Mileage records are subject to spot-checks by City auditors and monitors. Contractor shall strongly encourage the participation by its employees in an approved defensive driving course. Evidence of the required driver's license and liability insurance must be kept on file with the Contractor.

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

1) obtain City's prior approval and provide City with detailed documentation of such business travel expense(s),
2) ensure that any and all costs associated with out-of-town travel (including per diem rates) shall 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 shall document such, and
4) maintain supporting documentation for conferences to include itineraries and documentation certifying conference attendance and provide such documentation to City upon request.

XX. NO USE OF FUNDS FOR RELIGIOUS ACTIVITIES

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

XXI. DEBARMENT

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

21.2 Contractor shall provide immediate written notice to City, in accordance with the notice requirements of Article XXVI herein, if, at any time during the term of the contract, including any renewals hereof, Contractor learns that its certification was erroneous when made or have become erroneous by reason of changed circumstances.

XXII. ASSIGNMENT

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

XXIII. AMENDMENT

23.1 Any alterations, additions or deletions to the terms hereof shall be by amendment in writing executed by both City and Contractor and evidenced by passage of a subsequent City ordinance, as to City's approval; provided, however, the Director of DHS shall have the authority to execute an amendment of this Contract without the necessity of seeking any further approval by the City Council of the City of San Antonio if permitted by all applicable local, state and federal laws, and in the following circumstances:

A. An increase in funding (the cause of which is unrelated to the reason set forth in Section 23.1(E) below) of this Contract in an amount not exceeding (a) twenty-five percent (25%) of the total amount of this Contract or (b) $25,000.00, whichever is the lesser amount; provided, however, that the cumulative total of all amendments executed without City Council approval pursuant to this subsection and increasing Contract funding during the term of this Contract shall not exceed the foregoing amount;

B. Modifications to the Scope of Work set forth in **Attachment I** hereto, so long as the terms of the amendment stay within the substantive parameters set forth in the original Scope of Work, also set forth in **Attachment I** hereto;

C. Budget line item shifts of funds, so long as the total dollar amount of the budget set forth in Section 3.1 of this Contract remains unchanged; (these modifications may be accomplished through Budget Revisions);

D. Modifications to the insurance provisions described in Article IX of this Contract that receive the prior written approval of the City of San Antonio's Risk Manager and the Director of DHS.

E. decreases (and increases if the City agrees to allocate additional enrollment slots to Contractor) in Contract funding based upon Head Start Program enrollment levels, and modifications to Contract terms related to enrollment; provided, however, that the cumulative total of all Head Start Program contracts, as amended, shall not exceed the City's total budget for the Head Start Program budget for the applicable grant year. Contractor shall execute any and all amendments to this Contract that are required as a result of a modification made pursuant to this Section 23.1(E).

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

XXIV. SUBCONTRACTING

24.1 None of the work or services covered by this Contract shall be sub-contracted without the prior written consent of the City and the Grantor of the Grant Funds, if so required by said Grantor.

24.2 Contractor must comply with all applicable local, State and Federal procurement standards, rules, regulations and laws in all its sub-contracts related to the work or funds herein. It is further agreed by the Parties hereto that the City has the authority to monitor, audit, examine, and make copies and transcripts of all sub-contracts, as often as deemed appropriate by the City. If, in the sole determination of the City, it is found that all applicable local, State and Federal procurement standards, rules, regulations and laws have not been met by Contractor with respect to any of its sub-contracts, then the Contractor will be deemed to be in default of this Contract, and as such, this Contract will be subject to termination in accordance with the provisions hereof.

24.3 Any work or services for sub-contracting hereunder, shall be sub-contracted only by written Contract, and unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this Contract. Compliance by sub-contractors with this Contract shall be the responsibility of Contractor. Contractor agrees that payment for services of any sub-contractor shall be submitted through Contractor, and Contractor shall be responsible for all payments to sub-contractors.

24.4 Contractor certifies that its subcontractors are not presently debarred, suspended or proposed for debarment, declared ineligible or voluntarily excluded from participation in any state or federal program.

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 the termination will be effected and the basis for settlement.

XXV OFFICIAL COMMUNICATIONS

25.1 Except where the terms of this Contract expressly provide otherwise, any election, notice or communication required or permitted to be given under this Contract shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either Party may from time to time designate in writing.

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

Contractor:
Theresa de la Haya, Senior Vice President
Community Health & Clinical Preventive Programs
University Health System
701 So. Zarzamora
San Antonio, Texas 78207

With a copy to:
Roberto Villarreal, MD, MPH
Senior VP, Research & Information Management
University Health System
4502 Medical Drive, MS 45-2
San Antonio, Texas 78229-4493

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

XXVI. VENUE

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

XXVII. GENDER

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

XXIII. REPRESENTATIONS AND OTHER OBLIGATIONS

28.1 The signer of this Contract for Contractor represents, warrants, assures and guarantees that (s)he has full legal authority to execute this Contract on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations herein contained. Whether a non-profit or public entity, Contractor must be authorized to do business in the State of Texas and be formed under and operating in accordance with all applicable laws of the State of Texas. Contractor shall provide DHS verification of the foregoing requirements upon request by City.

28.2 This Contract is based on the representation of Contractor that it is financially viable, solvent, and accountable for its expenditures; that it has the continuing capability to furnish the non-Federal Share of the

cost of operating its approved Contractor Program; and that Program funds disbursed to Contractor will be expended only for allowable costs in the implementation of the Contractor Program which is the subject of this Contract. Contractor represents that there are no financial limitations or impediments that would make it not viable, solvent and accountable such that the flow of Program funds might be diverted away from the operation and maintenance of the Program which is the subject of this Contract.

28.3 In the event that circumstances arise which might result in interference with Contractor's ability to provide the services which are the subject of this Contract, Contractor agrees to inform City of those circumstances immediately upon their discovery. Contractor agrees that reimbursement to Contractor, upon reasonable notice, may be suspended by City until such financial circumstances giving rise to the possible interference with the operation of the Program have been eliminated, provided, however, that authorized expenditures made prior to the suspension, and approved by City shall be disbursed pursuant to the terms of this Contract.

XXIX. LICENSES AND TRAINING

29.1 Contractor warrants and certifies that Contractor's employees and its subcontractors have the requisite training, license or certification to provide said services, and meet all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XXX. INDEPENDENT CONTRACTOR

30.1 It is expressly understood and agreed that the Contractor is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions and that the City shall in no way be responsible therefor, and that neither Party hereto has authority to bind the other nor to hold out to third parties that it has the authority to bind the other.

30.2 Nothing contained herein shall be deemed or construed by the Parties hereto or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the Parties hereto.

30.3 Any and all of the employees of the Contractor, wherever located, while engaged in the performance of any work required by the City under this Contract shall be considered employees of the Contractor only, and not of the City, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the Contractor.

XXXI. SEVERABILITY

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

XXXII. NON-WAIVER OF PERFORMANCE

32.1 No waiver by City of a breach of any of the terms, conditions, covenants or guarantees of this Contract shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of City to insist in any one or

more cases upon the strict performance of any of the covenants of this Contract, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option.

XXXIII. CONTRIBUTION PROHIBITIONS

33.1 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 30th calendar day following the contract award. . Contractor understands that if the legal signatory entering the Contract has made such a contribution, the City may not award the Contract 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.

33.2 Contractor acknowledges that the City has identified this Contract as high profile.

33.3 Contractor warrants and certifies, and this Contract is made in reliance thereon, that the individual signing this Contract 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 Contract. Should the signor of this Contract violate this provision, the City Council may, in its discretion, declare the Contract void.

[The remainder of this page intentionally left blank]

XXXIV. ENTIRE CONTRACT

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

In witness of which this Contract has been executed effective the _____ day of _____, _____.

CITY OF SAN ANTONIO:

Melody Woosley, Director
Department of Human Services

APPROVED AS TO FORM:

Assistant City Attorney

CONTRACTOR:
Bexar County Hospital District d/b/a University Health System

George B. Hernandez, Jr.
President/Chief Executive Officer

APPROVED AS TO FORM:

Associate General Counsel

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
Attachment VI – Additional OMB Provisions

SCOPE OF WORK

1. Summary

To promote healthy development and ensure optimal learning, Contractor will provide Head Start health services to children enrolled in the Head Start Program, as needed, in accordance with the Head Start Performance Standards and the terms of this Contract. Contractor will conduct Lead Screenings for all children who need it during the period of February 1, 2017 to June 2, 2017. Additionally during this period, Contractor agrees to serve as a medical provider and perform complete physical exams for children referred from Head Start service providers. Contractor will provide guidance and advice in the area of health to Head Start service providers when requested.

2. Program Services

A. Contractor shall provide Head Start program services to eligible children without regard to age, race, creed, color, sex, or national origin.

B. Contractor shall use Head Start funds for professional medical services when no other funding source is available, in accordance with Head Start Performance Standards. If funds are used for medical services, Contractor must have and provide to the City upon request written documentation of their efforts to access other available sources of funding.

C. Contractor shall establish an ongoing monitoring system that includes an inventory of equipment and supplies, and conduct internal monitoring of operations throughout the program year, notifying the City when the Contractor identifies possible or actual lack of compliance with the Head Start Performance Standards, Head Start Act, City's program policies or terms of this contract. Contractor will make copies of monitoring reports available to the City upon request.

D. Contractor shall establish and maintain an organizational structure that supports the accomplishment of Program objectives and supports Education Service Providers to ensure all the required Head Start health services are provided. At a minimum, management of medical services must be assigned to an individual serving in the role of a Medical Assistant (MA) or Patient Care Attendant (PCA). This individual and any supporting staff or consultants must be licensed or certified health professionals with experience and expertise in serving young children and their families.

E. Contractor shall ensure that employees who are one hundred percent (100%) funded through the Head Start grant devote one hundred percent (100%) of their time and effort to support the Head Start Program. Contractor will provide administrative support to ensure that all Head Start activities are coordinated and billed accordingly.

F. Contractor shall ensure that its Head Start Program shall be, and remain, in full compliance with the Head Start Performance Standards as provided in Head Start regulations, 45 CFR Part 1301 *et seq*. and with the Head Start Act, as amended, 42 U.S.C. 9801 *et. seq*.

G. Contractor must strive to perform the following no later than 90 calendar days of the child's entry into the Program, and as needed throughout the program school year as new children enter the Program:

1. Contractor shall perform a complete unclothed physical examination for all children who are referred from Head Start service providers. This complete physical exam must be conducted in accordance with the Texas Health and Human Services Health Steps (THSteps) requirements. Contractor must provide copies of the physical exam documentation to Head Start service providers' Health Coordinators. Contractor must also verify or make a determination as to whether or not the child is eligible for health insurance, including Medicaid, Children's Health Insurance Program (CHIP), and Title V funds. Contractor shall ensure no other funding sources are available before using Head Start funds.

2. If Education Service Providers determine that an uninsured child has not received the required physical examination or that the physical examination is incomplete, Contractor will coordinate with Education Service Provider, the uninsured child's medical home or health service provider to have the physical examination completed or, if needed, Contractor must complete the physical examination. Before conducting said physical examination, Contractor shall ensure that the uninsured child has the appropriate consent forms and required documentation. Contractor must refer the uninsured child to the appropriate health care service provider if further medical attention is needed. Contractor shall also ensure no other funding sources are available before using Head Start funds.

H. During the period of February 1, 2017 to June 2, 2017, Contractor, in coordination with the Education Service Provider, must strive to complete the following no later than 90 calendar days of the child's entry into the Program, and as needed throughout the program school year as new children enter the Program:

1. Contractor must conduct Lead Screenings for all children who need it at the appropriate Head Start Center. Contractor will provide the appropriate Consent and Release of Information form. Contractor will initiate the work as soon as the Education Service Provider completes the initial assessment and the Contractor receives a list of the children that require these screenings.

2. If screenings indicate a lead level above normal, Contractor shall refer the child to a health professional for further evaluation and treatment and inform the appropriate Education Service Provider. Contractor will provide a referral letter to parents and Service Provider stating lead level, and will be responsible for explaining/counseling elevated lead levels to parents, when needed and as appropriate. All such parent follow up activities as described in this section shall be in accordance with the written procedures stipulated in Section 2(H)(3) of the Scope of Work.

3. Education Service Providers will make available the following information to the Contractor on all children that are screened for lead and report to the Department of State Health Services (with appropriate consent from parent) in accordance with Contractor's Policy and Procedures:

    a.) Child's name
    b.) Child's date of birth
    c.) Current home address

I. During the period of February 1, 2017 to June 2, 2017, Contractor must coordinate directly with the Education Service Providers' Health Coordinators to ensure that there is a system of appointments, document collection, follow-up and information sharing for the provision of Lead Screenings and Physical Exams for uninsured children in the Head Start Program to include the following:

1. Contractor's MA/PCA will carry out the following:
    a) Report all lead results and document to the Texas Childhood Lead Poisoning Prevention Program – Texas Department of State Health Services in accordance with Contractor's Policy and Procedures.
        - All elevated lead results will be reported immediately to the Health Coordinator and the parents will be notified through a written referral given by the Family Service Worker.
        - Any direct contact between the UHS MA/PCA and parents of children with elevated lead results must be documented in ChildPlus within 7 days from the initial contact.
    b) Contractor (RN, NP) must be available on an as needed basis to assess Physical Exams for health concern follow up and answer medical concerns related to the THSteps EPSDT. Findings will be reported to the City and Education Service Providers on a timely basis. All such parent follow up activities described in this section shall be in accordance with the written procedures stipulated in Section 2(H)(3) of the Scope of Work.

2. During the period of February 1, 2017 to June 2, 2017, Contractor will carry out the following:
    a) Provide City and Education Service Providers ChildPlus status reports on Lead Screenings of Head Start children on a monthly basis and as requested by the City. Reports must include number of campus visits, number of children screened for lead, and number of children indentified with abnormal lead results (referrals).
    b) Be responsible for the ChildPlus data entry on health events of Lead Test. Contractor must create the Lead Test health event in ChildPlus, and input event date, status and results with the health services module for every Head Start child served. The information must be entered into ChildPlus no later than three (3) business days from the date of service. If appropriate, Contractor must check appropriate referral section on the health event.
    c) Conduct a THSteps Medical Checkup, e.g. blood pressure, height and weight, etc., on Head Start children identified by the City and/or Education Service Provider on an as needed basis.
    d) Reporting on testing updates during monthly Health Coordinators Monthly meetings and bi-monthly Head Start Directors meetings on an as needed basis.

3. Contractor and City will collaboratively develop and mutually agree upon written procedures prior to the start of the 2016-2017 program school year that will govern the parent follow-up activities described in Section 2(G) and 2(H) of this Scope of Work. City acknowledges that Contractor is not required to conduct parent follow up activities as described in Section 2(G) and 2(H) of this Scope of Work until such written procedures are agreed upon by the parties. Such procedures must describe, at a minimum, the type of parent contact required, the required follow up timeline for each activity and the number of contacts required prior to referral to proper campus health coordinator or other Head Start staff member. Contractor acknowledges that such

procedures must be in compliance with the Head Start Performance Standards, Head Start Act and any other guidance or clarification from HHS as well as the City of San Antonio Head Start policies and guidance.

J. Contractor must provide written referral or written correspondence to parent(s) of uninsured Head Start enrollees, who received a physical examination, explaining abnormal findings in accordance with the Health Insurance Portability and Accountability Act (HIPAA) and all appropriate state and federal statutes and regulations.

K. Contractor will provide the City, upon request, with a list of Contractor's ambulatory facility hours and locations indicating the availability of child examinations and immunizations. Contractor will work with City to adjust the Contractor's hours of operation in order to meet the needs of parents and Head Start service providers.

L. Contractor must establish, implement and maintain communication systems to ensure that timely, accurate and appropriate information is provided to parents, Health Coordinators and Education Service Providers.

M. Contractor will coordinate with the City to make available University Health System's Pediatric Mobile Unit (PMU) to Head Start program sites on as needed basis to perform professional medical services in accordance with the Head Start Performance Standards. The City will facilitate the provision of Contractor's services by assisting with the following:

1. City will obtain needed paperwork from Parent and/or legal guardian prior to appointment.
2. City will ensure Parent and/or legal guardian or other consented adult is present with the child during the duration of the THSteps EPSDT and/or immunizations
3. If the parent and/or legal guardian cannot be present during the time of the scheduled THSteps EPSDT and/or immunizations, the city will obtain special consent form.
4. City will ensure City Health Coordinator and support staff is available to assist when needed during the time the PMU is present at the designated Head Start site.
5. Both City and Contractor will collaborate to ensure a maximum of children are seen during the time the PMU is at the designated Head Start site. The maximum number of children seen will be determined by the staffing availability of UHS.
6. Both City and Contractor will also collaborate to ensure all available PMU slots are scheduled in advance.
    a. City and Contractor will collaborate to determine in advance the number of slots available for that PMU.
    b. In the case that City cannot fill the PMU slots in advance, City may cancel scheduled PMU visit with one week's prior written notice to Contractor. Such cancellation will be at no additional cost to the City.
    c. UHS will require at least 5 confirmed Head Start patients in order for the PMU to visit head start program sites.
    d. City will ensure that all necessary paperwork required for UHS to perform a Texas Health Steps including a list of children who are scheduled to be seen will be emailed/faxed no later than one-week prior to scheduled visit. Failure to provide UHS the necessary paperwork prior to the visit will result in cancellation of the scheduled date to perform Texas Health Steps examinations.
    e. If space is available, UHS agrees to provide services to any child City

presents with proper documentation at PMU site

f. Physical examinations may be performed utilizing the PMU at the Head Start Centers after hours or during the weekend.

N. Contractor will provide the following professional medical services: THSteps EPSDT and immunizations. Contractor will provide parent and/or legal guardian with a copy of the THSteps EPSDT and/or proof of the immunization administered. Contractor will make every effort to provide services funded through Medicaid, CHIP, or private/3rd party health insurance. Contractor may invoice the City $82.00 per unfunded exam for uninsured children. Contractor may also invoice the City $22.00 for each immunization administered to uninsured children. If the child does not have insurance, Contractor will provide City with the child's name and contact information.

3. Program Governance

A. Contractor's Governing Board shall 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 CFR §1301 *et. seq.* Contractor's Governing Board members or representatives of the Board shall be offered the opportunity to participate in Board education activities arranged by City. Contractor shall also offer the Governing Board members and representatives of the Board the opportunity to engage in a cooperative strategic planning process with respect to the City's Head Start Program and shall submit any final strategic plans developed through such process to City for approval.

B. Contractor shall 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 provision of Head Start services.

C. Contractor shall seek and obtain the City's written approval before making any material revisions in Contractor's Head Start services that conflicts 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, and (iii) the terms of this Contract.

4. Licensure/Staffing

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

5. Participation

Contractor shall make time and resources available to support: (i) participation by Contractor in meetings with City staff for community assessment, self-assessment, strategic planning, development of

training and technical assistance plan, communication and program development activities; (ii) participation in technical assistance trainings and service enhancements developed by City and the Head Start training and technical assistance service provider, as well as other Head Start trainings that may be developed by relevant federal or state agencies.

6. Records. Reporting, Monitoring and Intellectual Property

Additionally, Contractor shall maintain and furnish to City the following financial and programmatic information and reports, in such forms as the City may prescribe, as required under the Head Start Act, as amended, and federal regulations such as 45 C.F.R. Part 74, 45 C.F.R. Part 92, or 45 C.F.R. Part 75, as applicable:

a) The total amount of public and private funds received by Contractor and the amount from each source;

b) Financial reports showing all actual and/or projected costs of the Program, an explanation of budgetary expenditures, Program Income, non-Federal Share amounts;

c) The results of the most recent financial audit;

d) The number and percentage of enrolled children that received medical exams;

e) Reports showing employee credentials and a list of personnel serving to satisfy Contractor's in-kind non-Federal Share requirement;

f) Reports showing the wages of each employee;

g) Head Start Service Providers report to the Head Start Policy Council, submitted on a monthly basis; and

h) Any other information requested by City.

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

ATTACHMENT II

[INSERT PROGRAM BUDGET HERE]

ATTACHMENT III
SPECIAL PROVISIONS — Program Year 2017-2018

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
Disability
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
Disability

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 HHS AWARD DOCUMENT HERE]

Attachment V

WITNESSETH:

HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement is entered into by and between the City of San Antonio ("Covered Entity"), andthe Bexar County Hospital District d/b/a University Health System, a Business Associate ("BA").

WHEREAS, Covered Entity and BA have entered into a Head Start Agreement ("Service Contract") to provide health services, effective February 1, 2017; 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 C.F.R. 160.103. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 C.F.R. 160.103.

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

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

(6) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. 164.501, limited to the information created or received by BA from or on behalf of Covered Entity. PHI includes "Electronic Protected Health Information" or "EPHI" and shall have the meaning given to such term under the HIPAA Rule, including but not limited to 45 C.F.R. Parts 160, 162, 164, and under HITECH.

(7) "Required By Law" shall have the same meaning as the term "required by law" in 45 C.F.R. 164.103.

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

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

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

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

(1) Not use or disclose the PHI other than as permitted or required by this Agreement or as permitted by the HIPAA Regulations 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 as defined by 45 C.F.R. 164.304 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;

(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 the U.S. Department of Health and Human Services, as required, any covered PHI breach. Breach notification to Covered Entity must include: names of individuals with contact information for those who were or may have been impacted by the HIPAA Breach; a brief description of the circumstances of the HIPAA Breach, including the date of the breach and date of discovery; a description of the types of unsecured PHI involved in the breach; a brief description of what the BA has done or is doing to investigate the breach and mitigate harm. BA will appoint a breach liaison and provide contact information to provide information and answer questions Covered Entity may have concerning the breach;

(12) Comply with all HIPAA Security Rule requirements;

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

(14) Under no circumstances may BA sell PHI in such a way as to violate Texas Health and Safety Code, Chapter 181.153, effective September 1, 2012, nor shall BA use PHI for marketing purposes in such a manner as to violate Texas Health and Safety Code

Section 181.152, or attempt to re-identify any information in violation of Texas Health and Safety Code Section 181.151, regardless of whether such action is on behalf of or permitted by the Covered Entity.

C. Permitted Uses and Disclosures by BA

(1) Except as otherwise limited in this 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. 164.502(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 February 1, 2017. 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 Service 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.

(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. ***INDEMNIFICATION. CONTRACTOR ACKNOWLEDGES THAT IS A POLITICAL SUBDIVISION OF THE STATE OF TEXAS AND IS SUBJECT TO, AND COMPLIES WITH THE APPLICABLE PROVISIONS OF THE TEXAS TORT CLAIMS ACT, AS SET OUT IN THE CIVIL PRACTICES 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, INCLUDING BUT NOT LIMITED TO THOSE RESULTING OR ARISING FROM ANY AND ALL INJURIES OR DEATH OF ANY PERSON OR DAMAGE TO ANY PROPERTY ARISING FROM OR RELATED TO THIS CONTRACT.***

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 of 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 Contract 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.

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 February 1, 2017.

COVERED ENTITY:

City of San Antonio,
a Texas municipal corporation

Melody Woosley, Director
Department of Human Services

BUSINESS ASSOCIATE:

Bexar County Hospital District d/b/a University Health System

Michael Hernandez, Chief Legal Officer

APPROVED AS TO FORM:

Assistant City Attorney

Associate General Counsel

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."

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.

(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

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,

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,

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,

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.