

**PROFESSIONAL SERVICES AGREEMENT FOR  
SEARCH FIRM FOR CHIEF EXECUTIVE OFFICER POSITION  
FOR SAN ANTONIO EARLY CHILDHOOD EDUCATION MUNICIPAL  
DEVELOPMENT CORPORATION (Pre-K 4 SA)**

This Agreement is entered into by and between the San Antonio Early Childhood Education Municipal Development Corporation, a Texas Municipal Development Corporation ("Corporation" or "Pre-K 4 SA") acting by and through its Chief Executive Officer, or her designee, and Denise Smith Consulting LLC, having its principal place of business in Houston, Texas, ("Consultant"), both of which may be referred to herein collectively as the "Parties".

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

**I. DEFINITIONS**

As used in this Agreement, the following terms shall have meanings as set out below:

"Corporation" is defined in the preamble of this Agreement and includes its successors and assigns.

"Consultant" is defined in the preamble of this Agreement and includes its successors.

"Director" shall mean the director of the City of San Antonio's Human Resources Department.

**II. TERM**

2.1 The term of the contract shall commence upon execution of contract by the last party to sign, and shall terminate upon completion of all services described herein.

2.2 Consultant agrees and understands that the Corporation expects to pay all obligations of this Agreement from a 1/8<sup>th</sup> cent sales tax approved by the voters of the City of San Antonio. Accordingly, if funding is not received by Corporation in a sufficient amount to pay any of its obligations under the terms of this Agreement, or if the collection of sales tax is terminated, then this Agreement will terminate and neither Corporation nor Consultant will have any further obligations hereunder. Lack of funding is not and will not be considered a breach of this Agreement; provided however, that lack of funding will not excuse payment for services rendered.

**III. SCOPE OF SERVICES**

3.1 Consultant agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation.

3.2 The Consultant shall provide all services as set forth in Consultant's Proposal attached hereto as Exhibit "A" and incorporated by reference herein. The Consultant understands and agrees that Exhibit "A" is a part of this Agreement, as though fully set out herein, and that all obligations, conditions, tasks, products, and representations set forth in said documents are required to be fulfilled by the Consultant as completely and fully as are the obligations, conditions, tasks, products, and representations imposed by this Agreement.

3.3 The terms of this Agreement shall control where there is any conflict between the terms of the Consultant's Proposal and the terms of this Agreement.

3.4 Consultant shall work with the board for the Corporation, the Deputy City Manager for the City of San Antonio, and their designees, to perform any and all related tasks required by the Corporation in order to fulfill the purpose of this Agreement. Denise Smith will manage and serve as the primary consultant for the services to be performed under this Agreement. Corporation is an Equal Opportunity Employer and does not discriminate. Consultant shall conduct all activities in accordance with this and all applicable federal, state and local requirements.

3.5 The Consultant shall provide professional search services, including, but not limited to the following:

- 3.5.1 Conduct a detailed review of the job description for the Chief Executive Officer position, as well as a needs assessment with the current CEO, key Corporation leaders and staff, and City staff; compile resulting information and develop common themes; probe for key characteristics and personality traits, background and management style determined to be important for the position.
- 3.5.3 Develop detailed CEO recruitment profile and position description, and conduct a comprehensive regional and national outreach effort to identify and recruit best qualified candidates for the CEO position.
- 3.5.4 Conduct preliminary screening of applicants to provide an independent and objective assessment of the qualifications and suitability of candidates for the position; conduct interviews, in-depth reference checks of those candidates deemed most qualified based on the candidate profile.
- 3.5.5 Provide periodic progress reports to key Corporation and City staff on status of search and prospective candidates. Prepare a detailed written report recommending three (3) to four (4) finalist candidates for the position for further consideration. Include in the written report and executive summary, detailed resumé, comprehensive references, and profile results. Consultant shall provide the report related to the CEO search no later than 60-days after execution of this contract, unless otherwise mutually agreed between the parties. By such mutual agreement, the parties may establish other deadlines for the services to be rendered under this Article III.

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3.5.5 Provide assistance to the Corporation as needed during the final interview process.

3.5.6 Provide assistance to the Corporation with the negotiation process of the selected candidate and professionally and positively communicate to candidates not selected for the position.

3.6 Consultant shall perform its services in accordance with the ordinary, reasonable standard of care and diligence normally practiced by recognized professional firms in performing services of a similar nature, under similar circumstances. This includes the knowledge and experience ordinarily required of a member of that profession, and includes performing the skills necessary to adequately cope with problems that arise in performing its services, which skills are not possessed by ordinary laymen.

3.7 Service Guarantee

3.7.1 Consultant shall continue fulfilling terms of Agreement as provided for in Scope of Services until Corporation makes a final candidate selection.

3.7.2 Consultant shall not recruit the selected candidate for other positions for a period of 3 years after the start date without Corporation's permission.

3.7.3 Consultant guarantees that, if in the first twelve (12) months of employment, the hired candidate is released by the Corporation for performance-related issues or if the candidate voluntarily resigns, Consultant will re-launch a search for a new candidate, under the original position specifications, and proceed with the services under Article III, entitled Scope of Services, for no additional professional fee. Corporation will reimburse Consultant for reasonable recruiting expenses only.

3.8 All work performed by Consultant hereunder shall be performed to the satisfaction of the Deputy City Manager of the City Of San Antonio. The determination made by the Deputy City Manager shall be final, binding and conclusive on all Parties hereto. Corporation shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to the Deputy City Manager. Corporation shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant's work not be satisfactory to the Deputy City Manager; however, Corporation shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should Corporation elect not to terminate.

#### IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by the Deputy City Manager, of all services and activities set forth in this Agreement, Corporation agrees to pay Consultant a professional fee of SIXTY THOUSAND AND NO/100THS (\$60,000.00) split into three equal payments. The professional fee shall be equivalent to 30% of the successful candidate's first year annual base salary, and as

such, the professional fee above may be reconciled upon the successful closing of all search covered by this Agreement as either a credit or bill. The payment schedule as further described below:

- 4.1.1 Corporation shall pay 1/3 of the professional fee (\$20,000.00) plus any reasonable expenses upon completion of initial strategy meetings with the Corporation and City staff, and acceptance by Corporation of the recruitment strategy;
- 4.1.2 Corporation shall pay 1/3 of the professional fee (\$20,000.00) plus any reasonable expenses upon completion of evaluation of all candidates and identification of the most promising candidates for interviews for the CEO position;
- 4.1.3 Corporation shall pay 1/3 of the professional fee (\$20,000.00) plus any reasonable expenses upon the issuance and acceptance of an offer letter by the final candidate for the CEO position by the Corporation, so long as Corporation hires such candidate within one year of Consultant's original recommendation. This fee shall constitute full and complete payment for all services to be performed by Consultant under this Agreement.

#### 4.2 Expense Reimbursement.

- 4.2.1 Reasonable and necessary expenses are those identified in Consultant's Proposal and incurred in performance of the work under this Agreement. These expenses shall include reimbursement for travel expenses and reasonable expenses for meals/meetings with potential candidates and will be reimbursed upon receipt and review by the Director of Human Resources for the City of San Antonio, or her designee, of an itemized bill or statement. First class air travel shall not be considered reasonable and will not be reimbursed. Director may demand satisfactory proof of Consultant's expenditure and shall only be obligated to reimburse if satisfied, in her sole discretion, that the expense was incurred, and that it was reasonable. Consultant may, but is not required to, request an advanced determination from Director prior to incurring the expense. Failure to do so, however, will be at Consultant's sole risk.
- 4.2.2 Reasonable and necessary travel expenses for candidates interviewed by Corporation for the position of CEO will be arranged and paid directly by Corporation, not through Consultant. Candidate travel expenses will not be included in the professional services fees provided in Section 4.1, however, all such travel shall be approved in advance by Corporation.

4.3 In the event that more than one executive is hired as a result of the work performed by Consultant within twelve (12) months of this engagement, a fee of 20% of the actual first year base salary for each individual hired will be paid by Corporation. No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by Corporation. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 and 4.2 above. Total payments to

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Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved as provided in Article XVI, entitled Amendments.

4.4 Final acceptance of work products and services require written approval by Corporation. The approval official shall be the Deputy City Manager. Payment will be made to Consultant following written approval of the final work products and services by the Deputy City Manager. Corporation shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

## **V. OWNERSHIP OF DOCUMENTS**

5.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement shall be the exclusive property of Corporation and the City of San Antonio; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant.

5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, Corporation and the City have the right to use all such writings, documents and information as Corporation and City desire, without restriction.

## **VI. RECORDS RETENTION**

6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the Corporation and City at their respective offices, at all reasonable times and as often as Corporation and/or City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by Corporation, City and any of their authorized representatives.

6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that Corporation and City shall each have access to any and all such documents at any and all times, as deemed necessary by Corporation, during said retention period. Corporation and/or City may, at their election, require Consultant to return the documents to Corporation and/or City at Consultant's expense prior to or at the conclusion of the retention period. In such event, Consultant may retain a copy of the documents.

6.3 Consultant shall notify Corporation and City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the

documentation and records referenced herein. Consultant understands and agrees that Corporation and City will process and handle all such requests.

## **VII. TERMINATION**

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination without Cause. This Agreement may be terminated by Corporation upon 15 calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice. Payment will be made for work performed prior to termination.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, either Corporation or Consultant, may terminate this Agreement as of the date provided in the notice, in whole or in part, for a material breach of this Agreement.

7.4 Termination by Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.5 Regardless of how this Agreement is terminated, Consultant shall affect an orderly transfer to Corporation or to such person(s) or firm(s) as the Corporation may designate, at no additional cost to Corporation, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by Corporation, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by Corporation and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.

7.6 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to Corporation its claims, in detail, for the monies owed by Corporation for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of Corporation and constitute a waiver by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.7 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.

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7.8 Termination not sole remedy. In no event shall Corporation's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of Corporation's remedies, nor shall such termination limit, in any way, at law or at equity, Corporation's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

## VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement 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.

### CORPORATION

Kathy Bruck  
CEO  
Pre-K 4 SA  
7031 S. New Braunfels  
San Antonio, TX 78223

### CONSULTANT

Denise Smith  
Denise Smith Consulting LLC  
P.O. Box 22010  
Houston, TX 77227

### CITY

Peter Zaroni  
Deputy City Manager  
P.O. Box 839966  
San Antonio, TX 78283-3966

## IX. CONFIDENTIAL WORK

9.1 No reports, information, evaluation, data or any other documentation developed by, given to, prepared by, or assembled by the Consultant under this Contract shall be disclosed or made available to any individual or organization by the Consultant without express written approval of the Corporation and the City.

9.2 The Consultant shall establish a method to secure the confidentiality of records and information that the Consultant may have access to, in accordance with the applicable federal, state, and local laws and regulations. This provision shall not be construed as limiting the Corporation's and City's or their authorized representatives' right of access to records or other information under this Contract.

9.3 If the Consultant receives inquiries regarding documents within their possession pursuant to this Contract, the Consultant shall immediately forward such request to the

Corporation and City for disposition.

## **X. INSURANCE REQUIREMENTS**

Consultant shall be responsible for insuring her own Property, Equipment, Autos and Legal Liability. In no event will the Corporation or City be required to maintain any insurance coverage for Consultant.

## **XI. INDEMNIFICATION**

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

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONSULTANT shall advise the CORPORATION and CITY in writing within 24 hours of any claim or demand against the CORPORATION, CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONSULTANT's cost. The CORPORATION and CITY shall each have the right, at their option and at their own expense, to participate in such defense without relieving CONSULTANT of any of its obligations under this paragraph.

**11.2 Defense Counsel - CONSULTANT shall retain defense counsel within seven (7) business days of CORPORATION's and/or CITY's written notice that CORPORATION or CITY is invoking its right to indemnification under this Contract. If CONSULTANT fails to retain Counsel within such time period, CORPORATION and/or CITY shall have the right to**



retain defense counsel on its own behalf, and CONSULTANT shall reimburse CORPORATION and/or CITY for all costs related to retaining defense counsel until such time as CONSULTANT retains Counsel as required by this section. CORPORATION and CITY shall also have the right, at their option, to be represented by advisory counsel of their own selection and at their own expense, without waiving the foregoing.

11.3 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONSULTANT or any subcontractor under worker's compensation or other employee benefit acts.

## **XII. ASSIGNMENT AND SUBCONTRACTING**

12.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Consultant. Consultant, its employees or its subcontractors shall perform all necessary work.

12.2 Corporation understands that this Agreement is made in reliance thereon that Consultant does not intend to use subcontractors in the performance of this Agreement, but in the event that subcontractors become necessary, Consultant agrees that any subcontractor(s) shall be approved by Corporation prior to the provision of any services by said subcontractor(s).

12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the Corporation, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. Corporation shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the Corporation.

12.4 Except as otherwise stated herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the Corporation. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee or subcontractor. Corporation agrees not to unreasonably withhold consent for Consultant to sell, assign, pledge, transfer or convey its interest in this Agreement.

12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part

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of its right, title or interest in this Agreement, Corporation may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII - Termination, notwithstanding any other remedy available to Corporation under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to Corporation, which Corporation sustains as a result of such violation.

### **XIII. INDEPENDENT CONTRACTOR**

13.1 Consultant covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of the Corporation; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of *respondeat superior* shall not apply as between Corporation and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, collaborators or joint venturers between Corporation and Consultant. The parties hereto understand and agree that the Corporation shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the Corporation.

### **XIV. CONFLICT OF INTEREST**

14.1 Consultant acknowledges that it is informed that the Board for the Corporation has adopted the Ethics Code for the City of San Antonio, which prohibits a City or Corporation officer or employee, from having a financial interest in any contract with the Corporation or City, or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the Corporation or City or in the sale to the Corporation or 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 Corporation or City officer or employee; his parent, child or spouse; a business 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 business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a Corporation or City contract, a collaborator or a parent or subsidiary business entity.

14.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the Corporation or City. Consultant further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

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## **XV. AMENDMENTS**

15.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both Corporation and Consultant. The CEO may execute contract amendments on behalf of Corporation in the following circumstances: a) revisions to attachments regarding the specifics of the program, to include modification of routes and depots, and the adjustment of the number of students requiring service, b) changes in state or federal regulations relevant to the program and the implementation of the services set out herein.

## **XVI. SEVERABILITY**

16.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, 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 Agreement 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 Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement 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.

## **XVII. LICENSES/CERTIFICATIONS**

17.1 Consultant warrants and certifies that Consultant and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

## **XVIII. COMPLIANCE**

18.1 Consultant shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

## **XIX. NONWAIVER OF PERFORMANCE**

19.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not 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 either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, 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. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the

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party to be charged. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

## **XX. LAW APPLICABLE**

20.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

20.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

## **XXI. LEGAL AUTHORITY**

21.1 The signer of this Agreement for Consultant represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Consultant and to bind Consultant to all of the terms, conditions, provisions and obligations herein contained.

## **XXII. PARTIES BOUND**

22.1 This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

## **XIII. CAPTIONS**

23.1 The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

## **XXIV. DEBARMENT**

24.1 Consultant 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.

24.2 Consultant shall provide immediate written notice to Corporation, in accordance with Article VIII - Notice, if, at any time during the term of this contract, including any renewals hereof, Consultant learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

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## **XXV. ENTIRE AGREEMENT**

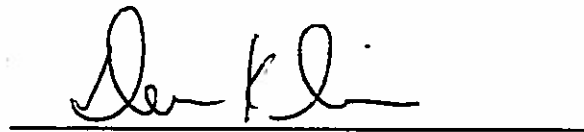
25.1 This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XV - Amendments.

**EXECUTED and AGREED** to as of the dates indicated below.

**SAN ANTONIO EARLY  
CHILDHOOD EDUCATION  
MUNICIPAL  
DEVELOPMENT  
CORPORATION**

**DENISE SMITH  
CONSULTING LLC**

  
(Signature)

  
(Signature)

Printed  
Name: Peter Zononi  
Title: Deputy City Manager  
Date: 3-29-16

Printed  
Name: Denise Smith  
Title: Executive Search Consultant  
Date: 3-18-16

Attachments:  
Exhibit "A" – Consultant Work Plan

# EXHIBIT A



- |  |   |   |  |
|--|---|---|--|
| <ul style="list-style-type: none"> <li>• Understand current needs of the organization</li> <li>• Develop/Modify job description and skills needed</li> <li>• Discuss draft with the key stakeholders</li> <li>• Meet with Board/Employees about the current needs of the organization</li> <li>• Determine priority of qualifications and type of candidate</li> <li>• Understand salary and benefits for the position</li> <li>• Revise job description based on discussions</li> <li>• Agree on search timeline</li> </ul> | <ul style="list-style-type: none"> <li>• Determine application and screening process</li> <li>• Distribute job description to key stakeholders</li> <li>• Post position with appropriate sources as needed</li> <li>• Network with sources for leads on candidates</li> <li>• Track all source contacts and candidates</li> <li>• Screen resumes and leads and determine people to bring in for first round interviews</li> <li>• Communicate with all candidates that apply</li> </ul> | <ul style="list-style-type: none"> <li>• Develop list of potential questions for interviews and interview rating sheet</li> <li>• Determine interviewers for first/second round</li> <li>• Interview potential candidates</li> <li>• Track candidates and strengths of each candidate</li> <li>• Provide communication to candidates interviewed</li> </ul> | <ul style="list-style-type: none"> <li>• Select 3-5 candidates to bring to Committee and interview</li> <li>• Ask candidates to complete written assessment or role play</li> <li>• Interview candidates</li> <li>• Check references on potential finalist candidates</li> <li>• Select one to make offer</li> <li>• Discuss compensation level and conduct salary negotiations as needed</li> <li>• Make offer and determine start date</li> <li>• Assist with communication plan and announcement</li> </ul> |
|--|---|---|--|

2-3 weeks\*

4-5 weeks\*

4-5 weeks\*

3 Weeks\*

*JS*

\*Approximate Timeframes

March 7 – 23*	Establish Profile & Vision for Role and Define Selection Process	<ul style="list-style-type: none"> <li>▪ Modify existing job description based on current state (March 5)</li> <li>▪ Meet with Board and Staff to understand most pressing needs and strategic direction of Pre-K 4 SA (March 9-10)</li> <li>▪ Determine priority of qualifications and competencies needed (March 9-10)</li> <li>▪ Receive additional job profile feedback (March 9-10)</li> <li>▪ Understand salary and benefits of the position (March 18)</li> <li>▪ Revise job description based on discussions (March 21)</li> <li>▪ Agree on search process, timeline, key steps and participants (March 23)</li> </ul>
March 28 – April 22*	Build Candidate Pool: Post Job Profile, Source Candidates & Conduct Initial Screening	<ul style="list-style-type: none"> <li>▪ Distribute Job Description to key stakeholders and sources (March 25 or as soon as complete)</li> <li>▪ Post position with appropriate sources (by end of March)</li> <li>▪ Network with sources on leads of candidates (Ongoing)</li> <li>▪ Develop initial competency based screening questions for 1V (March 28)</li> <li>▪ Screen all resumes and leads (Ongoing)</li> <li>▪ Continue sourcing additional candidates</li> </ul>
April 25 – May 20*	Select and evaluate top Candidates	<ul style="list-style-type: none"> <li>▪ Develop list of interview questions for Second Round Interviews (2IV)</li> <li>▪ Interview top 7-10 candidates (April 25-27)</li> <li>▪ Track strengths of each candidate</li> <li>▪ Provide resumes, rating forms, and areas to probe of the 3/4 candidates moving forward</li> </ul>
May 23 – June 17*	Making the Hire: Final Selection	<ul style="list-style-type: none"> <li>▪ Select 3-4 candidates to bring to Hiring Committee</li> <li>▪ Ask candidates to complete written exercise/case study</li> <li>▪ Interview finalists (mid-to-late May?)</li> <li>▪ Check references on potential finalists</li> <li>▪ Complete background screen (City of San Antonio to complete)</li> <li>▪ Make offer and negotiate salary</li> <li>▪ <b>EXPECTED START-DATE: JULY 11 or JULY 18</b></li> </ul>

DES

- Weekly calls (30min) with Peter Zanoni (Fridays at 10:30)
- Bi-weekly email/call with Hiring Committee
  - Who are the members of Hiring Committee?
- Bi-weekly email with staff updating progress
  - Is there regularly scheduled meeting/discussion planned
- Proposed possible Search Timeline (assuming all goes well)\*
 

– Revise Job Profile	3/14-15
– Finalize Job Profile	3/17
– Post Job Profile	w/o 3/14
– Send Job Profile to Sources	w/o 3/14
– Screen and interview (Denise)	w/o 3/21 – 4/18
– Interview shorter list (7) of candidates (Denise & Peter)	w/o 4/25 & 5/2
– Interview with Sheryl and Personnel committee (3-4)	w/o 5/2 & 5/9

DS

\*All dates are estimates and subject to change